



**ASIC**

Australian Securities & Investments Commission

**ENFORCEABLE UNDERTAKING**

Australian Securities & Investments Commission Act 2001 ("*ASIC Act*")

**SECTION 93AA**

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

Ocean Salvage Corporation (Holdings) Limited ACN 097 854 174 ("*the Company*")

and

John Joseph McNamara ("*Mr McNamara*")

both of

4 Penfold Road, Magill, South Australia, 5072

**BACKGROUND**

1. Mr McNamara is a director of the Company and responsible for its day to day operations.
2. In about late August or early September, the Company sent to its shareholders and shareholders of Ocean Salvage Corporation Limited (ACN 065 046 120) ("*OSC*") a Notice of Meeting ("*Notice*"), a copy of which is attached to this Undertaking marked "*A*".
3. The Notice seeks to raise \$1,500,000 by way of loans from shareholders.
4. A "Notification of Loan" form ("*Loan Form*"), a copy of which is attached to this Undertaking marked "*B*", was enclosed with the Notice, pursuant to which shareholders could apply to lend money to the Company.
5. No disclosure document has been lodged with ASIC in relation to the loans being sought by the Company.
6. ASIC was concerned that in seeking the loans, the Company had breached, or would breach the Corporations Act 2001 ("*the Act*") in that

- 6.1 Loans to the company are a debenture, and therefore a security regulated by the Act;
  - 6.2 The offer required disclosure to investors under Part 6D.2 of the Act and contrary to section 727 of the Act, offers were being made when no disclosure document had been lodged with ASIC; and
  - 6.3 the Notice was misleading and deceptive within the meaning of section 995 of the Act and section 12 DA of the ASIC Act and amounted to the making of false or misleading statements contrary section 999 of the Act.
7. The Company and Mr McNamara each acknowledges ASIC's concerns set out above and in particular that
- 7.1 Loans to the Company are a security regulated by the Act;
  - 7.2 No disclosure document has been lodged with ASIC;
  - 7.3 A disclosure document is required to be lodged before offers are made if more than 20 people lend money to the Company.

#### UNDERTAKINGS

8. Mr McNamara and the Company each undertakes, jointly and severally that, from the date of this Undertaking, they:
- 8.1 will not deposit or pay into any bank account operated by them or any other person, or in any way deal with any money received from any person pursuant to the Loan Form;
  - 8.2 will forthwith return any money received from any person pursuant to the Loan Form, to the person who sent the money;
  - 8.3 will not deposit or pay into any bank account operated by them or any other person, or in any way deal with any money received by the Company or OSC from any person by way of loan to the Company or OSC in connection with the Company or OSC or for the purpose of the salvage operation referred to in the Notice, or any other salvage operation in which the Company, OSC or any subsidiary of either company proposes to be involved, unless the loan is made to the Company or OSC pursuant to the acceptance of an offer which does not require disclosure because of section 708 of the Act or an offer made in a disclosure document that has been lodged with ASIC;
  - 8.4 will not issue any shares in the Company unless they are issued for no consideration or are issued pursuant to the acceptance of an offer that does not need disclosure because of section 708 of the Act or an offer made in a disclosure document or a bidders statement that has been lodged with ASIC; and

8.5 will not make any offer of shares or other securities of the Company without first lodging a disclosure document with ASIC in accordance with the Act, or, if the offer is purported by them to be an offer that does not need disclosure because of section 708 of the Act, without first giving ASIC 7 days notice in writing, addressed to the Assistant Director Enforcement, Corporate Investigations, South Australia of the intention to make the offer.

#### ACKNOWLEDGEMENTS

9. Mr McNamara and the Company each acknowledge that ASIC:
- 9.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
  - 9.2 may from time to time publicly refer to this undertaking; and
  - 9.3 will make this undertaking available for public inspection.
10. Mr McNamara and the Company each acknowledge that 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.

*John Joseph McNamara*  
.....  
John Joseph McNamara  
This *18* day of *Sept* 2001

SIGNED BY Mr McNamara

in the presence of:

*Anthony Vella*  
.....  
witness

*ANTHONY VELLA*  
.....  
name (print)

*250 THE PARADE NORWOOD*  
.....  
address

*AGENT*  
.....  
occupation

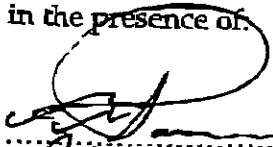
This 18<sup>th</sup> day of Sept 2001

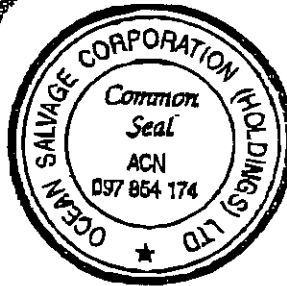
.....  
Ocean Salvage Corporation (Holdings) Limited ACN 097 854 174

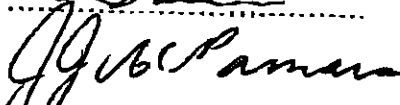
This 18<sup>th</sup> day of Sept 2001

SIGNED BY the Company

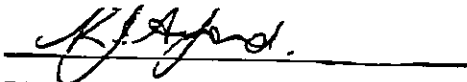
in the presence of.





.....  


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



Karen Axford  
Regional Commissioner,  
South Australia

This 18<sup>th</sup> day of September 2001