

Enforceable Undertaking

Section 93AA

Australian Securities & Investments Commission Act

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

**Managed Investment Projects Ltd ("MIP")
ACN 083989691
109 William Street
Port Macquarie NSW 2444**



AND

**Frank Reginald Spindler ("Mr Spindler")
6008 Olympic Drive
Sanctuary Cove QLD 4212**



AND

**Carol Anne Spindler ("Mrs Spindler")
6008 Olympic Drive
Sanctuary Cove QLD 4212**



1. Background

- 1.1 On 22 March 1999, MIP was granted a dealers license by ASIC which authorised MIP to act as responsible entity for Olive Growers Federation No.1, ("the scheme"), a registered managed investments scheme, and to market the scheme.
- 1.2 Mr and Mrs Spindler were directors of MIP at all relevant times and were responsible for recruitment training and supervision of proper authority holders. Mr Spindler held a proper authority from MIP.
- 1.3 MIP lodged prospectuses dated 29 March 1999 and 9 December 1999 in respect of the scheme. Records in ASIC's possession indicate that a sum of \$101,322.20 was raised from 17 external investors and in addition an amount of \$66,890 was contributed to the scheme by entities associated with the Spindlers in respect of "trade ins" allowed in respect of external investor's interests in an investment scheme carried on by the Emu & Ostrich Breeders Federation of Australia Pty Ltd, a scheme associated with and promoted by the Spindlers.
- 1.4 The Olive Growers Federation No 1 prospectus specified a minimum subscription of 50 investment units ("groves") to be accepted by 31 January 2000. By that date, applications were received for a total of 67 groves. Spindler Nominees Pty Ltd subscribed for 45 of

these groves and a deposit of \$4,500 was paid, however it cancelled its application on 12 August 2000.

- 1.5 As a result of investigations, ASIC is concerned that sections 849 and 851 of the Corporations Law ('the Law') were contravened by Mr Spindler and MIP in connection with the making of recommendations to persons considering investing in the scheme.
- 1.6 The dealers licence issued to MIP was revoked by ASIC on 7 August 2000 on the basis that the ASIC considered that MIP had contravened provisions of a securities law and had not performed and will not perform efficiently, honestly and fairly its duties as a holder of a dealers licence.
- 1.7 In September 2000 ASIC filed an application in the NSW Supreme Court which resulted in MIP being replaced as the responsible entity of the scheme.
- 1.8 After inspecting the project, the replacement responsible entity believed that project was not of a viable size and recommended that it be wound up.
- 1.9 ASIC is concerned that MIP may have failed to treat members who hold interests in the same class equally, failed to act in the best interests of members and failed to ensure that as a responsible entity it complied with: the Corporations Law; the conditions imposed in its responsible entity's licence; the scheme's constitution and the scheme's compliance plan in contravention of section 601FC and section 601FD of the Corporations Law by:
 - (a) the issuing of interests in the scheme to Spindler Nominees Pty Ltd, and the subsequent cancellation of those interests;
 - (b) the issuing of interests in the scheme to persons who 'traded in' an interest in an investment scheme carried on by the Emu & Ostrich Breeders Federation of Australia Pty Ltd, as distinct from the issue of interests to other investors; and
 - (c) the failure to return funds raised for investment in the scheme to investors when the scheme failed to reach minimum subscription.
- 1.10 Pursuant to provisions in the Corporations Law, ASIC may make application to the Court for declarations of contraventions of the Law and orders for compensation if the Court is satisfied that a person has contravened a civil penalty provision. ASIC may also make an order prohibiting a person permanently or for a specified period from doing an act as:
 - a representative of a dealer;
 - a representative of an investment adviser;
 - or a representative of a dealer or of an investment adviser.
- 1.11 Mr and Mrs Spindler and MIP acknowledge ASIC's concerns set out in this undertaking.
- 1.12 ASIC has agreed to accept the commitments in this enforceable undertaking as an alternative to the exercise of the powers referred to in paragraph 1.10 above and as an alternative to ASIC proceeding further with its investigation into any breaches of the Corporation Law arising by reason of any of the circumstances recited in clauses 1.1 to 1.10 above.



2. Undertakings

Mr and Mrs Spindler and MIP, jointly and severally, give the following enforceable undertakings to ASIC pursuant to section 93AA of the Australian Securities and Investments Commission Act:

- 2.1 Within 14 days of the date of this undertaking, to refund to external investors all monies subscribed by them to the Olive Growers Federation No 1 project. The distribution of these funds is to be in accordance with a list of investors prepared by ASIC from MIP's available books and records.
- 2.2 Not to act in its or their own right, or as a director or responsible officer of a company that is or applies to become a licensed dealer in securities, or an investment adviser, for a period of 3 years from the date of this undertaking without the approval of ASIC; and
- 2.3 Not to act, for a period of 18 months from the date of this undertaking, as an authorised representative of a licensed dealer in securities, or of an investment adviser, unless a copy of this enforceable undertaking is provided to the licensed dealer or investment adviser prior to the appointment as an authorised representative.

3. Acknowledgments

3.1 Mr and Mrs Spindler and MIP acknowledge that they have had the opportunity to obtain legal advice in relation to the content and effect of this enforceable undertaking.

3.2 Mr and Mrs Spindler and MIP acknowledge that ASIC:-

- 3.2.1 will issue a media release on the execution of this enforceable undertaking referring to its terms and the concerns of ASIC which led to the execution of the enforceable undertaking;
- 3.2.2 will make this enforceable undertaking available for public inspection; and
- 3.2.3 may from time to time publicly refer to this enforceable undertaking.

3.3 Mr and Mrs Spindler and MIP further acknowledge:

- (a) that entering into this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity relating to or arising from any conduct described in this enforceable undertaking;
- (b) 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 arising from future conduct; and



(c) that this enforceable undertaking has no operative force until accepted by ASIC.

THE COMMON SEAL OF)
MANAGED INVESTMENT PROJECTS LTD)
ACN 083 989 691)
Was duly affixed to this undertaking)
In the presence of)



SIGNED BY FRANK REGINALD SPINDLER)
IN THE PRESENCE OF)

Frank Reginald Spindler

Signed

Michelle Hollingdale

Name In Print

Michelle Hollingdale

Address

Maghead Way
Sanctuary Cove.

SIGNED BY CAROL ANNE SPINDLER)
IN THE PRESENCE OF)

Carol Anne Spindler

Signed

Michelle Hollingdale

Name In Print

Michelle Hollingdale

Address

Maghead Way
Sanctuary Cove.

Accepted by the Australian Securities and Investments Commission pursuant to Section 93AA of
the Australian Securities and Investments Commission Act by its duly authorised delegate

Jan Speirs

Jan Speirs
Director of Regulatory Projects
Queensland Regional Office

This

9th

day of

July

2001.