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Australian Securities & Investments Commission

**ENFORCEABLE UNDERTAKING**

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

**Section 93AA Australian Securities & Investments Commission Act 2001**

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

**Robert Marusco**

**3 Keel Place North Fremantle W.A 6159**

**1. Background and Concerns**

- 1.1. NKH Securities Ltd was the holder of Responsible Entity Dealer's Licence No 185107 issued on 4 November, 1999. This Licence was revoked by ASIC by order dated 27 November, 2002.
- 1.2. Robert Marusco is a director and key person named in NKH's dealer's licence.
- 1.3. On 30 October 2002, ASIC issued a Notice of Hearing pursuant to sections 829 and 837 Corporations law with an attached statement of areas of concern in respect of the operations of NKH and Mr Marusco's role as an officer of the company.
- 1.4. These concerns refer to deficiencies in performance of the duties of the responsible entity in its compliance and reporting regime including:
  - 1.4.1. that management agreements were not in place as required by law;
  - 1.4.2. that timely registration of the scheme's interest in land was not achieved;
  - 1.4.3. that officers' professional indemnity cover was not maintained;

- 1.4.4. that the Responsible Entity was not diligent in establishing trust accounts to hold refurbishment moneys, as required by its securities licence;
- 1.4.5. that financial reports were not lodged with ASIC within the timeframes provided by the Corporations Act;
- 1.5. Paragraph 601FD(1)(f) of the Corporations Act requires an officer of a responsible entity of a registered scheme to take all steps that a reasonable person in the officer's position would take to ensure that the responsible entity complies with the Law, any conditions imposed on the responsible entity's dealers licence, the scheme constitution and the scheme's compliance plan.
- 1.6. Mr Marusco has provided ASIC with submissions and supporting materials in respect of those concerns.

## **2. Acknowledgement of ASIC's Concerns**

- 2.1. Mr Marusco acknowledges ASIC's concerns and wishes to satisfy ASIC that he has the skills and qualifications appropriate to the securities and financial services industry.

## **3. Undertakings**

Pursuant to section 93AA of the Australian Securities and Investments Commission Act ('ASIC Act'), Mr. Marusco undertakes that:

- 3.1. He will undertake and successfully complete a course of study being the Securities Institute of Australia Diploma of Financial Markets, Managed Investments stream, or other equivalent course approved by ASIC's Assistant Director, Financial Services Enforcement, South-West.
- 3.2. He will not, for a period of 12 months commencing 20<sup>th</sup> December 2002 or such longer period as it takes him to successfully complete the course of study referred to in 3.1:
  - 3.2.1. Do any act or engage in any conduct as a director of a Responsible Entity;
  - 3.2.2. Do any act or engage in any conduct as a key person of a Responsible Entity.

4. Acknowledgements

4.1. Mr Marusco acknowledges that:

4.1.1. ASIC may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which lead to its execution;

4.1.2. ASIC may from time to time publicly refer to this undertaking; and

4.1.3. ASIC will make this undertaking available for public inspection.

4.2. Mr Marusco acknowledges that ASIC's acceptance of this undertaking in no way derogates from the rights and remedies available to ASIC or any other person arising from any conduct described in this undertaking.

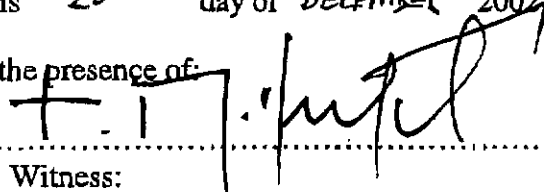
4.3. Mr Marusco acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue criminal prosecution, or its power to lay charges or seek a pecuniary civil order.

4.4. Mr Marusco acknowledges that this undertaking has no operative force until accepted by ASIC.

SIGNED by  .....

Robert Marusco

This 20<sup>th</sup> day of DECEMBER 2002

In the presence of:  .....

Witness:

**T. ROSS KESTEL** (B.Bus; ACA, FCPA, C.D.)

Chartered Accountant

Name: (print) 7 Hopson Close  
BOORAGOON WA 6154

Address:

This 20 day of December 2002

03/0017

ACCEPTED BY the Australian )  
Securities & Investments )  
Commission pursuant to the )  
ASIC Act 2002 section 93AA by its )  
duly authorised delegate )



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*Michael Gething*  
Regional Commissioner Western Australia,

Australian Securities and Investments Commission

This *10th* day of *January* 2002