

## ENFORCEABLE UNDERTAKING

### Section 93 AA

#### *Australian Securities and Investments Commission Act 2001*

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

Christopher John Daws  
147 Brighton Road  
SCARBOROUGH WA 6019

#### 1. BACKGROUND

- 1.1 Mr Christopher John Daws ("Mr Daws") held a proper authority as a securities representative of CIBC World Markets Australia Ltd ("CIBC World") and CIBC World Markets Securities Australia ("CIBC") which was the broking arm of the CIBC World from February 1994 to 29 August 1997.
- 1.2 From 10 September 1997 to 23 February 2000 Mr Daws held a proper authority as a securities representative of Merrill Lynch Private (Australia) Ltd ("MLPA") and from 10 March 1999 to 23 February 2000 from Merrill Lynch Equities (Australia) Ltd ("MLEA") the retail broking arm of MLPA.
- 1.3 Following an ASIC investigation into his conduct, Mr Daws consented on 30 April 2001 to a banning order being made against him by ASIC pursuant to section 829 of the Corporations Law ("CL") as it then was and acknowledged that he had engaged in improper conduct as set out in the Consent to Banning Order.
- 1.4 On 2 May 2001 ASIC made an order ("the Original Banning Order") pursuant to CL section 829 permanently prohibiting Mr Daws from acting as a representative/proper authority holder of a securities dealer or investment adviser unless each of the following requirements were complied with:
  - Within 12 months from the date of the execution of the order Mr Daws shall provide to ASIC the "Original Transcript of Academic Record" from the Securities Institute of Australia showing successful completion of the units known as "Financial Planning and Wealth Creation" (410) and "Stockbroker's Compliance" (961) or their equivalents;
  - Prior to commencing employment with a licensed entity ("the Licensee") from whom Mr Daws will be an authorised representative, the Licensee shall nominate a director or

- (e) It is 4 years since the Original Banning Order was made;
- (f) ASIC's view was that the conduct did not warrant a "life time ban" and it was accepted Mr Daws was "not beyond redemption";
- (g) The Applicant is remorseful and has expressed contrition and he is now a more mature person and is aware of what is right and wrong;
- (h) The purpose of a banning order is not punitive but is for the protection of the public;
- (i) Deterrence is relevant but in this case there has already been publication of the Original Banning Order by ASIC's Media Release and an article in the West Australian.

## 2. Undertakings

2.1 Mr Daws provides the following undertakings.

2.2 Mr Daws will comply with section 911A of the *Corporations Act*.

2.3 Within 3 months from the acceptance of this undertaking by ASIC Mr Daws will:

- (i) complete the course known as "Directors Essentials" offered by the Australian Institute of Company Directors; and
- (ii) provide to ASIC a copy of the Certificate in Directors Essentials which he receives from the Australian Institute of Company Directors upon his successful completion of the "Directors Essentials" course.

2.4 In the event that in the future Mr Daws wishes to re-enter the financial services industry, by either applying for an Australian Financial Services Licence or becoming an authorised representative of a Australian Financial Services Licence holder ("Licensee"), Mr Daws will comply with each of the following:

### **Education**

- (a) Mr Daws will comply with the training requirements set out in ASIC's policy statement 146;

### **Supervision by Licensee**

- (b) Prior to commencing employment with a Licensee for whom Mr Daws will be an authorised representative, the Licensee shall

principal of the Licensee who will be responsible for the supervision of Mr Daws ("the Supervisor");

- Prior to commencing employment with the Licensee, Mr Daws shall obtain from the Licensee a letter confirming that it undertakes to supervise him in the manner set out in this order. The letter shall include the name of the Supervisor; and
- The Licensee does not terminate Mr Daws' proper authority for improper conduct.

- 1.5 As Mr Daws failed to comply with the above requirements within 12 months he became permanently banned.
- 1.6 On 14 July 2004 Mr Daws made an application to ASIC under section 920D of the Corporations Act 2001 ("CA") seeking variation of the Original Banning Order.
- 1.7 Following a hearing before the ASIC Delegate on 22 November 2004 the Delegate handed down a decision on 10 December 2004 refusing to vary or cancel the Original Banning Order.
- 1.8 On 6 January 2005 Mr Daws appealed ASIC's decision not to vary or cancel the Original Banning Order to the Administrative Appeals Tribunal.
- 1.9 Following a hearing before the Administrative Appeals Tribunal on 14 February 2006, the Administrative Appeals Tribunal on 15 February 2006 handed down its decision that it would revoke the Original Banning Order and directed that Mr Daws enter into and ASIC accept an Enforceable Undertaking pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001.
- 1.10 The Administrative Appeals Tribunal determined that:
  - (a) Mr Daws' cessation of employment was a change in circumstance falling within CA section 920D given that as at the date of the Original Banning Order he was employed and it later ceased;
  - (b) The unintended consequence of the Original Banning Order was that Mr Daws could not be appointed to board of companies;
  - (c) It is a change in circumstance that Mr Daws was in the Securities Industry at the time and is now no longer and does not intend to continue in the industry;
  - (d) It is many years since the conduct giving rise to the Original Banning Order;

nominate a director or principal of the Licensee who will be responsible for Mr Daws' supervision (the "Supervisor"); and

- (c) Prior to commencing employment with a Licensee, Mr Daws shall obtain from the Licensee a letter confirming that it undertakes to supervise him in the manner set out in this undertaking. The letter shall include the name of the Supervisor.

2.5 In addition to any other measures the Licensee has in place for the supervision of its representatives:

- (a) The Licensee shall not allow Mr Daws to trade on personal or associated accounts.
- (b) The Licensee shall require that all orders placed by Mr Daws for direct shares or other investment products to be authorised by the Supervisor prior to execution, or in the absence of the Supervisor, by another person nominated by the Supervisor.
- (c) The Licensee shall not allow Mr Daws to have any dealings in or discussions with clients in relation to corporate matters.
- (d) The Licensee shall require Mr Daws to record in writing the substance of all his dealings conducted on behalf of the Licensee contemporaneously or as soon as practicable after such dealings take place. Written particulars of client profiles and updated client profiles, client warnings where clients have not given full personal information, disclosures of interests, material benefits and advantages and bases for securities recommendations must be kept.
- (e) The Licensee shall require Mr Daws to provide a written report to his Supervisor as to his trading activities every fortnight. The report shall annex copies of all new client accounts opened by Mr Daws, any relevant authorities to open or trade upon accounts and the "adviser copies" of the buy and sell order forms completed by Mr Daws.
- (f) As per normal compliance requirements of the Licensee for all authorised representatives, the Licensee must ensure that he attend compliance meetings and research meetings, maintain a comprehensive day book and appointment book, and complete client profiles for all new accounts.
- (g) Within 7 days prior to the end of each month, the Supervisor shall conduct a written review to determine whether Mr Daws has performed his duties as a representative of the Licensee in accordance with the *Corporations Act* and the Australian Stock Exchange Listing Rules during the previous month. The

Supervisor shall also inspect Mr Daws' day book and appointment book during the course of this review.

- (h) If the Supervisor considers that Mr Daws has not performed his duties, in that he:
- i. has breached the *Corporations Act*, or
  - ii. has breached the Australian Stock Exchange Listing Rules; or
  - iii. has not complied with the financial services law,
- the Licensee shall immediately notify ASIC giving particulars of its concerns.
- (i) At least 2 weeks prior to the supervision requirements set out herein ceasing to apply, the Licensee, through the Supervisor will provide to ASIC a reasoned written report that states that in the opinion of the Supervisor, Mr Daws:
- i. has during the period of supervision performed his duties as an authorised representative of the Licensee in accordance with the *Corporations Act*;
  - ii. will in the future perform his duties as an authorised representative of the Licensee in accordance with the *Corporations Act*.
- (j) The Licensee shall submit to an audit of Mr Daws' duties as an authorised representative of the Licensee which may be conducted by ASIC at least twice randomly during the 12 month period of supervision.
- (k) The requirements set out at paragraphs 2.5(b) and (c) and 2.6(a) to (j) shall cease to apply once Mr Daws has acted as an authorised representative of a Licensee for a period of 12 months. The only absences that are permitted are for study leave, writing exams, annual leave and sick leave in terms of the Licensee's standard employment conditions.

### 3. Notifications

- 3.1 Any notification to be provided to ASIC in accordance with this enforceable undertaking is to be sent to:

Assistant Director Enforcement WA  
 Australian Securities & Investments Commission  
 3<sup>rd</sup> Floor, 66 St George's Terrace  
 PERTH WA 6000

#### 4. Acknowledgements

4.1 Mr Daws acknowledges that ASIC:

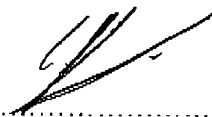
- (a) may issue a Media Release on execution of this enforceable undertaking;
- (b) may from time to time publicly refer to this enforceable undertaking;
- (c) will make this enforceable undertaking available for public inspection;

4.2 Mr Daws further acknowledges that:

- (a) this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct leading to the undertaking;
- (b) ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary penalty civil order; and
- (c) this enforceable undertaking has no operative force until accepted by ASIC.

Signed this 29<sup>th</sup> day of March 2006

by CHRISTOPHER JOHN DAWS



In the presence of:



Witness

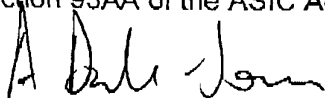
Phatcha Mintle Tantiprasut  
Solicitor, Western Australia

Name (Print)

Level 9, 172 St George's Toe  
Perth WA 6000

Address

ACCEPTED BY THE Australian Securities & Investments Commission pursuant to section 93AA of the ASIC Act by its duly authorised delegate



ASIC Delegate

Dated this 25<sup>th</sup> day of March 2006

May