

1999

*Australian Securities and Investments Commission*

**ENFORCEABLE UNDERTAKING**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT**

**SECTION 93AA**

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

**Yates Security Limited ACN 087 141 295**  
**Level 13, 33 Bligh Street**  
**Sydney NSW**

**1. BACKGROUND**

- 1.1 ASIC has received complaints in relation to the possible contravention of the licensing, managed investments and fundraising provisions of the Corporations Law in respect of securities offered by Yates Security Limited ("Yates") in the period from 1 July 1999 to 12 August 1999 inclusive.
- 1.2 As a result ASIC has reason to suspect that Yates may have contravened sections 780, 995, 999 and 1000 of the Corporations Law ("Law") and section 12DA and 12DF of the ASIC Law, by reason of the matters set out in clauses 1.3 to 1.13 below.
- 1.3 Yates in the period between 10 August 1999 and 12 August 1999 inclusive placed advertisements in the Australian Financial Review seeking investors in a managed investment scheme ("Scheme") offering a return of 12.6% p.a. paid on the 10<sup>th</sup> of each month. Participants in the Scheme enter into a contract with Yates, Yates Monitoring Services Pty Ltd, Yates Security Network Pty Ltd, Greenwood BKT & Co and Ian Yates (the "Contract").
- 1.4 The advertisement sought a minimum investment of \$100,000.00 for a minimum 3 year period with the capital to be repaid at maturity.
- 1.5 The advertisement amongst other things stated that the investment was "*Ideal for Superannuation Funds*", "*Security lodged with ASIC*" and "*Personal Guarantee: Ian Yates*".
- 1.6 ASIC is concerned that the published statement "*Security lodged with ASIC*" was misleading and deceptive and / or was likely to mislead or deceive in contravention of section 12DA of the ASIC Law and sections 995, 999 and 1000

of the Law, in that it suggests that Yates has lodged a bond with ASIC. No such bond has been lodged.

- 1.7 ASIC is concerned that the published statement "*Ideal for Superannuation Funds*" was liable to mislead the public as to the suitability for their purpose of the financial service offered and was misleading and deceptive and / or was likely to mislead or deceive in contravention of sections 12DA and 12DN of the ASIC Law and sections 995, 999 and 1000 of the Law.
- 1.8 The advertisement also states "*Personal Guarantee: Ian Yates*". ASIC is concerned that the documentation for the Scheme is unclear as to whether Ian Yates is providing a personal guarantee.
- 1.9 The advertisement also referred to an internet web site "[www.yatessecurity.com.au](http://www.yatessecurity.com.au)".
- 1.10 The internet site stated at page 1 of the paragraph titled "*Corporate Ownership Structure*" that "*YSL: Single Responsible Entity Trust Business Mgr*" and at page 2 that Yates was "*.....(Single Responsible Entity): Licensed Trustee: Funds Manager with Yates Security Network Pty Limited (YSN) to replace churn.*".
- 1.11 ASIC has no record that Yates is licensed as the responsible entity of any registered managed investment scheme.
- 1.12 ASIC has no record that Yates is licensed as an approved trustee for the purposes of section 1067 of the old Corporations Law.
- 1.13 ASIC is concerned that the published statement "*.....(Single Responsible Entity): Licensed Trustee: Funds Manager with Yates Security Network Pty Limited (YSN) to replace churn.*" was misleading and deceptive and / or was likely to mislead or deceive and in contravention of section 12DA of the ASIC Law and sections 995, 999 and 1000 of the Law.
- 1.14 Pursuant to provisions in the Law and ASIC Law, ASIC may make application to the Court to obtain injunctions to restrain Yates from publishing the statements referred to in paragraphs 1.5 and 1.10 above.
- 1.15 Yates acknowledges the concerns of ASIC and accordingly offers the undertakings set out in section 2.
- 1.16 ASIC has agreed to accept the commitments in this Enforceable Undertaking as an alternative to the exercise of the power referred to in clause 1.14 above.


## **2. UNDERTAKINGS PURSUANT TO SECTION 93AA OF THE ASIC ACT**

- 2.1 Yates will not publish any advertisement in relation to the Scheme containing any representations to the effect of those referred to in paragraphs 1.6 and 1.7 above
- 2.2 Yates will not make any representations or statements to the effect of those set out in paragraphs 1.6 and 1.7 above
- 2.3 Yates will immediately withdraw and cease publication of the statements and representations referred to in paragraphs 1.10 and 1.13 from the internet web site "[www.yatessecurity.com.au](http://www.yatessecurity.com.au)";
- 2.4 Yates will not make any representations or statements to the effect of those referred to in paragraphs 1.10 and 1.13 above, unless and until, Yates becomes a licensed responsible entity as defined in section 9 of the Corporations Law and / or an approved trustee for the purposes of section 1067 of the old Corporations Law
- 2.5 Yates will refund by 5.00 pm on 19 August 1999 all subscription monies to persons who have applied for interests in the Scheme referred to in paragraphs 1.3 to 1.4 above;
- 2.6 Yates will ensure that any documentation (including any contract issued to third parties) for the Scheme clearly includes a personal guarantee from Ian Yates before advertising or representing Ian Yates is providing such a guarantee;
- 2.7 Yates will ensure that any contracts in relation to the Scheme referred to in paragraph 1.3, that have been executed by third parties will at the third parties request be rescinded or if not rescinded, varied to clearly include a personal guarantee from Ian Yates; and
- 2.8 Yates will provide by 5.00 pm on 19 August 1999 to ASIC, marked to the attention of the Director of Managed Investments, New South Wales, a statutory declaration of one of the Directors of Yates that the undertakings in paragraphs 2.1, 2.3, 2.5 and 2.7 have been complied with.

## **3. ACKNOWLEDGMENTS**

- 3.1 Yates acknowledge that they have obtained legal advice in relation to the content and effect of this Enforceable Undertaking.
- 3.2 Yates acknowledge that ASIC:
  - (a) may issue a media release from 19 August 1999 referring to the terms of this Enforceable Undertaking and the concerns of ASIC which led to its execution;

- (b) may from time to time publicly refer to this Enforceable Undertaking, and
- (c) will make this Enforceable Undertaking available for public inspection.

3.3 Yates acknowledge that this Enforceable Undertaking in no way derogates from the rights and remedies available to ASIC (subject to clause 1.16) or any other person or entity arising from any conduct described in this Enforceable Undertaking. 

3.4 Yates acknowledge that this Enforceable Undertaking has no operative force until accepted by ASIC.

The Common Seal of  
 Yates Security Limited ACN 087 141 295  
 was affixed to this undertaking  
 in the presence of:




  
 Signature of Director

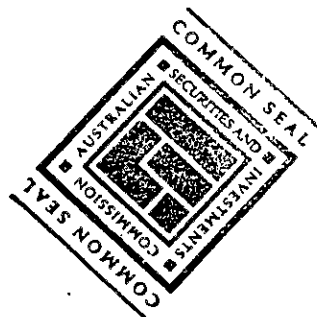
  
 Signature of Director/Secretary

IAN YATES  
 Name of Director (printed)

EDWARD. GNANARATNAM  
 Name of Director/Secretary (printed)

**ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS  
 COMMISSION PURSUANT TO ASIC ACT S93AA BY ITS DULY  
 AUTHORISED DELEGATE:**

  
 Jan Redfern  
 General Counsel  
 NSW Operations



This 19<sup>th</sup> day of August 1999.