

Enforceable Undertaking

Pursuant to sections 46 and 46A of the Financial Markets
Authority Act 2011

The enforceable undertaking is offered to the Financial Markets
Authority for its acceptance under sections 46 and 46A of the
Financial Markets Authority Act 2011 by:

Eoin Malcolm Miller Johnson

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www.fma.govt.nz

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Overview

Date: 27th day of August 2019

Parties

EOIN MALCOLM MILLER JOHNSON, of Cambridge, New Zealand

and

FINANCIAL MARKETS AUTHORITY, an independent Crown entity established under the Financial Markets Authority Act 2011

Introduction

This enforceable undertaking is given by Eoin Malcolm Miller Johnson (**Mr Johnson**) and has been accepted by the Financial Markets Authority (**FMA**) in accordance with sections 46 and 46A of the Financial Markets Authority Act 2011 (**FMA Act**).

Mr Johnson has offered this enforceable undertaking following initial inquiries made by the FMA into his trading of shares in Promisia Integrative Limited (**Promisia**) and his failure to disclose the acquisition of these shares (referred to as the '**trading conduct**').

Background

Relevant background

- A. Following a referral from NZX Limited (NZX) in September 2016, the FMA made various initial inquiries into Mr Johnson's trading in, and subsequent dealings with, shares in Promisia between June 2016 and August 2016.
- B. Based on the inquiries made, the FMA is of the view that Mr Johnson has contravened the following provisions of the Financial Markets Conduct Act 2013 (FMC Act):
 - (i) The "insider trading" provisions, specifically sections 240 and 241; and
 - (ii) The on-going "disclosure obligations" of relevant interests by directors, specifically sections 297 and 301.
- C. Following these inquiries, the FMA engaged with Mr Johnson at an early stage. Mr Johnson has constructively engaged and co-operated with the FMA.
- D. As part of this engagement, Mr Johnson has offered to make fulsome admissions in relation to his trading conduct, pay an amount in lieu of a pecuniary penalty, and be subject to formal restrictions on his participation in New Zealand's financial markets.

Background facts

- E. Mr Johnson previously held senior professional roles at Promisia, a listed issuer with NZX. Promisia's shares are approved for trading on New Zealand's stock exchange (NZSX) as 'PIL'.
- F. Mr Johnson was previously:
 - (i) A director of Promisia between 22 January 2003 and 3 June 2016; and
 - (ii) Chairman of Promisia between 24 May 2013 and 30 May 2016.
- G. In his capacity as a director and Chairman of Promisia, Mr Johnson regularly received detailed information regarding the monthly sales figures for Promisia's key product, *Arthrem*, which was marketed as a natural dietary supplement for maintaining and supporting joint mobility.
- H. In 2016, *Arthrem* was the only product that Promisia was producing, selling and actively marketing on a commercial scale.
- I. Between January 2016 and May 2016, Mr Johnson came to possess the budgeted and actual monthly sales figures for *Arthrem* (referred to as the '*Arthrem* 2016 Sales Figures'). The regular and up-to-date reporting of the budgeted and actual sales figures enabled Mr Johnson to build up a detailed view of the month-to-month sales performance of *Arthrem*.
- J. Mr Johnson received the information relating to the *Arthrem* 2016 Sales Figures in his capacity as a director and Chairman of Promisia.
- K. On 31 May 2016, Mr Johnson's resignation as Chairman of Promisia was announced to the market. His resignation as a director of Promisia was announced to the market on 3 June 2016.

- L. Five days after his resignation as a director of Promisia was announced to the market, Mr Johnson began trying to purchase, and then actually acquiring, shares in Promisia.
- M. Between 17 June 2016 and 15 August 2016, Mr Johnson acquired 2,550,000 shares in Promisia across 12 trades, in his personal name. These shares were purchased by him for a total value of \$45,950.00.
- N. During this time, Mr Johnson also placed and/or amended three orders to purchase additional shares in Promisia but was unsuccessful due to a lack of other trading.
- O. On 30 August 2016, Promisia made a 'price sensitive' announcement to the market regarding the sales performance of *Arthrem* for the half year ended 30 June 2016. The announcement was titled "*600% Sales Increase for Promisia*" and reported "*healthy sales of \$994,098 for Arthrem which is \$850,000, or 600%, more than the sales of \$142,000 for the same period in 2015*" (referred to as '**the August Announcement**').
- P. This same sales information was separately published as a 'financial summary' for the half year ended 30 June 2016 on Promisia's website (<https://www.promisia.com/press-releases-and-announcements>).
- Q. Following the August Announcement, Promisia's share price closed at \$0.033 on 30 August 2016 (which was up from the prior day's closing price of \$0.026 on 29 August 2016). The total share price move on the day was +26.92%, which was the most significant intraday shift in Promisia's share price following any market announcement across 2015 and 2016.
- R. At all relevant times, Mr Johnson was:
- (i) Prohibited from trading in shares in Promisia while being an 'information insider'; and
 - (ii) Under an on-going obligation of disclosure for six months following his resignation as a director of Promisia.
- S. Notwithstanding this prohibition and his on-going disclosure obligation, Mr Johnson traded in shares in Promisia between June 2016 and August 2016 whilst he was an 'information insider', and he also failed to disclose the acquisition of these shares notwithstanding his on-going obligation to do so for a period of 6 months following his resignation as director in June 2016, or until December 2016.

Admissions

Admissions

1. Mr Johnson accepts that at the relevant times, he was required to comply with the FMC Act in his capacity as a director and Chairman of a listed issuer, being Promisia.
2. Mr Johnson also accepts that he tried to purchase, and subsequently acquired 2,550,000 shares in Promisia across 12 trades between 17 June 2016 and 15 August 2016.
3. Mr Johnson admits that:
 - 3.1 He was in possession the *Arthrem* 2016 Sales Figures –
 - 3.1.1 Immediately prior to his resignation as Promisia’s Chairman being announced on 30 May 2016;
 - 3.1.2 Immediately prior to his resignation as a director being announced on 3 June 2016;
 - 3.1.3 During all relevant times when he traded in shares in Promisia between 17 June 2016 and 15 August 2016;
 - 3.2 The *Arthrem* 2016 Sales Figures was material information that was not generally available to the market, and which he received in his capacity as a director and Chairman of Promisia;
 - 3.3 He knew or ought to have known that the *Arthrem* 2016 Sales Figures that he possessed was material information that was not generally available to the market until the August Announcement was made on 30 August 2016;
 - 3.4 He was prohibited from acquiring shares in Promisia between 17 June 2016 and 15 August 2016; and
 - 3.5 Having traded in shares in Promisia between 17 June 2016 and 15 August 2016 he has contravened sections 240 and 241 of the FMC Act.
4. Mr Johnson also admits that:
 - 4.1 As a (former) director of Promisia he was obliged to disclose his acquisition of the 2,550,000 shares he purchased in Promisia between 17 June 2016 and 15 August 2016, within 5 trading days of the acquisition of these shares; and
 - 4.2 Having failed to disclose the acquisition of these shares, he has contravened sections 297 and 301 of the FMC Act.

No further action

5. In agreeing to accept these admissions made by Mr Johnson, and the undertakings and payment offered by him (as set out **below**), the FMA agrees that unless otherwise required by law it will not take any further action against Mr Johnson in relation to the trading conduct that it identified as part of its initial inquiries.

Undertakings and Payment

Undertakings

Mr Johnson has offered the undertakings (as set out **below**) and the FMA has agreed to accept these undertakings in accordance with sections 46 and 46A of the FMA Act.

6. Accordingly, Mr Johnson undertakes that he:
- 6.1 Has resigned from his directorships (including Unisaver Limited) (subject to those matters set out in 6.3 **below**);
 - 6.2 Has cancelled his Independent Trustee Licence (FSP 445906);
 - 6.3 Will resign from his remaining directorships, except for those two entities listed **below**, by not later than the following specified dates –
 - 6.3.1 **30 September 2019** – in relation to all remaining entities, except for Silverwood Forest Corporation Limited, and regardless of whether any sale/wind-up of these entities has, or has not, occurred by that time; and
 - 6.3.2 **31 July 2020** – in relation to Silverwood Forest Corporation Limited, and regardless of whatever has, or has not, occurred with any on-going negotiations or claim(s) in relation to that entity; –– the two entities excluded from this undertaking, and for which Mr Johnson may remain as a director of, are Aratas Consulting Services Limited and Halland Investments Limited.
 - 6.4 Will not seek or accept any directorship(s) or senior management position(s) with, or provide any consultancy services to, any –
 - 6.4.1 Current listed issuer(s) and/or any entity that is intending to become a listed issuer; and
 - 6.4.2 Other entity that is intending to, or is required to, comply with the FMC Act; and
 - 6.4.3 Other entity that is intending to be, or is, licenced or otherwise regulated by the FMA; –– for a period of **5 years** from the date this Agreement is executed by both parties.
- For the avoidance of doubt, the undertakings listed at 6.4.1 to 6.4.3(inclusive) **above** apply in respect of all activities that Mr Johnson undertakes in the course of the directorships that he is retaining (as listed **above**).

Payment

In addition to offering the undertakings (as set out **above**), Mr Johnson has also offered a payment in lieu of a pecuniary penalty which the FMA has also agreed to accept in accordance with sections 46 and 46A of the FMA Act.

7. Accordingly, Mr Johnson undertakes that:
- 7.1 He will pay \$75,000.00 to the FMA in lieu of a pecuniary penalty; and

- 7.2 This amount will be paid to the FMA within 5 working days from the date this Agreement is executed by both parties.
8. This amount will be paid into a Crown Bank Account, after deducting the FMA's actual costs incurred in connection with its initial inquiries into this matter.

Default

9. In the event Mr Johnson fails to pay the agreed amount in lieu of a pecuniary penalty at 7.1 **above** within the agreed time under 7.2 **above**, the FMA may at its absolute discretion enforce this Agreement and pursue recovery of the agreed amount, plus interest (at 5% per annum), and legal costs on a solicitor-client basis.

Notice

10. The FMA will give notice of the undertakings offered, and the payment made, by Mr Johnson on its website (www.fma.govt.nz). A corresponding media statement will also be published on the FMA's website.

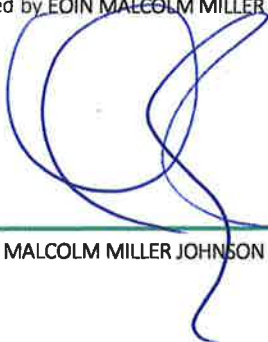
Acknowledgements

Acknowledgements

11. Mr Johnson acknowledges that:
 - 11.1 The undertakings and payment voluntarily given by him and accepted by the FMA in accordance with sections 46 and 46A of the FMA Act may be legally enforced by the FMA in accordance with section 47 of the FMA Act from the date this Agreement is executed by both parties;
 - 11.2 Following the execution of this Agreement by both parties, it will be published by the FMA on its website, together with a media statement; and
 - 11.3 In accepting the undertakings and payment, the FMA is not prevented from exercising its rights under financial markets legislation and/or under the FMA Act in relation to any contravention(s) of the undertakings or arising from any future conduct.


Execution

Signed by EOIN MALCOLM MILLER JOHNSON:



EOIN MALCOLM MILLER JOHNSON

In the presence of:




Name:

Occupation:

Address:

Execution (cont.)

The Financial Markets Authority accepts this enforceable undertaking pursuant to sections 46 and 46A of the FMA Act by its authorised delegate:



Rob Everett

Chief Executive Officer at the Financial Markets Authority

In the presence of:



Name: Shane Petherick

Occupation: PA

Address: Wellington