



014835074

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001(Cth)

Section 93AA

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

Colonial First State Investments Limited ACN 002 348 352 ('Colonial First State'), of Level 29, 52 Martin Place, Sydney, New South Wales, 2000.

1. BACKGROUND

- 1.1 Colonial First State is engaged in the business of providing funds management and superannuation services.
- 1.2 ASIC is responsible for monitoring and providing consumer protection in relation to financial services and pursuant to section 12GD of the *Australian Securities and Investments Commission Act 2001* ('Act'), ASIC may seek injunctive relief in respect of a contravention of the Act. ASIC may also commence proceedings for compensation on behalf of consumers who have suffered loss and damage as a result of a contravention of the Act (section 12GM) and seek non-punitive orders such as a community service order (section 12GLA).
- 1.3 Colonial First State offers financial services in relation to financial products in the course of trade or commerce, as defined in sections 12BAB and 12BAA of the Act.
- 1.4 On 20 June 2004 Colonial First State published advertisements promoting the Colonial First State First Choice Personal Super Geared Share Option Fund (the Fund) in each of:
 - (a) The Sunday Age, entitled "*Geared Super Choices...with Colonial First State*" containing in the body of the advertisement the statement "Colonial First State Geared Share Option performance 32.67%* 1 year".
 - (b) Sunday Life (the Sunday Age Magazine), entitled "*Invest in geared super choices...with Colonial First State*" containing in the body of the advertisement the statement "Colonial First State Geared Share Option performance 48.45%* 1 year"; and
 - (c) The Sun Herald, entitled "*Geared super choices...with Colonial First State*" containing in the body of the advertisement the statement "Colonial First State Geared Share Option performance 32.67%* 1 year"

(together, the Advertisements).

The asterisks referred readers to smaller print at the bottom of the Advertisements that included statements that the 32.67% was the performance of the Fund as at 30 April 2004 and that the 48.45% was the performance of the Fund as at 31 March 2004. This print also contained a statement that past performance was no indication of future performance.

- 1.5 The Fund was established in May 2002. The table below sets out the performance of the Fund available at the time the Advertisements were placed, on a one year, two year and since inception basis.

Date	One year return*	Two years return pa*	Since inception in May 02 return pa*
31 March 2004	48.45%	Not applicable	0.24%
30 April	32.67%	Not applicable	-1.21%
31 May	32.92%	0.85%	-0.20%

- 1.6 ASIC has the following concerns about the Advertisements:-

- (a) The use of the one year past performance figures amounted to a representation that these figures reflected the past performance of the Fund.

In fact, at the time when the one year past performance was 48.45% the performance since inception of the Fund was 0.24% p.a. and at the time when the one year past performance was 32.67% the performance since inception was - 1.21% p.a.

- (b) Given the prominence of the past performance figures and the layout of the Advertisements as a whole, the use of the past performance figures amounted to a representation about the likely future performance of the Fund. Further, the content of the fine print was not sufficient to correct this representation.

- (c) The use of past performance figures amounted to a representation that these figures were up to date, and that they had not been selectively chosen. In fact, at the time of publication of the Advertisement referred to in 1.4(b) there was a more up to date, substantially lower figure available.

- (d) The advertisements stated that gearing "...can also magnify losses..." and "in a rising share market, your investment amplifies your gains". In fact gearing always magnifies losses, and borrowing costs can exceed small share market rises. Accordingly, the Advertisements did not give a balanced and accurate account of the risks and benefits of the Fund.

- (e) The advertisements stated that "the fund can be a high risk investment" when in fact the fund is generally regarded as a high risk investment.

- 1.7 In July 2003 ASIC released the ASIC Guide to the Use of Past Performance in Advertisements and Promotional Material ('ASIC Guide'). The ASIC Guide was widely distributed and promoted to the financial services industry. The ASIC Guide states, amongst other things, that past performance figures in investment advertisements:

- (a) may be misleading if they use past performance information from an inappropriately short time period;
- (b) should include past performance information for the per annum return over the previous 5 years or for the whole period the investment has been available (if less than 5 years); and
- (c) should use "up to date" performance data being the most recent data that is available at the last practical opportunity to update the material in the verification and publication process.

- 1.8 ASIC is of the view that the Advertisements breached the ASIC Guide. Consequently, ASIC is concerned that the Advertisements were likely to mislead and deceive in contravention of section 12DA(1) and to represent that the Fund had performance characteristics which it did not have in contravention of section 12DB(1) of the Act, in that the Advertisements used past performance information relating to the Fund from an inappropriately short and/or selective period, whereas the Advertisements should have used performance information for the whole period of the Fund's life so as to provide a fair and balanced impression of its past performance.
- 1.9 The Advertisements were published at various times in the print media from 6 June 2004. Colonial First State ceased publication of the Advertisements after 30 June 2004 prior to the matter being raised with it by any other person and by ASIC in October 2004.
- 1.10 After ASIC raised this matter Colonial First State sent out a letter in the form of Annexure A to this undertaking to people who invested in the Fund after the Advertisements were run.
- 1.11 The table below sets out the performance of the Fund since the Advertisements were run on a one year, two year and since inception basis.

Date	One year return*	Two years return pa*	Since inception in May 02 return pa*
30 June 2004	33.99%	6.44%	2.07%
31 July	30.62%	11.84%	3.42%
31 August	32.90%	14.00%	5.01%
30 September	40.44%	26.18%	8.05%
31 October	39.17%	30.56%	10.99%
30 November	62.82%	36.83%	15.53%

- 1.12 Colonial First State accepts that the Advertisements did not comply with the ASIC Guide and acknowledges ASIC's concerns as set out in this undertaking.
- 1.13 Colonial First State has offered this Enforceable Undertaking, which ASIC has agreed to accept. By accepting the undertakings in 2 below offered by Colonial First State ASIC will not take any action against Colonial First State in relation to the matters the subject of this Enforceable Undertaking.

2. UNDERTAKINGS

Pursuant to Section 93AA of the Act Colonial First State offers the undertakings set out below:

- 2.1 Within 14 days Colonial First State will, if it has not already done so, send out a letter in the form of Annexure A to this Undertaking (updated as appropriate with the latest performance information) to any person who invested in the Fund between 7 June 2004 and 30 July 2004
- 2.2 Colonial First State will, in relation to any person who:
- (a) invested in the Fund between 7 June 2004 and 30 July 2004; and
 - (b) requests a refund of their investment within:
 - (i) 14 days of receiving a letter referred to in 2.1 above; or
 - (ii) 30 days of the date of this Undertaking
 refund to that person:
 - (c) their investment at the prevailing unit price at the date the request for a refund is received; and

- (d) any entry fee paid by that person to Colonial First State in relation to the making of the investment in the Fund

and Colonial First State will waive any exit fee that would normally be payable to Colonial First State in relation to the person withdrawing their investment in the Fund.

- 2.3 Colonial First State will maintain a Register of Contacts (the **Register**) containing details of:

- (a) requests for refunds received from investors in the Fund;
- (b) the date the requests were received;
- (c) whether the refund requested has been paid; and
- (d) the date on which the refund was paid.

- 2.4 Colonial First State will refrain from using, in any of its investment-related print or TV media advertising or promotional material for a retail audience, past performance information relating to a period of 12 months or less for any of its funds:

- (a) where the use of such information does not reasonably provide investors with a balanced and fair indication of the fund's past performance over the whole period of its life;
- (b) unless the advertising or material also includes:
- (i) for funds that have been available for more than 5 years, past performance figures for the per annum return over the previous 5 year period; or
- (ii) for funds that been available for less than 5 years, past performance figures for the whole period the investment has been available; and
- (c) unless the past performance information included is the most recent data that is available at the last reasonably practical opportunity to update the material in the verification and publication process.

- 2.5 By no later than 1 March 2005, Colonial First State will:

- (a) undertake a complete internal review of its approval process for advertisements and promotional material, with a view to ensuring that its advertising and promotional material continues to comply in all material respects with the provisions of the ASIC Act and the ASIC Guide in relation to the use of past performance information; and
- (b) prepare a report detailing:
- (i) any deficiencies identified in the existing approval process; and
- (ii) recommendations to address those deficiencies.


- 2.6. Within a period of 6 months of the date of this Enforceable Undertaking, Colonial First State will implement any recommendations contained in the report prepared pursuant to the undertakings contained at 2.5 above.

- 2.7 Within a period of 6 months of the date of this Enforceable Undertaking, Colonial First State will undertake a training program for all relevant staff involved in the approval process for advertisements and promotional material with a view to educating and reminding relevant staff of the consumer protection requirements of the Act and the ASIC Guide in relation to the use of past performance in advertising and promotional material.
- 2.8 Subsequently, Colonial First State will provide ongoing refresher training for a period of three (3) years from the date of this Enforceable Undertaking of the material contemplated in paragraph 2.7 to relevant staff.
- 2.9 Colonial First State will pay ASIC, within 14 days of the acceptance of this undertaking, the sum of \$10,000 representing a contribution to a program designed to further educate consumers and/or industry on the use of past performance figures in investment advertising.
- 2.10 Colonial First State will on or before 30 June 2005 and 1 December 2005 provide a report, signed off by the Head of Compliance & Risk Management, containing:
- (a) a copy of the Register;
 - (b) a copy of the report prepared pursuant to paragraph 2.5(b);
 - (c) a detailed report of the steps taken by Colonial First State to comply with the undertakings set out in the Enforceable Undertaking.

ACKNOWLEDGEMENTS

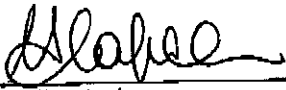
3. Colonial First State acknowledges that ASIC:
- (a) may issue a media release on the date of execution of this Enforceable Undertaking referring to its terms and to the concerns ASIC had which led to its execution;
 - (b) may from time to time publicly refer to this Enforceable Undertaking; and
 - (c) will place a copy of this Enforceable Undertaking on a Public Register.
- 3.1 Colonial First State acknowledges that this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct described in this Enforceable Undertaking.
- 3.2 Colonial First State acknowledges that ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate a contravention arising from future conduct.
- 3.3 Colonial First State acknowledges that this Enforceable Undertaking has operative force only once it is accepted by ASIC.
- 3.4 ASIC acknowledges the assistance and co-operation of Colonial First State in relation to the negotiation and settlement of the terms of this Enforceable Undertaking.

Executed by Colonial First State Investments Limited ACN 002 348 352 in accordance with s 127 of the Corporations Act 2001 by:



Signature of director
JOHN PEARCE

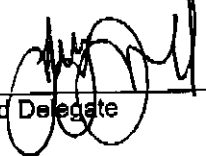
Name of director



Signature of director/~~company secretary~~
HENRY CAPRA

Name of director/~~company secretary~~

Executed by Australian Securities and Investments Commission by:



Authorised Delegate

Dated this 21st day of December 2004

Annexure A

Letter to Affected Investors

Dear xx

Your investment in First Choice Personal Super Geared Share Option

It has been brought to our attention by ASIC that advertisements for the Geared Share Option, which were run on or about 20 June 2004, may have misled investors. This letter outlines ASIC's concerns and the alternatives you, as an investor, now have available.

ASIC was of the view that the advertisements were misleading and deceptive in the following ways:

1. The use of the one year performance figures amounted to a representation that these figures reflected the past performance of the option over the life of the fund. At the time of publication of the advertisements the option had returned approximately 0. % pa. over its life.

Further, that the use of the past performance figures amounted to a representation that these figures were up to date, and that they had not been selectively chosen. In fact, at the time of publication there were more up to date, substantially lower figures available.
2. Given the prominence of the past performance figures and the layout of the advertisements as a whole, the use of the past performance figures amounted to a representation about the likely future performance of the option. Further, the content of the disclaimer at the bottom of the advertisements was not sufficient to correct this representation.
3. The advertisements stated that gearing "...can also magnify losses..." and "In a rising share market, your investment amplifies your gains". In fact, gearing always magnifies losses, and borrowing costs can exceed small share market rises. Accordingly, the advertisements did not give a balanced and accurate account of the risks and benefits of the funds.
4. The advertisements stated that "the fund can be a high risk investment" when in fact the fund is a high risk investment.

Colonial First State values highly its integrity and being open and honest with our investors and we have taken the decision to write to you now about your investment. As you invested in this option soon after the advertisements were run, it may be that the performance information in these advertisements influenced your investment decision. We want to give you more details about the option so you can reconsider this investment decision.

The table below shows the recent performance results for the Colonial First State Geared Share Option, which is included in your FirstChoice Personal Super product, over its life. Each line represents the annualised performance as at the specified date, over one and two year periods and since the option was established.* The option was launched in May 2002, which is why there are no two year performance results for some of the months below.

Date	One year return*	Two years return pa*	Since inception in May 02 return pa*
31 March 2004	48.45%	Not applicable	0.24%
30 April	32.67%	Not applicable	-1.21%
31 May	32.92%	0.85%	-0.20%
30 June	33.99%	6.44%	2.07%
31 July	30.62%	11.84%	3.42%
31 August	32.90%	14.00%	5.01%
30 September	40.44%	26.18%	8.05%
31 October	39.17%	30.56%	10.99%

You should always remember that past performance is no indication of future performance. This means that performance of the option will continue to change up or down over the life of your investment. Also we want to re-emphasise that, as this is a geared option, the gearing magnifies both losses and gains from the option's investments. This leads to increased fluctuation in the value of your investment. Further details on the risks, benefits and general characteristics of this option are set out in our Product Disclosure Statement for this option.

Your choices with your investment

If you now feel this option is no longer appropriate for you, we will arrange for your investment to be refunded. We suggest that you speak with your financial adviser before you make your decision. Your investment will be refunded to you at the prevailing unit price on the date that we receive your request for a refund. We will also refund any entry fees you paid. Please tell us within 14 days of this letter if you wish to have your investment refunded.

Alternatively if you wish to remain invested in the option, you do not need take any action, and your investment will continue.

We apologise for any inconvenience caused to you. If you have any questions or require another copy of the Product Disclosure Statement for this option, please call Jemima Bednarz on (02) 9303 7484 or speak to your financial adviser.

Yours sincerely

Catherine Badran
Head of Client Services

*calculated from exit price to exit price with distributions re invested, after ongoing fees and charges but excluding individual entry fees and taxes(if applicable)