



**UNDERTAKING TO THE
AUSTRALIAN SECURITIES AND
INVESTMENT COMMISSION**

**GIVEN FOR THE PURPOSES OF
SECTION 93A OF THE
AUSTRALIAN SECURITIES AND
INVESTMENT COMMISSION
ACT 1989**

**by Tyndall Investment Management
(Australia) Limited**

ABN 70 002 060 228

ENFORCEABLE UNDERTAKING
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
SECTION 93A

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

Tyndall Investment Management (Australia) Limited ABN 70 002 060 228 of Level 24, 2 Market Street, Sydney, New South Wales

1. BACKGROUND

- 1.1 Tyndall Investment Management (Australia) Limited ABN 70 002 060 228 ("TIMAL") is the holder of a Responsible Entity Licence number 11391 under the Corporations Law (the "Law").
- 1.2 In accordance with its powers to carry out regular surveillance checks of responsible entities, ASIC recently conducted a surveillance review of TIMAL in relation to its obligations as a responsible entity of the managed investment schemes ("schemes") referred to in Schedule A.
- 1.3 ASIC has a number of concerns arising from its surveillance of TIMAL including those set forth in the sub-paragraphs that follow.

Unit Pricing Errors

- (a) A series of unit pricing errors occurred over the period 31 December 1999 to September 2000 (the "UP errors"). ASIC is of the view that the UP errors demonstrate inadequate controls and reporting systems in relation to the operation of the schemes and that the UP errors constitute breaches of the compliance plans and the constitutions of the schemes, and of s601FC(1)(h) of the Law.
- (b) The UP errors were, in ASIC's view, not adequately reported internally within TIMAL in accordance with the compliance plans of the schemes which require certain matters to be reported to business unit heads, the compliance manager, the compliance committee and the board of directors of TIMAL ("Board").
- (c) TIMAL failed to notify ASIC of the UP errors during or before ASIC's surveillance.

Compliance Committee

- (d) The Compliance Committee meetings for six of the eleven schemes were not held within the time frames specified in the schemes' compliance plans and the Law (the "CC breaches"). The delays ranged from one week for three schemes up to four and a half months in the case of the Tyndall Cash Portfolio scheme, and in the case of two of the schemes, no meeting occurred during the first two quarters.
- (e) The Board failed to identify or act on the CC breaches.
- (f) TIMAL failed to notify ASIC of the CC breaches. ASIC considers the CC breaches constitute breaches of the compliance plans of the schemes and therefore of s601FC(1)(h) of the Law.
- (g) ASIC has identified a number of other breaches of the compliance plans that occurred as a result of the failure of the compliance committee to meet as required, including failure of the compliance committee to consider certain reports required

to be given to it by the compliance manager, and failure of the compliance committee to report to the Board in writing on a quarterly basis as to its findings regarding TIMAL's compliance with the compliance plans.

Other issues

- (h) TIMAL failed to lodge an auditor's report in respect of audit of the compliance plans of seven of the schemes on time as required by the Law (or to apply for corresponding relief).
- 1.4 ASIC is of the view, based on a review of Board and compliance committee minutes and reports, and considering the breaches, deficiencies and omissions referred to in paragraph 1.3 above, that TIMAL's internal compliance controls and system have not been fully functional or operating to an effective standard.
- 1.5 ASIC has the power to, subject to section 837 of the Law, make a revocation order against a holder of a licence either permanently or for a specified period pursuant to section 826 of the Law, or impose conditions on the licence pursuant to section 786 of the Law.
- 1.6 TIMAL asserts that:
- (a) many of the compliance concerns identified by ASIC had already been identified by TIMAL's internal compliance system;
 - (b) the UP errors:
 - (i) did not constitute breaches of the compliance plans and constitutions of the schemes concerned, nor did they constitute breaches of s601FC (1)(h) of the Law;
 - (ii) were adequately reported internally within TIMAL; and
 - (iii) did not require notification to ASIC.
 - (c) the UP errors have been corrected, and that it has sent to all investors identified by TIMAL as at the date of this Enforceable Undertaking as having been out of pocket to a material extent by UP errors a letter in the form of annexure A with appropriate compensation;
 - (d) it has implemented a number of initiatives in order to improve its internal compliance system.
 - (e) it was of the opinion that it was not under an obligation to notify ASIC of the CC breaches prior to its surveillance because there was no material adverse effect on unitholders; and
 - (f) the delay in lodgement of an auditor's report was communicated to ASIC by TIMAL after the due date for lodgement (although no extension was sought from, or granted by ASIC), and largely arose due to the issues identified above.
- 1.7 TIMAL acknowledges ASIC's concerns and, while it does not agree with all of the conclusions drawn by ASIC with regard to its compliance regime and issues raised by ASIC, including the reason for, and consequences of the UP errors and the CC breaches, TIMAL is committed to ensuring that its compliance system protects the interests of scheme members in accordance with the Law.
- 1.8 In view of ASIC's concerns, and in order to resolve this matter, TIMAL has elected to offer

this Enforceable Undertaking to ASIC.

2. UNDERTAKINGS

TIMAL undertakes the following for the purposes of section 93A of the ASIC Act.

Unit Pricing – Corrective Action

2.1 TIMAL will:-

- (a) send to all investors identified by TIMAL as at the date of this Enforceable Undertaking as having been out of pocket to a material extent by UP errors a letter in the form of annexure B unless the investor has already at the date of this Enforceable Undertaking been notified by a letter in the form of annexure A with appropriate compensation as referred to in sub-paragraph 1.6(c) above; and
- (b) within seven days of becoming aware that any other investor has been out of pocket to a material extent by a UP error or any unit pricing errors that occurred prior to or during the course of the review by the UP Consultant referred to in 2.2 below, send a letter in the form of annexure B to that investor;
- (c) within seven days of becoming aware that an investor (who has already at the date of this Enforceable Undertaking been notified under paragraph 1.6(c) above) has been out of pocket to a material extent that is greater than that notified, send a letter in the form of annexure C to that investor.

2.2 TIMAL will on or by 30 April 2001, engage an appropriately qualified, independent person, whose appointment and terms of reference are approved in writing by ASIC ("UP Consultant") to review, assess, make recommendations and report in writing to TIMAL and ASIC ("UP Report") by 15 June 2001 on the UP errors and TIMAL's unit pricing system. TIMAL will not remove, replace or vary the terms of reference of the UP Consultant without the prior written approval of ASIC.

2.3 The review and report referred to in 2.2 will include, but not be limited to:

- (a) a determination of the nature and extent of any material unit pricing errors occurring since 31 December 1999 in relation to the schemes;
- (b) by using testing methods as reasonably determined by the UP Consultant, details of the extent of and current status of the UP errors, including whether any material unit pricing errors have not been previously identified, and whether any unitholders have yet to be recompensed for any material loss and, if any, what action and mechanisms are appropriate to recompense them;
- (c) a review of the internal TIMAL report dated 31 January 2001 on the UP errors that was commissioned by TIMAL and prepared with the assistance of an independent actuarial consultant and given to ASIC (the "Report"). The review will cover an assessment and testing of the methodology and process adopted by TIMAL in the Report, and will provide the UP Consultant's opinion as to whether the Report correctly, and completely (to the extent that the testing methods used by the UP Consultant are capable of demonstrating that completeness) describes the UP errors that have occurred and the factual circumstances giving rise to the UP errors and any other material facts or information;
- (d) an assessment as to whether the UP errors are indicative of any wider compliance issues that may affect TIMAL's operations generally;

- (e) an assessment of the methodology adopted by TIMAL for determining which investors have been affected and estimating loss incurred by those investors;
 - (f) confirmation that TIMAL has notified (or will notify) investors in accordance with this Enforceable Undertaking; and
 - (g) a review and assessment of the unit pricing system used generally in respect of the schemes, and recommendations to the Board as to improvements to the unit pricing system.
- 2.4 TIMAL will also arrange for the UP Consultant to conduct an ongoing review and report to TIMAL on the unit pricing system on a six monthly basis for one year following the issue of the UP Report.
- 2.5 TIMAL will:
- (a) allow the UP Consultant to have access to the books of the schemes; and
 - (b) as requested by the UP Consultant, give the UP Consultant information or an explanation of any aspect of TIMAL's operation of the schemes for the purpose of its review, assessment and report; and
 - (c) otherwise assist the UP Consultant in conducting the review and assessment referred to above.
- 2.6 To the extent that to do so will not constitute a breach of the law by TIMAL, TIMAL will implement, or will agree with ASIC a timetable to implement, any recommendations made in the reports by the UP Consultant as soon as practicable, but in any event by 31 August 2001, and advise ASIC of the steps taken by TIMAL in this regard.

Compliance

- 2.7 TIMAL will, on or before 30 April 2001, engage an external independent professional compliance consultant (the "Compliance Consultant"), whose appointment and terms of reference are to be approved in writing by ASIC, to review, assess, make recommendations and report in writing to TIMAL and ASIC ("Compliance Report") on TIMAL's current compliance arrangements. TIMAL will not remove, replace or vary the terms of reference of the Compliance Consultant without the prior written approval of ASIC.
- 2.8 The review and report referred to in 2.7 will include, but not be limited to:
- (a) An assessment of the adequacy of the compliance framework TIMAL relies on to identify changes in and comply with:
 - (i) the Law,
 - (ii) the Corporations Regulations,
 - (iii) its licence conditions,
 - (iv) the constitution of the schemes,
 - (v) the compliance plan of the schemes,
 - (vi) the terms of this Enforceable Undertaking; and
 - (b) the performance of the compliance committee including:

- (i) its monitoring, review and supervisory functions; and
 - (ii) its keeping of sufficient written records, minutes and other documents to independently verify issues, findings and conclusions identified in internal compliance, breach or exception reports and in carrying out its functions generally.
- (c) a review of the compliance of the financial, administration and back office functions of TIMAL in respect of the schemes. This review will also test the veracity of compliance reporting from the business units and the chief compliance officer to the compliance committee and will test whether all such reports are given to the compliance committee on a quarterly basis or as required ("back office functions" include unit pricing, valuation of assets, reconciliations, processing of all applications and redemption transactions and monitoring of compliance with investment mandate, accounting and taxation positions).

The review and report will cover the period that will properly demonstrate TIMAL's current ability to meet its obligations as listed in (a) and (b) above.

2.9 TIMAL will use its best endeavours to ensure that the first review and Compliance Report is to be undertaken and completed by 15 June 2001 and thereafter on each of 30 November 2001, 31 May 2002 and 29 November 2002 unless otherwise approved in writing by ASIC.

2.10 TIMAL will:

- (a) allow the Compliance Consultant to have access to the books of the schemes; and
- (b) as requested by the Compliance Consultant, give the Compliance Consultant information or an explanation of any aspect of TIMAL's operation of the schemes for the purpose of the compliance review, assessment and report; and
- (c) otherwise assist the Compliance Consultant in conducting the review and assessment referred to above.

2.11 To the extent that to do so will not constitute a breach of the law by TIMAL, TIMAL will implement, or agree with ASIC a timetable to implement the recommendations made in the Compliance Reports, which may include modification, repeal or replacement of the compliance plan of the schemes, as soon as practicable, but in any event by 31 August 2001 and advise ASIC accordingly of the steps taken by TIMAL in this regard.

2.12 TIMAL will ensure that the compliance committee meetings for the schemes are held within the time frames specified in the schemes' compliance plans and in accordance with the requirements of this Enforceable Undertaking, recommendations made by the Compliance Consultant which TIMAL must implement and the Law but in any event there will be a minimum of four meetings per year with a maximum period of four months between compliance committee meetings.

Reporting and defaults

2.13 TIMAL's chief Compliance Officer will provide reports to the compliance committee addressing:

- (a) every breach known to the Compliance Officer whether material or not which occurred during the relevant period for which the report has been prepared; and
- (b) other concerns or observations with respect to the schemes about the effectiveness

of the compliance arrangements, or the relevant compliance plan. The reports will be prepared to coincide with each compliance committee meeting as required under 2.12.

2.14 In addition to the compliance committee's obligations under the Law, the compliance committee will prepare a report to the Board addressing all compliance breaches and issues that the compliance committee determines are material with respect to the schemes that have been identified for the relevant reporting period following all compliance committee meetings.

2.15 The Board of TIMAL will provide a report approved by the Board ("Board Report") to ASIC each quarter for a period of 24 months from the date of this Enforceable Undertaking which:

- (a) certifies that, to the best knowledge of the Board, after making reasonable enquiries, TIMAL has complied with the terms of this Enforceable Undertaking and, except to the extent reported to the compliance committee, TIMAL has complied with the provisions of the Law and of its Licence;
- (b) where a Compliance Report has been received from the Compliance Consultant or a UP Report from the UP Consultant since the last Board Report, details the steps to be taken by TIMAL to comply with the recommendations of the Compliance Consultant or UP Consultant in that report and provides a full explanation of why any of the recommendations are not to be followed. ASIC reserves the right to comment on and require revisions to any proposed action or variation by TIMAL in response to each report; and
- (c) discloses material breaches of the law in accordance with s 601FC(1)(l) or material breaches of the licensing conditions that occurred during the relevant reporting period.

General

2.16 Where TIMAL fails to comply with any term of this Enforceable Undertaking, ASIC will be entitled to take action referred to in 1.5 above and/or require that TIMAL correct or rectify the failure to comply.

2.17 Where ASIC, on a reasonable basis, has concerns about the TIMAL's compliance with this Enforceable Undertaking, at its written request, TIMAL will provide ASIC officers with access to books so as to enable ASIC to determine whether or not TIMAL has complied with this Enforceable Undertaking.

2.18 For the avoidance of doubt, TIMAL offers and assumes obligations under this Enforceable Undertaking in its capacity as Responsible Entity of the schemes, and only in that capacity.

2.19 Where materiality is relevant to a UP error, it shall be determined by:

- (a) reference to IFSA Guidance Note No. 4.00 titled "Incorrect Pricing of Scheme Units - Correction and Compensation" which defines materiality as 0.3% (0.5% for errors occurring prior to 1 August 2000) of the price of a unit (paragraph 7.1); and
- (b) the pricing error representing a loss of at least \$20.00 in respect of any affected investor.

If any other type of materiality is referred to, the test will be based on a prudent fund manager in the same circumstances as TIMAL.

3. **ACKNOWLEDGEMENT**

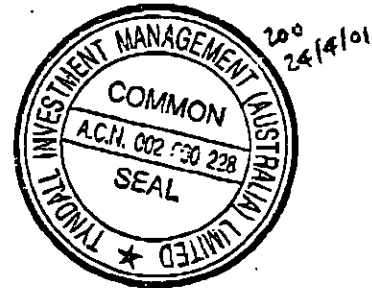
3.1 TIMAL acknowledges that ASIC:

- (a) may issue a media release on execution of this Enforceable Undertaking referring to the terms of the 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.

3.2 TIMAL acknowledges that:

- (a) this undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this undertaking;
- (b) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order; and
- (c) this undertaking has no operative force until accepted by ASIC.

THE COMMON SEAL OF TYNDALL
INVESTMENT MANAGEMENT (AUSTRALIA)
LIMITED ABN 70 002 060 228 was affixed to this
undertaking in the presence of:

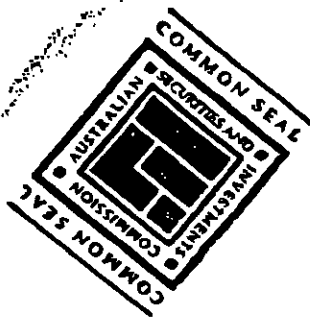


Michael Willie
Director

[Signature]
Secretary

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
PURSUANT TO SECTION 93A OF THE ASIC ACT BY ITS DULY AUTHORISED DELEGATE

DMcShane
[name/title]



D M^c SHANE DIRECTOR MANAGED INVESTMENTS
NATIONAL TEAM Date 26/4/01

SCHEDULE A

Tyndall Cash Portfolio

Tyndall Meridian Trust *(formerly Meridian Investment Trust)*

Tyndall Australian Share Wholesale Portfolio

Tyndall Managed Portfolio

Tyndall International Share Portfolio

Tyndall Australian Share Portfolio

Tyndall Australian Share Value Fund

Special Situations Fund

Tyndall Australian Sharemarket Enhanced Fund *(formerly Tyndall Wholesale Enhanced Index Fund)*

First International Equity Performance Fund

Tyndall International Share Fund *(formerly International Equity Performance Fund No. 2)*

ANNEXURE A

18 December 2000

«Name_1»

«Name_2»

«Add_1»

«Add_2»

Dear «SAL»

Re: Recent redemption from Tyndall Managed Portfolio

Investor No: «Inv_No»

We have just completed our regular review of transactions on our system and have discovered that when your investment was closed and paid-out you were underpaid.

Tyndall apologises for the error and we have enclosed a cheque for the amount you were underpaid.

We have modified our procedures to ensure that the error, related to our calculation of the unit price on redemption, will not recur.

Again, we are sorry for the inconvenience we may have caused you. If you have any questions or require further information please phone us on 1800 819 499.

Yours sincerely,



**Sarah Hall
Client Service Manager
Financial Services**

ANNEXURE B

{Date}

«Name_1»

«Name_2»

«Add_1»

«Add_2_»

Dear «SAL»

Re: Recent redemption from Tyndall [name of Fund]

Investor No: «Inv_No»

We have just completed our regular review of transactions on our system and have discovered that when your investment was redeemed and paid-out you were underpaid.

Tyndall apologises for the error and we have enclosed a cheque for the amount you were underpaid.

We have modified our procedures to ensure that the error, related to our calculation of the unit price on redemption, will not recur.

In accordance with our commitment to unitholders, and an enforceable undertaking we have offered to the Australian Securities and Investments Commission (ASIC) which ASIC has accepted, we are committed to ensuring that the risk of such errors being repeated are minimised.

Again, we are sorry for the inconvenience we may have caused you. If you have any questions or require further information please phone us on 1800 819 499.

Yours sincerely,

[Name]

**Client Service Manager
Financial Services**

ANNEXURE C

{Date}

«Name_1»

«Name_2»

«Add_1»

«Add_2_»

Dear «SAL»

Re: Recent redemption from Tyndall [name of Fund]

Investor No: «Inv_No»

We refer to our recent letter notifying you of an underpayment when your investment was redeemed and enclosing a cheque for the amount you were underpaid.

We have discovered that when your investment was redeemed and paid-out you were underpaid by a greater extent than first identified.

In accordance with our commitment to unitholders, and an enforceable undertaking we have offered to the Australian Securities and Investments Commission (ASIC) which ASIC has accepted, we are committed to ensuring that the risk of such errors being repeated are minimised.

Tyndall apologises for the error and we have enclosed a cheque for the further amount you were underpaid.

Again, we are sorry for the inconvenience we may have caused you. If you have any questions or require further information please phone us on 1800 819 499.

Yours sincerely,

[Name]
Client Service Manager
Financial Services