



A handwritten signature in black ink, appearing to be "R. Swannell".

Australian Securities and Investments Commission

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001

SECTION 93AA

The commitments in this Enforceable Undertaking are offered to the Australian Securities and Investments Commission ("ASIC") by:

Richard John SWANNELL
103 Ullapool Road
MT PLEASANT WA 6153 ("Mr Swannell")

1. Definitions

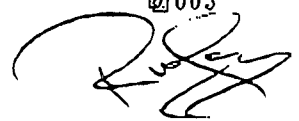
1.1 In this Enforceable Undertaking:

"Software" shall mean and include the software currently marketed as Elliott Wave Pattern recognition software, software using the source code described as Elliott Wave Pattern Recognition Software, and software sold by Swannell which contains a recommendation or a statement of opinion or a report of either things, that is intended to influence a person in making a decision in relation to a financial product or class of financial products or could reasonably be regarded as being intended to have such an influence.

"financial product" shall have the meaning described in Division 3 of Part 7.1 of the *Corporations Act 2001*.

2. Background

2.1 Mr Swannell is the developer of a computer program based on a type of mathematical modeling called Elliott Wave analysis ("the Software"). The program purports to measure investor psychology and to assist in anticipating the financial markets most likely next move through the analysis of wave patterns. By knowing the wave patterns, investors are able to identify market 'lows' and 'highs' and therefore able to make investment decisions that involve the least risk. The investment decisions able to be made by persons include decisions concerning the dealing in derivatives (futures contracts).



- 2.2 In 1999, the activities of Mr Swannell and associated companies were investigated by ASIC for selling certain share trading software without holding an investment advisers or futures advisers licence.
- 2.3 As a consequence of its investigation in 1999, ASIC made application for and obtained orders from the WA Supreme Court on 27 January 2000 which prohibited Mr Swannell, and any associated companies, from selling the then share trading software without holding an appropriate license from ASIC. Mr Swannell was permitted to sell the software by going through an existing licensee able to deal in financial products including derivatives.
- 2.4 In October 2000 Mr Swannell's company, Elliott Wave Research Pty Ltd, entered into a license and distribution agreement concerning the Software with Roxburgh Securities Pty Ltd ("Roxburgh"), a licensed securities dealer. As part of that agreement, Roxburgh established a web site by the name of www.stockandfuturestrading.com for the purpose of promoting and selling Mr Swannell's products. The web site, which was later renamed to www.elliottwaveresearch.com, was owned and controlled by Roxburgh, and included a link for ordering the Software online.
- 2.5 Through the course of its current investigation, which concluded in mid-March 2003, ASIC reviewed the website named "www.elliottwaveresearch.com" and noted that it primarily focused on Mr Swannell and the work of an associated company named Elliott Wave Research Pty Ltd. The agreement between Mr Swannell and Roxburgh was subsequently terminated in August 2003.
- 2.6 ASIC is of the view that the visual and written presentation of the website named "http://www.elliottwaveresearch.com" was such that Mr Swannell may have been carrying on a financial services business and thereby may have breached section 911A(1) of the *Corporations Act* 2001.
- 2.7 ASIC has power pursuant to section 920A of the *Corporations Act* 2001 to make an order banning Mr Swannell from providing financial services.
- 2.8 Mr Swannell acknowledges the concerns of ASIC regarding the promotion and sale of the Software on the website named "www.elliottwaveresearch.com" and has accordingly offered the undertakings set out below in section 3.
- 2.9 ASIC has agreed to accept the undertakings as an alternative to the exercise of its powers under section 920A of the *Corporations Act* 2001.



3. Undertakings

3.1. Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* ("the ASIC Act"), ASIC accepts the following undertakings from Mr Swannell:

- (a) That he will not personally or indirectly through any associated Company advertise for sale, promote the sale of, or sell the Software other than through a person who holds an Australian financial services licence and that person is appropriately licenced to provide financial services including, if necessary, financial services and advice regarding derivatives.
- (b) That he will not personally or indirectly through any associated Company advertise for sale, promote the sale of or sell any other computer software concerning financial products, in addition to the Software, other than through a person who holds an Australian financial services licence and that person is appropriately licensed to provide financial services including if necessary financial services and advice regarding derivatives.
- (c) That he will not, for a period of 2 years from the date thereof, do any act or engage in any conduct, whether directly or indirectly, as a representative of a person who holds a licence which authorises that person to carry on a financial services business; and
- (d) That after the two year period, he will not do any act or engage in any conduct, whether directly or indirectly, as a representative of a person who holds, a licence which authorizes that person to carry on a financial services business until he first undertakes and successfully completes a course of study being the Securities Institute of Australia Diploma of Financial Markets, or other equivalent course approved by ASIC's Specialist Assistant Director, Enforcement, Financial Services, or any other authorized ASIC staff member.

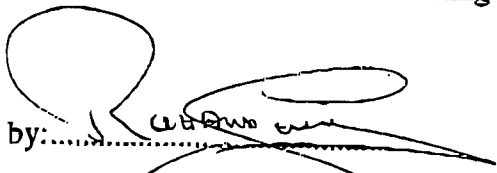
4. Acknowledgements

4.1. Mr Swannell acknowledges:

- (a) That he has obtained legal advice in relation to the content and effect of this Enforceable Undertaking and
- (b) That ASIC will make this Enforceable Undertaking available for public inspection and may enter Mr Swannell's name onto a register maintained by ASIC pursuant to section 922A(1) of the *Corporations Act 2001*; and
- (c) That ASIC may issue a media release on execution of this Enforceable Undertaking; referring to its terms and to the concerns of ASIC, which lead to its execution, and
- (d) That ASIC's acceptance of this Enforceable Undertaking in no way derogates from the rights and remedies available to ASIC or to any other person arising from any of the conduct

described in this Enforceable Undertaking; and

- (e) That ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate a suspected contravention of any of the matters referred to in section 13 of the ASIC Act and which arise from any past or future conduct of Mr Swannell. Nor does acceptance of this Enforceable Undertaking restrain ASIC from exercising any other powers that have been conferred on it; and
- (f) This Enforceable Undertaking has no operative force until it is accepted by ASIC. The signature of the authorised delegate will be evidence of such acceptance. The date of signing, as marked by the authorised delegate, will be the date on which this Enforceable Undertaking comes into effect.

SIGNED by:..... 

OFFERED by Richard John Swannell

This 21ST day of MAY 2004


In the presence of: 

Witness: Name: (print) ELIZABETH MARY MARTIN

Address: 1 VINEYARD ROW, SWAN VIEW.

This 21ST day of MAY 2004

ACCEPTED by the Australian)
 Securities and Investments)
 Commission, pursuant to section)
 93 AA of the ASIC Act 2001, by its)
 Duly authorised delegate.)



Regional Commissioner for Western Australia,

Australian Securities and Investments Commission

This 7th day of July 2004