



ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

SECTION 93AA ASIC ACT

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

**Herbert Ross Fisher of
care of MFA Finance Pty Ltd
160 Stirling Highway
Nedlands WA**

("Fisher")

1. BACKGROUND

- 1.1 Fisher is a director of MFA Finance Pty Ltd which carried on business between 1995 and 2000 as a finance broker licensed under the Finance Brokers Control Act 1975 (WA).
- 1.2 Fisher's duties at MFA Finance Pty Ltd included assessing loan applications from prospective borrowers and putting loan proposals to prospective lenders.
- 1.3 ASIC has been investigating the circumstances in which MFA Finance Pty Ltd brokered a number of loans to companies associated with Mr Greg Kennedy in 1998. Mr Kennedy is now bankrupt and the loans are in default.
- 1.4 ASIC is of the opinion that in a number of instances Fisher, on behalf of MFA Finance Pty Ltd:
 - (a) did not make reasonable or adequate inquiries about the financial position of the borrower and guarantors and their ability to service the loans; and
 - (b) prepared and sent loan proposals to potential lenders which contained misleading and deceptive information about the value of the property offered as security, the financial position of the borrowers and guarantors and the purpose for which the loan funds would be used.

2. DEFINITIONS

In this undertaking the following terms have the following meanings unless the context otherwise requires:

"person" includes a body corporate as well as a natural person.

The terms "securities business", "investment advice business", "representative", "deal", "dealer" and "investment adviser" have the same meanings as in the Corporations Law.

3. UNDERTAKINGS

3.1 Except as permitted by paragraph 3.2 Fisher undertakes that he will not:

- (a) carry on a securities business, or be in any way (whether directly or indirectly) concerned in the conduct of such a business;
- (b) act as a representative of a dealer;
- (c) carry on an investment advice business, or be in any way (whether directly or indirectly) concerned in the conduct of such a business;
- (d) act as a representative of an investment adviser; or
- (e) make any application to a dealer or investment adviser to become a representative of that dealer or investment adviser;

3.2 Fisher may:

- (a) act on behalf of existing lender clients of MFA Finance Pty Ltd to assist in the recovery of their principal or interest in relation to mortgage investments brokered by MFA Finance Pty Ltd and existing at the date of this undertaking; and
- (b) facilitate a change of mortgage management from MFA Finance Pty Ltd to such other person or persons as lender clients may agree and authorise.

4. ACKNOWLEDGMENTS

4.1 Fisher acknowledges that ASIC:

- (a) may issue a media release upon execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this document available for public inspection.

4.2 Fisher acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in the undertaking.

- 4.3 Fisher acknowledges that this undertaking has no operative force until accepted by ASIC.
- 4.4 Fisher acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from past or future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order, or commence civil proceedings against Fisher or any other person.
- 4.5 Fisher neither admits nor denies any liability by MFA Finance Pty Ltd, Fisher or any of MFA Finance Pty Ltd's directors in respect of any claim made by ASIC. The entering into this undertaking is without prejudice to the rights of MFA Finance Pty Ltd, Fisher and any of MFA Finance Pty Ltd's directors to defend any civil or criminal action taken by ASIC or lenders or any other person howsoever arising in respect of any of the matters referred to herein.

SIGNED by the said
HERBERT ROSS FISHER
 in the presence of:

)
)
)

HR Fisher
 Herbert Ross Fisher

[Signature]
 Signature of Witness

DAVID SASH
 Name of Witness (please print)

81 ST GEORGES TERRACE
 Address

SOLICITOR
 Occupation

This day of 2000

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
 COMMISSION PURSUANT TO ASIC ACT s93AA BY ITS DULY AUTHORISED
 DELEGATE:

[Signature]
 Michael Gething
 Counsel

This 1st day of June 2000