



ASIC

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Australian Securities & Investments Commission

## **ENFORCEABLE UNDERTAKING**

### **AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

#### **Section 93AA Australian Securities & Investments Commission Act 2001**

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

John Irving  
Desmond Robert Munro  
Alan Geoffrey Scott

12 Pirie Street  
ADELAIDE SA 5000

#### **1. Background**

- 1.1 John Irving, Desmond Robert Munro and Alan Geoffrey Scott ("the Partners") are registered liquidators and the equity partners in an Adelaide based insolvency practice trading as a licensed member of a national firm of Chartered Accountants.
- 1.2 ASIC was advised by the Partners that:
  - (a) They investigated financial anomalies found within a number of corporate insolvency administrations conducted by their partnership.
  - (b) As a result of that investigation, they uncovered a fraud by a senior, long-term employee of the Partners. The fraud was immediately reported to the SA Police.

- (c) The partners believe that the employee stole approximately \$372,000 from bank accounts operated in respect of a number of administrations under the control of the Partners ("the affected administrations") over a period of time.
- 1.3 The employee initially admitted to the Partners the theft of the full amount and advised that she used the funds for gambling. She has since retracted that confession and now admits to an amount of \$174,470, which sum was transacted through her bank accounts. She has indicated via her solicitors that she may accept further liability if evidence can be provided regarding the balance.
- 1.4 The Partners voluntarily disclosed this matter to ASIC and have, since uncovering the fraud, taken steps to ensure that the affected administrations are compensated in full for the losses each has suffered, including interest and will suffer no further losses.
- 1.5 ASIC is concerned that as a result of the frauds occurring a number of documents lodged with ASIC in relation to the affected administrations were incorrect and presented a false and misleading record of those administrations. ASIC is also concerned that the fraud was not detected sooner, notwithstanding the seniority and particular expertise of the employee.
- 1.6 The Partners each acknowledge ASIC's concern set out above.
- 1.7 ASIC has power to apply to the Companies Auditors and Liquidators Disciplinary Board ("the CALDB") for an order that the registration of a person as a liquidator be cancelled or suspended for a specified period where that person has failed to carry out or perform adequately and properly the duties of a liquidator.
- 1.8 The Partners have proposed and ASIC has agreed to accept the terms of this enforceable undertaking as an alternative to seeking the relief outlined in paragraph 1.7.

## **2. Undertakings**

Pursuant to section 93AA of the ASIC Act, each of the Partners undertakes as follows:

- 2.1 By no later than 15 June 2004, reimburse the affected administrations with the full amount stolen by the employee in each case, together with the interest the money would have earned had it not been stolen.
- 2.2 With respect to one administration, the money will be held in a trust account from the date of execution of this agreement until an account in the name of the administration can be opened following the re-instatement of the relevant company by the Court.
- 2.3 The Form 524's lodged in respect of the affected administrations will, on the next anniversary date at which a Form 524 is required, reflect the funds stolen and their reimbursement, including interest.
- 2.4 The Partners will, by 15 June 2004, engage a Chartered Accountant agreed to by ASIC ("the Consultant") to review, assess, make recommendations and report in

writing by 30 June 2004 to the Partners in relation to the firm's internal controls, compliance systems, procedures and supervision of staff ("the Report").

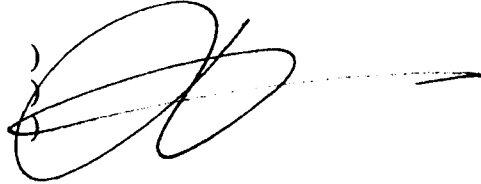
- 2.5 The terms of the engagement of the Consultant will require the Consultant to:
- (a) provide to ASIC a copy of the Report and any draft versions of that report that are provided to the Partners.
  - (b) identify in the Report any shortcomings with the firm's internal controls, compliance systems, procedures or supervision of staff as a result of which the thefts of funds from the affected administrations were possible or were not detected sooner.
  - (c) identify in the Report where action has already been taken by the Partners to address those issues and comment on the effectiveness of those changes. Detail any recommendations for further action required to strengthen the actions already taken ("the Recommendations").
- 2.6 The Partners will provide a copy of the documents recording the engagement of the Consultant within 7 days of the engagement.
- 2.7 Within 30 days of the Partners receiving the Report, they will provide ASIC with:
- (a) written details of the steps taken or to be taken by the Partners to comply with the Recommendations.
  - (b) a written explanation as to why any of the Recommendation has not been or will not be followed.
- 2.8 The Partners will pay all fees and costs associated with the engagement of the Consultant referred to in this undertaking.

### **3. Acknowledgements**

- 3.1 The Partners each acknowledge that ASIC:
- (a) may issue a media release on 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 undertaking available for public inspection.
- 3.2 The Partners each acknowledge that ASIC's acceptance of an enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- 3.3 The Partners each acknowledge that ASIC's acceptance of an enforceable 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.

- 3.4 The Partners each acknowledge that, without derogating from ASIC's right to enforce these undertakings, ASIC may apply to the CALDB to seek the relief outlined in paragraph 1.7 above in the event that the Partners fail to comply with their undertakings set out in section 2 above.
- 3.5 The Partners each acknowledge that the obligations they owe under this enforceable undertaking are owed by them jointly and severally.
- 3.6 The Partners each acknowledge that this undertaking has no operative force until accepted by ASIC.

SIGNED by John Irving  
this 21st day of May 2004  
In the presence of:



Witness

NICHOLAS DAVID COOPER

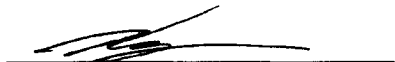
Name (Print)

Level 6, 12 Pirie Street

Adelaide SA 5000

Address

SIGNED by Desmond Robert Munro )  
this 4 day of May 2004 )  
In the presence of: )



Witness

Nicholas David Cooper

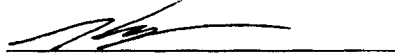
Name (Print)

Level 6, 12 Pirie Street

Adelaide SA 5000

Address

SIGNED by Alan Geoffrey Scott )  
this 24 day of May 2004 )  
In the presence of: )



Witness

Nicholas David Cooper

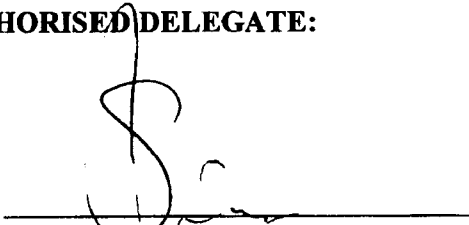
Name (Print)

Level 6, 12 Pirie Street

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



Simon Dwyer  
Regional Commission - South Australia  
Australian Securities and Investments Commission

This 28 day of May 2004.