



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Bradley David Dohrmann

13 Springhill Avenue, Oakden, South Australia, 5086

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

AFSL means Australian financial services licence;

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth);

ASX means Australian Securities Exchange Limited;

Corporations Act means the *Corporations Act 2001* (Cth);

Corporations Regulations means the Corporations Regulations 2001 (Cth);

MBL means Macquarie Bank Limited ACN 008 583 542;

MEL means Macquarie Equities Limited ACN 002 574 923 holder of AFSL no. 237504 and a participating organisation of the ASX;

MIL means Macquarie Investment Lending a division of MBL;

MTP means Macquarie Trading Power, a margin lending facility offered by MIL which allowed clients to buy or sell options against shares held as security in their margin loan accounts or to short sell those shares. MTP also permitted higher levels of gearing through the use of put options on held stock;

MTP clients means those clients of MEL that operated a MTP facility and traded options contracts;

Mr Dohrmann means Bradley David Dohrmann of 13 Springhill Ave, Oakden, South Australia, 5086.

2. Background

2.1 ASIC's role

- 2.1.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

2.2 Details of Conduct

- 2.2.1 Between 1 December 2006 and 15 July 2008 Mr Dohrmann was employed by MBL as a Private Client Advisor in its Adelaide office.
- 2.2.2 During that time a number of MEL clients that Mr Dohrmann advised used MTP to finance options trading on an account with MEL.
- 2.2.3 MEL's internal procedures did not require a separate account to be created to hold MTP clients' margin lending collateral. An MTP client's margin lending collateral and the collateral supporting the MTP client's options positions were held in the one derivatives clearing account.
- 2.2.4 As a consequence it was possible for the same options contract (specifically bought put positions) to be pledged as collateral to support both the MTP leveraging and the client's trading position, resulting in the appearance of a greater level of security than was actually supported by the MTP client's assets, and permitting MTP clients to access a higher level of leveraging than would otherwise have been available.
- 2.2.5 This was the case with MTP clients that Mr Dohrmann advised prior to September 2007.
- 2.2.6 In about July 2007 MEL became aware of the consequence outlined in paragraph 2.2.4 above and the associated risks.
- 2.2.7 On 3 September 2007 MEL management representatives met with Mr Dohrmann and for the first time raised with him MEL's concerns about the risks to his clients associated with the procedures referred to in paragraph 2.2.3. Prior to this meeting the risks had not been understood by Mr Dohrmann nor communicated to his clients.
- 2.2.8 During the discussion Mr Dohrmann acknowledged that the practice exposed MTP clients to a higher level of risk. Those of Mr Dohrmann's clients who were exposed to this higher level of risk were identified. MEL outlined three strategies that would enable the clients to continue to trade, but with an acceptable level of risk and Mr Dohrmann was instructed to adopt one of these strategies in respect of each of his MTP clients.
- 2.2.9 Mr Dohrmann agreed to operate within the framework mandated by MEL and initially did so, as instructed by his clients, either by purchasing put option contracts to provide a floor for the client's trading additional to the contracts held as security for the MTP facility or by closing out the client's options positions.

- 2.2.10 MEL relied on Mr Dohrmann to continue operating within the framework referred to in paragraph 2.2.8 above in respect of each MTP client as had been agreed by him.
- 2.2.11 From about January 2008, in respect of one MTP client, Mr Dohrmann ceased to operate within the framework mandated by MTP and no longer ensured the client followed one of the three permitted strategies.
- 2.2.12 This failure had the effect of significantly increasing the risk for that client. At the time the conduct was reported to ASIC, MEL estimated that the client was exposed to losses totalling approximately \$500,000.
- 2.2.13 MEL has since compensated the client for losses incurred.
- 2.2.14 On 15 July 2008 MEL terminated Mr Dohrmann's employment.

2.3 ASIC's investigation

- 2.3.1 ASIC has conducted an investigation into the conduct of Mr Dohrmann during the period 1 September 2007 to 15 July 2008 and in particular as to whether he contravened Chapter 7 of the Corporations Act with respect to his trading on account of MTP clients.

2.4 ASIC's concerns

- 2.4.1 As a result of its investigation, ASIC is concerned that Mr Dohrmann:
- 2.4.1.1 from September 2007 failed to adequately explain to MTP clients the risks of double pledging their put option protection;
 - 2.4.1.2 from about January 2008 to July 2008 without reference to MEL in respect of one MTP client, ceased to apply any of the strategies within the framework approved by MEL to manage the risk of that client; and
 - 2.4.1.3 as a result of these failures and as a result of entering into naked trading positions, exposed that client to losses that were significantly higher than would have been the case had he operated within the agreed framework.
- 2.4.2 ASIC is concerned that Mr Dohrmann's conduct as outlined above resulted in the affected MTP client suffering significant financial loss.
- 2.4.3 ASIC is concerned that as a consequence of the conduct outlined above, Mr Dohrmann has not complied with a financial services law or laws.

2.5 Acknowledgement of concerns

- 2.5.1 Mr Dohrmann acknowledges ASIC's concerns set out in paragraph 2.4 above.
- 2.5.2 Mr Dohrmann asserts that in September 2007, he explained the 3 alternate strategies to his clients to the best of his ability however feels he received insufficient guidance from MEL to assist him in this regard.

2.5.3 Mr Dohrmann acknowledges the conduct outlined in paragraph 2.2.11 above however maintains that in doing so he acted in accordance with the instructions of his client whom he believed to be an experienced options trader and his intention was to assist the client rather than obtain personal monetary gain

2.5.4 Mr Dohrmann acknowledges that he did not advise MEL or seek guidance from MEL when instructed by his client to trade as described in paragraph 2.2.11.

3. Undertakings

3.1 Under section 93AA of the ASIC Act, Mr Dohrmann has offered, and ASIC has agreed to accept as an alternative to ASIC exercising its power under section 920A of the Corporations Act to make a banning order against Mr Dohrmann, the following undertakings:

- (a) Mr Dohrmann undertakes that for a period of two years from the date of acceptance of this undertaking by ASIC he will not:
 - (i) provide a financial service or services whether on his own behalf or on behalf of a person who carries on a financial services business whether as an employee of that person or otherwise;
 - (ii) apply to ASIC under section 913A of the Corporations Act for an AFSL; or
 - (iii) hold out that he is in any way authorised to provide a particular financial service or services or that he is in any way authorised to provide financial services generally;
- (b) Mr Dohrmann undertakes to pay the costs of compliance with this enforceable undertaking.
- (c) Mr Dohrmann will provide all documents and information requested by ASIC from time to time for the purpose of assessing Mr Dohrmann's compliance with the terms of this enforceable undertaking.

4. Acknowledgements

4.1 Mr Dohrmann acknowledges that ASIC:

- (a) may issue an advisory on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

4.2 Further Mr Dohrmann acknowledges that:

- (i) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation

to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;

- (ii) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

4.3 Mr Dohrmann acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraph 3.1 above.

4.4 Mr Dohrmann acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Dohrmann and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

..... *BDohrmann*

Bradley David Dohrmann

Dated: *6/11/09*

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:

..... *David John McGuinness*

David John McGuinness

Delegate of Australian Securities and Investments Commission

Date: *12/11/09*