

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT

SECTION 93AA

ENFORCEABLE UNDERTAKING

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

Ludgates Chartered Accountants

65 Park Road
MILTON QLD 4064
("Ludgates")

and

Ludgates Corporate and Investment Advisory Services Pty Ltd

65 Park Road
MILTON QLD 4064
("LCIAS")

1. Background

- 1.1 In about May 1999, ASIC received a complaint in relation to a possible contravention of the managed investment provisions of the *Corporations Law* by Ludgates Chartered Accountants ("Ludgates") and Ludgates Corporate and Investment Advisory Services Pty Ltd ("LCIAS"). The complaint alleged that Ludgates and LCIAS promoted to investors within Australia the investment schemes known as the Seed Program and the Shell Program pursuant to which Ludgates and LCIAS solicited funds from investors in Australia.
- 1.2 In excess of 20 Australian investors invested approximately \$725,313.67 in the scheme known as the Seed Program in the period between April 1999 and January 2000.
- 1.3 Approximately 13 Australian investors invested approximately \$337,475.55 in the scheme known as the Shell Program in the period between April 1999 and January 2000.
- 1.4 ASIC has formed the view that the Shell Program and the Seed Program were closely related within the meaning of Section 601ED(3) of the *Corporations Law* and accordingly each of the Schemes was required to be registered pursuant to Chapter 5C of the *Corporations Law* as the total number of members of both of the Schemes exceed 20.

- 1.5 ASIC has also formed the view that in any event the Seed Program was required to be registered as a managed investment scheme as the total number of members of that Scheme exceeded 20.
- 1.6 ASIC has also formed the view that Ludgates and LCIAS have infringed the provisions of Section 1018 of the *Corporations Law* by offering the issue of a security, namely a managed investment known as the Seed Program and/or the Shell Program without having registered a prospectus with ASIC.
- 1.7 While Ludgates and LCIAS do not agree with all aspects of ASIC's concerns, it acknowledges that ASIC has concerns set out in paragraphs 1.4, 1.5 and 1.6 above and accordingly offers the undertaking set out in paragraph 2 below.
- 1.8 ASIC has agreed to accept the enforceable undertaking set out in paragraph 2 below.

2. Undertakings Pursuant to Section 93AA of the ASIC Act

Ludgates and LCIAS jointly and severally undertake that upon execution of this undertaking by ASIC they will within Australia:

- (a) cease all promotion of the Shell Program and Seed Program and will not in the future promote those Schemes or Schemes with a similar nature without first obtaining the approval of ASIC;
- (b) take no step in furtherance of the Shell Program or Seed Program;
- (c) not collect any funds for investment in the Shell Program or Seed Program or any similar schemes and that no further funds will be forwarded to any entity or person in the United States of America in relation to such schemes without the same having been first approved by ASIC;
- (d) use their best endeavours to cause the return of the monies forwarded to the United States of America the subject of the Shell Program and Seed Program within a time agreed with ASIC; and
- (e) keep ASIC informed of their efforts to return the monies.

3. Acknowledgments

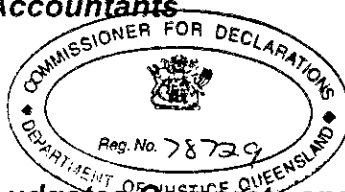
- 3.1 Ludgates and LCIAS jointly and severally acknowledge that they have obtained legal advice in relation to the content and affect of this enforceable undertaking.
- 3.2 Ludgates and LCIAS jointly and severally acknowledge that ASIC:
- (a) may issue a media release referring to the terms of this enforceable 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 inspection.
- 3.3 Ludgates and LCIAS jointly and severally acknowledge that this enforceable undertaking in no way derogates from the rights and remedies otherwise available to ASIC or any other person or entity arising from any conduct described in this enforceable undertaking.
- 3.4 Ludgates and LCIAS jointly and severally acknowledge that this enforceable undertaking has no operative force until accepted by ASIC.

Signed by:

Ludgates Chartered Accountants

in the presence of:

KITA Beck



[Handwritten signature]

The Common Seal of **Ludgates Corporate and Investment Advisory Services Pty Ltd** was duly affixed to this undertaking on *24th* February 2000 in the presence of :

[Handwritten signature]



Accepted by the Australian Securities and Investments Commission pursuant to the ASIC Act Section 93AA by a duly authorised delegate.

Date:.....*29*.....February 2000

B. E. Adams

B E ADAMS

Regional Commissioner, Queensland