

Australian Securities and Investments Commission

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION ACT 2001

SECTION 93AA

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

Mr Michael Bradley Curtis
81A Harris Street
Bicton WA 6157 ("Mr Curtis")

1. Background

- 1.1. Mr Curtis was a holder of a property authority from Colonial Financial Services Limited ("Colonial"), Dealers Licence No. 554400, from 7 November 1994 to February 2002. The proper authority authorised Mr Curtis to provide advice on all financial products listed in Colonial's approved Product List.
- 1.2. ASIC was contacted by Colonial on 19 April 2002 following a complaint from a client that Mr Curtis was engaging in the practice of transferring client's superannuation investment funds between two funds managed by Colonial (the Colonial Masterpac Fund and Colonial Masterfund Fund) ("the Colonial Funds"), for the primary purpose of generating commissions.
- 1.3. As a result of an investigation into the complaint ASIC has reason to suspect that Mr Curtis may have contravened section 146 of the *Superannuation Industry (Supervision) Act 1993* ("the SIS Act") (now section 1041H of the *Corporations Act 2001* - misleading or deceptive conduct in relation to a financial product), by reason of the matters set out in paragraphs 1.4 to 1.5 below.
- 1.4. ASIC is concerned that during the period in question:
 - (a) Mr Curtis transferred monies invested by approximately seventy-three clients ("the clients") between the Colonial Funds;
 - (b) the transfer of the monies between the Colonial Funds by Mr Curtis generated commissions both for Mr Curtis and Colonial;
 - (c) Mr Curtis transferred monies between the Colonial Funds for the primary purpose of generating commissions and without proper consideration of the investment needs of the clients.

- (d) Mr Curtis did not disclose to the clients the true level of exit and entry costs associated with switching between the Colonial Funds.
 - (e) As a result of transferring the clients between the Colonial Funds the clients suffered losses totalling approximately \$190,000. These losses were made up of additional commissions, exit and entry fees, and forgone interest on the moneys invested.
- 1.5. Colonial subsequently reimbursed the clients affected by the conduct of Mr Curtis.
 - 1.6. Mr Curtis has in turn compensated Colonial for its reimbursement of the client's losses.
 - 1.7. ASIC has power pursuant to section 920A of the *Corporations Act 2001* to make an order banning Mr Curtis from acting as a representative of a person who carries on a financial services business.
 - 1.8. Mr Curtis acknowledges the concerns of ASIC regarding his conduct and accordingly he has offered the undertakings set out in section 2.
 - 1.9. ASIC has agreed to accept the undertakings as an alternative to the exercise of its powers under section 920A of the *Corporations Act 2001*.

2. Undertakings

- 2.1. Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* ("the *ASIC Act*"), ASIC accepts the following undertakings from Mr Curtis:
 - (a) That he will not, for a period of 4 years commencing 1 January 2003 and concluding on 31 December 2006, 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
 - (b) That after 31 December 2006, 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 authorises 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 Assistant Director, Financial Services Enforcement, South-West.

3. Acknowledgements

3.1. Mr Curtis acknowledges:

- (a) That he has had the opportunity to obtain legal advice in relation to the content and effect of this Enforceable Undertaking and has done so; and
- (b) That he has the opportunity of a hearing before an ASIC delegate pursuant to section 920A(2) of the *Corporations Act 2001* regarding ASIC's concerns, but has declined; 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 may from time to time publicly refer to this Enforceable Undertaking; and
- (e) That ASIC will make this Enforceable Undertaking available for public inspection and may enter Mr Curtis's name onto a register pursuant to section 922A(1) of the *Corporations Act 2001*; and
- (f) 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
- (g) 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 Curtis. Nor does acceptance of this Enforceable Undertaking restrain ASIC from exercising any other powers that have been conferred on it; and
- (h) 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:

Michael Bradley Curtis

This 13th day of FEB, 2003

In the presence of:

[Handwritten Signature]

Witness:

DEMI COOYNE

Name: (print)

82 HARRIS STREET BUNTON

Address:

This *13th* day of *FEBRUARY* 2003

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

Michael Gething

[Handwritten Signature]

Regional Commissioner for Western Australia,
Australian Securities and Investments Commission

This *18th* day of *February* 2003