

02/162 Barton Capital Securities provides enforceable undertaking

Thursday 9 May 2002

The Australian Securities and Investments Commission (ASIC) has today accepted an enforceable undertaking from Barton Capital Securities Pty Ltd (Barton Capital) about its future compliance regime with the financial services laws and its licence conditions.

The enforceable undertaking was provided in response to a number of concerns ASIC had following an ASIC investigation into certain proper authorities issued by Barton Capital between 31 October 2000 and 2 April 2001.

A proper authority is the authorisation provided by a licensed securities dealer to an individual that permits the holder to represent the securities dealer. Barton Capital holds an unrestricted dealers licence.

'Licensed securities dealers must take responsibility for the people who represent them, and this includes having adequate compliance procedures and practices to ensure that their representatives are adequately trained and properly supervised at all times', said Jamie Orchard, ASIC's Director of Enforcement.

As part of its enforceable undertaking to ASIC, Barton Capital will:

- retain a suitably qualified compliance officer with a designated compliance role who will be responsible for ensuring that Barton Capital complies with the financial services laws and its licence conditions. The compliance officer will report directly to the Board of Barton Capital;
- engage an external compliance consultant that will, until 31 March 2004, provide periodic reports to Barton Capital in relation to its compliance, training, supervision and complaints resolution procedures;
- provide ASIC with a copy of the compliance consultant's report, together with a report from Barton Capital of what, if any, action Barton Capital proposes to take to implement the compliance consultant's recommendations; and
- create a record of training of all its representatives, as well as identifying the tasks and functions of those representatives.

ASIC was concerned that Barton Capital may have contravened its obligations under the Corporations Act and Regulations and the conditions of its dealers licence because:

- Barton Capital did not provide sufficient supervision, training and continuing education to the proper authority holders;
- Barton Capital lacked knowledge of the activities of the proper authority holders; and
- there was a lack of any direct contractual arrangements between Barton Capital and the proper authority holders.

The proper authorities that were of concern to ASIC were issued by Barton Capital to directors of Online Trading Systems Limited (Online Trading) and certain employees of Online Trading's wholly owned subsidiary Trading Mastery Pty Ltd.

Barton Capital issued the proper authorities as part of an agreement between eStar Online Trading Limited (eStar) and Online Trading, under which a former adviser of Barton Capital, who himself continued to hold a proper authority from Barton Capital, agreed to supervise the Trading Mastery Pty Ltd staff who were issued with proper authorities.

Barton Capital received a \$1 per trade surcharge for trades made through Online Trading and eStar during the period that the proper authorities were issued.

ASIC was also concerned that Barton Capital did not notify it about:

- certain instances of alleged irregular trading by three advisors of Barton Capital;
- arrangements made between Barton Capital and certain clients of one of its former advisors whereby Barton Capital sought an undertaking from those clients that they not lodge a complaint with ASIC, ASX or any complaint resolution scheme; and
- an instance of dealing in ordinary shares in Satellite Group Limited on 28 June 2000 prior to their official quotation.

Under the enforceable undertaking, Barton Capital has also agreed to provide written notification to ASIC within three days of forming the view that either it or its representatives may have contravened the conditions of its dealers licence, ASX rules or laws administered by ASIC.

'To protect investors, it is imperative for ASIC to be kept informed of any suspected contraventions of the law so that ASIC can make an assessment of whether or not the conduct requires further investigation', Jamie Orchard said.

While Barton Capital acknowledged all of ASIC's concerns, it did not consider that any of those concerns amounted to contraventions of the Corporations Act or Regulations or its licence conditions.

End of release

[Download a copy of the enforceable undertaking](#)

19 December 2002

Note: The enforceable undertaking between Barton Capital Securities Pty Ltd ("BCS") and ASIC dated 9 May 2002 has been withdrawn following BCS' request that ASIC revoke its dealers licence. An order was made revoking BCS' licence on 17 December 2002 and the Enforceable Undertaking was withdrawn on 19 December 2002.