



ASIC

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:

**Berge Der Sarkissian
C/-Thompson Eslick
Solicitors
Level 25
31 Market Street
SYDNEY NSW 2000**

I. Background

- 1.1 Mr Berge Anthony Der Sarkissian held in the period between 12 December 1994 to 26 March 2001, a proper authority issued by his then employer. He was also the secretary of a company, DB Management Pty Ltd ("DB Management").
- 1.2 ASIC has conducted an investigation into relation to suspected contraventions of the Corporations Act by reason of dealings in the securities of Telstra Instalment Receipt Trustee Ltd ("TIRT") in the course of the Telstra 2 Public Share Offer ("The Investigation").
- 1.3 As a result of the Investigation, ASIC, formed the view that:
 - (a) In the period August 1999 to October 1999 Mr Der Sarkissian was involved in the making of 420 applications for the allotment of Telstra 2 Instalment Receipts ("T2IR") using names that may have been contrived. These names were a combination and permutation of names of family members at a number of addresses.
 - (b) Between December 1999 and January 2000, Mr Der Sarkissian:
 - i. caused the transfer of T2IRs through the completion of 26 Australian Standard Transfer Forms ("The Transfers"),
 - ii. caused the Transfers to be made from names that may have been contrived to David Groves, a director of DB Management; and
 - iii. by reason of the Transfers, represented that the sale of the relevant T2IRs occurred whilst it did not.

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The Transfers were affected in order to enable the future sale of these T2IRs for the benefit of DB Management.

2. Concerns of ASIC

As a result of the investigation ASIC is concerned that:

- (a) Mr Der Sarkissian has contravened s.995 of the Corporations Act by reasons of the matters set out in paragraphs 1.3 (a) and (b).
- (b) Although the conduct referred to in paragraph 1.3 did not involve Mr Der Sarkissian performing the duties of a representative of a dealer or an investment adviser, ASIC is concerned that Mr Der Sarkissian may not perform efficiently, honestly and fairly in the future the duties of a representative of a dealer or an investment adviser.

3. Acknowledgement of ASIC's Concerns

3.1 ASIC has the power pursuant to section 829 of the Corporations Act to make a banning order against a natural person if relevantly:

- (a) he contravenes a securities law; or
- (b) ASIC has reason to believe he will not perform efficiently, honestly and fairly the duties of a representative of a dealer or of an investment adviser.

3.2 Section 830 of the Corporations Act provides that ASIC, after complying with section 837(2), may make a banning order to prohibit a person permanently, or for a specified period, from doing an act as:

- (a) a representative of a dealer; and/or
- (b) a representative of an investment advisor.

3.3 In agreeing to offer the commitments in this undertaking Mr Der Sarkissian has acknowledged that ASIC has concerns as set out in paragraphs 2(a) and (b) above but does not make any admission that:

- (a) his conduct constituted a contravention s.995 of Corporations Act; or
- (b) he will not perform efficiently, honestly and fairly the duties of a representative of a dealer or of an investment adviser.

3.4 Mr Der Sarkissian has represented to ASIC that he is not engaged in the business of acting as a representative of a dealer or an investment adviser and in acknowledgement that ASIC has the concerns raised by it, he offers the commitments set out below. ASIC has agreed to accept the commitments of this undertaking as an alternative to the exercise of the powers referred to in paragraphs 3.1 and 3.2 in relation to the conduct referred to in paragraph 1.3.

4. Undertakings

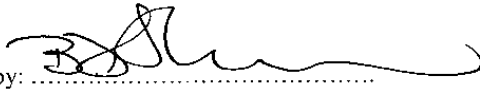
Pursuant to section 93AA of the Australian Securities and Investments Commission Act ('ASIC Act'), Mr. Der Sarkissian undertakes that:



- 4.1 He will not for 2 years commencing from the date of this undertaking:
- 4.1.1 do any act or engage in any conduct as a representative of a dealer (as defined by the Corporations Act from time to time);
 - 4.1.2 hold out that he is a representative of a dealer;
 - 4.1.3 hold a proper authority from a dealer;
 - 4.1.4 hold out that he holds a proper authority from a dealer;
 - 4.1.5 do any act or engage in any conduct as a representative of an investment adviser (as defined by the Corporations Act from time to time);
 - 4.1.6 hold out that he is a representative of an investment adviser;
 - 4.1.7 hold a property authority from an investment adviser;
 - 4.1.8 hold out that he holds a property authority from an investment adviser;
 - 4.1.9 carry on the business of a securities dealer either directly or indirectly as a director, partner, manager, servant or agent;
 - 4.1.10 carry on the business of an investment adviser either directly or indirectly as a director, partner, manager, servant or agent;
 - 4.1.11 apply to ASIC for an Australian Financial Services Licence ("AFSL");
 - 4.1.12 apply to a holder of an AFSL to become a representative of such a licence holder; and
 - 4.1.13 do any act or engage in any conduct for which an AFSL or an authorisation from an AFSL holder is or would be required by law, and /or hold out that he is a representative of an AFSL holder.
- 4.2 He will, complete a course accredited by the Financial Planning Association of Australia or the Securities Institute of Australia and approved by ASIC in relation to Ethics prior to applying, after the expiration of 2 years commencing from the date of this undertaking, for a AFSL or applying to a holder of an AFSL to become a representative of such a licence holder.
- 5. Acknowledgements**
- 5.1 Mr Der Sarkissian acknowledges that:
- 5.1.1 ASIC may issue a media release referring to the terms of this undertaking and to the concerns of ASIC as expressed in this undertaking that led to its execution;
 - 5.1.2 ASIC may from time to time publicly refer to this undertaking; and
 - 5.1.3 ASIC will make this undertaking available for public inspection.
- 5.2 Mr Der Sarkissian 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.

Der Sarkissian

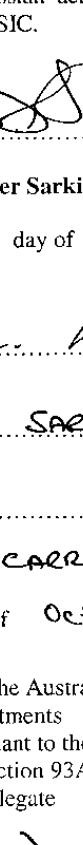
- 5.3 Mr Der Sarkissian acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.
- 5.4 Mr Der Sarkissian acknowledges that this undertaking has no operative force until accepted by ASIC.

SIGNED by: 

Berge Anthony Der Sarkissian

This 10th day of October 2002

In the presence of:



Witness:

NEA DER SARKISSIAN
Name: (print)

Address: 70 CARRINGTON Pde CURR CURR NSW 2096

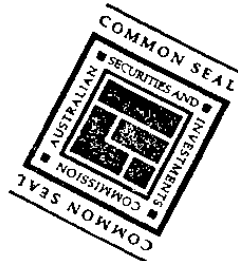
This 10th day of October 2002

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



Allen Turton

Director, Enforcement North/East



Australian Securities and Investments Commission

This 15th day of October 2002