

## 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:

Michael Melville Kirwan  
38 Park Place  
South Yarra VIC 3141

#### 1. Definitions

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

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

**ASX** means Australian Securities Exchange;

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

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

**Lands Kirwan Tong** means Lands Kirwan Tong Stockbrokers Pty Ltd, holder of an Australian Financial Services License (No. 246970) and an ASX Market Participant;

**Mr Kirwan** means Michael Melville Kirwan of 38 Park Place, South Yarra, Vic., date of birth 21 August 1959;

**Senetas** means Senetas Corporation Limited ACN 006 067 607.

#### 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 Mr Kirwan was a representative, client advisor, and director of Lands Kirwan Tong from 10 March 2004 to 12 April 2007. During that time Mr Kirwan was also the Responsible Person in respect of Lands Kirwan

Tong's Australian Financial Services Licence. Mr Kirwan was also Responsible Executive for the purposes of the ASX Market Rules.

2.2.2 Prior to 9 March 2004, Mr Kirwan held a proper authority to deal in securities on the ASX.

2.2.3 The conduct that is the subject of this enforceable undertaking occurred during the course of Mr Kirwan acting as a client advisor to clients of Lands Kirwan Tong and causing bids to be entered on the market operated by the ASX on their behalf.

### 2.3 ASIC's investigation/ surveillance and analysis

2.3.1 ASIC has conducted an investigation into Mr Kirwan's trading in Senetas which included suspected contraventions of sections 1041A [market manipulation] and section 1041B [false trading and market rigging] of the Corporations Act. The period the subject of this enforceable undertaking is June 2006.

### 2.4 ASIC's concerns

2.4.1 During and prior to June 2006, via GK Investments (Aust) Pty Ltd ACN 085 390 138, Mr Kirwan had an interest in a margin loan with Macquarie Margin Lending [Macquarie Group Ltd] which was secured against Senetas shares.

2.4.2 From April to early June 2006, the share price of Senetas declined.

2.4.3 ASIC has concerns that during June 2006, Mr Kirwan:

- (a) caused bids to be placed on the ASX on 9 and 13 June 2006 which separately or together had or were likely to have the effect of maintaining the price for Senetas shares at a price that was artificial;
- (b) in doing so, may have done an act or acts that separately or together had or were likely to have the effect of creating a false or misleading appearance with respect to the market for and the price for trading in Senetas shares on 9 and 13 June 2006;
- (c) failed to disclose to clients a conflict of interest in respect of Senetas shares; and
- (d) failed to maintain accurate records of clients' instructions with respect to trading on the ASX.

2.5 Acknowledgement of concerns

- 2.5.1 Mr Kirwan acknowledges ASIC's concerns set out in paragraph 2.4.3 above, and has offered an enforceable undertakings in terms of paragraph 3 below.
- 2.5.2 Mr Kirwan acknowledges that should ASIC form the view that he has failed to comply with this undertaking, ASIC may take additional action including (without limitation) seeking court orders under section 93AA of the ASIC Act requiring him to comply with the terms of this undertaking.

3. Undertakings

- 3.1 Under s 93AA of the ASIC Act, Mr Kirwan has offered, and ASIC has agreed to accept a voluntary undertaking in the terms set out below.
- 3.2 Mr Kirwan undertakes not to provide any financial services for a period of five (5) years from the time of acceptance of this undertaking by ASIC.
- 3.3 Without in any way limiting the undertaking in paragraph 3.2 above, Mr Kirwan undertakes, for a period of five (5) years from the time of acceptance of this undertaking by ASIC, not to:
- (a) do any act or engage in any conduct as a representative of an Australian Financial Services Licensee;
  - (b) hold himself out as a representative of an Australian Financial Services Licensee;
  - (c) carry on a business in relation to financial products or financial services, within the meaning of section 761A of the Corporations Act, either directly or indirectly as a director, partner, manager, servant or agent;
  - (d) apply for an Australian Financial Services Licence.

4. Acknowledgements

- 4.1 Mr Kirwan acknowledges that ASIC:
- (a) may issue a media release 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 Kirwan acknowledges that:

- (a) 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;
- (b) 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 Kirwan acknowledges that ASIC had reason to be concerned as to the matters set out in paragraph 2.4.3 above, given the facts set out in paragraphs 2.4.1 and 2.4.2 and has offered an enforceable undertaking in the terms of part 3 above.

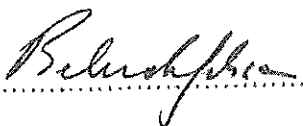
4.4 Mr Kirwan acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Kirwan and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

  
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Michael Melville Kirwan

Dated.....17/12/2008.....

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

  
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Belinda Gibson

Delegate of Australian Securities and Investments Commission

Dated .....22/12/2008.....