



ENFORCEABLE UNDERTAKING

SECTION 93AA AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001

The commitments in this Enforceable Undertaking are offered to the Australian Securities and Investment Commission ("ASIC") by :

Tidswell Administration Limited
ACN 010 810 607
50 Hindmarsh Square
ADELAIDE SOUTH AUSTRALIA 4000
("the Company")

BACKGROUND

- 1.1 On 16 January 2001 ASIC issued Dealers Licence number 10979 ("**the Dealers Licence**") to the Company.
- 1.2 Between 16 January 2001 and the date of this undertaking the Company has been the responsible entity for a number of registered managed investment schemes including the Pooled Mortgage Managed Investment Scheme (ARSN 095 540 597) ("**PMMI scheme**") and the Direct Mortgage Managed Investment Scheme (ARSN 095 540 659) ("**DMMI scheme**").
- 1.3 From 1996 until the date of this undertaking the Company established and managed the Commonwealth House Unit Trust ("**the CHUT scheme**").
- 1.4 As at 30 June 2001 the CHUT scheme had funds under investment of \$13,508,154 in 5 Commercial properties in Adelaide. There are 497.5 Units in the Trust which are held by Tower Trust (SA) Limited as custodian for the Company in its capacity as responsible entity and approved trustee respectively for 224 investors in the Tidswell Investment Plan and the Tidswell Master Superannuation Plan.
- 1.5 From 1995 the Company established and managed the 55 Gawler Place Joint Venture ("**the Joint Venture**"). As at 30 November 2001 the Joint Venture had funds under investment of \$394,000 (based on valuation) in 5 Strata Units in the property at 55 Gawler Place, Adelaide.

2. CONCERNS OF ASIC

Commonwealth House Unit Trust

- 2.1 ASIC has formed the view that the CHUT scheme is a registrable managed investment scheme under Section 601ED of the Corporations Act 2001 ("**the Act**").
- 2.2 The CHUT scheme is not registered under Section 601ED of the Act.

- 2.3 ASIC is concerned that by operating an unregistered managed investment scheme the investors' interests are not adequately protected.
- 2.4 ASIC has the power under Section 601EE of the Act to apply to a court to wind up the CHUT Scheme.

55 Gawler Place Joint Venture

- 2.5 ASIC has formed the view that the Joint Venture is a registrable managed investment scheme under section 601ED of the Act.
- 2.6 The Joint Venture is not registered under section 601ED of the Act.
- 2.7 ASIC is concerned that by operating an unregistered managed investment scheme the investors' interests are not adequately protected.
- 2.8 ASIC has the power under Section 601EE of the Act to apply to a court to wind up the Joint Venture.

Quarterly Audit reports under Dealers Licence

- 2.9 ASIC is concerned the Company appears to be unclear on the timing for the completion of the quarterly audit reports required under condition 19 of the Company's Dealers Licence.

Registered Pooled and Direct Mortgage Managed Investment schemes

- 2.10 ASIC has conducted an investigation in relation to the Company's compliance with the Constitution and the Compliance plan of the PMMI Scheme in particular in relation to the assessment, monitoring and recovery of mortgage investments made by the PMMI scheme.
- 2.11 ASIC is concerned that the Company may not be exercising its powers and carrying out its duties as a responsible entity with the care and diligence that a reasonable person would exercise if they were in the responsible entities position in relation to the assessment, monitoring and recovery of mortgage investments made by the PMMI Scheme and the DMMI Schemes. Accordingly ASIC is concerned to ensure that investors' interests are adequately protected.
- 2.12 ASIC has the power under Part 7.3, Division 4 of the Act to suspend or revoke the Dealers Licence (subject to the requirement to give the Company an opportunity for a hearing under section 837 of the Act).
- 2.13 ASIC has agreed to accept the commitments in this enforceable undertaking as an alternative to the exercise of the power referred to in paragraphs 2.4, 2.8 and 2.12.
- 2.14 The Company acknowledges ASIC's concerns and offers the undertakings set out in section 3 below.

3. UNDERTAKINGS

Pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001, the Company gives the following enforceable undertakings:

Commonwealth House Unit Trust

3.1 The Company will:

- (a) by [*30 days from date of entering into the enforceable undertaking*] make an application to ASIC for a variation to the Dealers Licence to permit the Company to act as the responsible entity for the registered CHUT Scheme;
- (b) within 7 days of the date of ASIC's letter advising the requirements for the granting of a licence (if ASIC decides to grant a licence), make an application to ASIC pursuant to, and in compliance with, section 601EA of the Act to register the CHUT scheme as a managed investment scheme;

3.2 The Company will not:

- (a) offer any interest in the CHUT scheme; or
- (b) accept any funds for investment in the CHUT scheme; or
- (c) redeem any investments in the CHUT scheme,

unless and until:

- (d) the CHUT scheme has been registered as a managed investment scheme pursuant to section 601EB of the Act; and
- (e) the Dealers Licence permits the Company to act as the responsible entity for the registered CHUT scheme.

3.3 The Company will, within 7 days of receiving notification from ASIC that ASIC has refused either of the Company's application to:

- (a) register the CHUT scheme; or
- (b) vary the Dealers Licence to permit the Company to act as the responsible entity for the registered CHUT Scheme,

provide ASIC with a letter consenting to the winding up of the CHUT scheme pursuant to any application made by ASIC pursuant to section 601EE of the Act.

55 Gawler Place Joint Venture

3.4 The Company will:

- (a) By 21 December 2001 convene a meeting of the Joint Venture investors to decide on whether to do one of the following:
 - (i) Terminate the Joint Venture pursuant to clause 6 of the Joint Venture Agreement; or
 - (ii) register the Joint Venture as a managed investment scheme.
- (b) Extend the invitation to the meeting to the members of the Tidswell Investment Plan who have an interest in the Joint Venture.
- (c) Do such things as are reasonably necessary to send to each member of the Tidswell Investment Plan with an interest in the Joint Venture all information necessary for them to be fully informed about the resolutions referred to in paragraph (a);
- (c) Within 7 days of the meeting of the Joint Venture Investors referred to in paragraph (a), notify ASIC in writing of the resolution.

3.5 In the event that the Investors resolve to wind-up the Joint Venture, the Company will wind up the venture within the terms of the Joint Venture Deed.

3.6 In the event that the Investors resolve to register the Joint Venture scheme as a managed investment scheme, the Company will:

- (a) within 14 days of that resolution apply to ASIC for a variation to the Dealers Licence to permit the Company to act as the responsible entity for the registered Joint Venture scheme;
- (b) within 7 days of the date of ASIC's letter advising the requirements for the granting of a licence (if ASIC decides to grant a variation to the Dealer's Licence), make an application to ASIC pursuant to, and in compliance with, section 601EA of the Act to register the Joint Venture scheme as a managed investment scheme;
- (c) not:
 - (i) offer any interest in the Joint Venture;
 - (ii) accept any funds for investment in the Joint Venture;
 - (iii) redeem any investments in the Joint Venture,

unless and until:

- (iv) the Joint Venture has been registered as a managed investment scheme pursuant to section 601EB of the Act; and
- (v) the Dealers Licence permits the Company to act as the responsible entity for the registered Joint Venture.

- 3.7 The Company will, within 7 days of receiving notification from ASIC that ASIC has refused either of the Company's application to:
- (a) register the Joint Venture; or
 - (b) vary the Dealers Licence to permit the Company to act as the responsible entity for the registered Joint Venture,

provide ASIC with a letter consenting to the winding up of the Joint Venture pursuant to any application made by ASIC pursuant to section 601EE of the Act.

Quarterly Audit reports under Dealers Licence and The PMMI scheme and the DMMI Schemes

- 3.8 The Company has consented to condition 19 of the Company's current Dealer's Licence being varied by replacing it with the following condition on their Dealer's licence:

Additional Audit Requirements

- 19. The licensee must ensure that for every quarter from 16 January 2001, that an audit of the compliance plans for the schemes described in paragraph 1(a) is carried out and completed within 30 days of the end of each quarter, by an auditor approved by ASIC. The cost of this audit must be borne by the licensee, who shall not seek reimbursement of the cost from the assets of the schemes. A copy of the audit report is to be provided to ASIC within 7 days of the date of the report.
- 3.9 The Company will within 30 days of the date of this undertaking make application for a variation of its Dealers Licence to include as a key person under condition 2, a named person or persons to be approved by ASIC, as part of this application, who will be responsible to assess and make written recommendations in respect of all mortgage loans advanced by the PMMI and DMMI Schemes.
- 3.10 The Company will by 31 December 2001 provide ASIC with a draft of the amendments the Compliance Plans for the PMMI and DMMI schemes prohibiting the approval of any mortgage loan unless the key person appointed pursuant to the amended condition 2 of TAL's Dealers Licence has made a written recommendation that the loan be approved.
- 3.11 The Company will immediately upon entering into this enforceable undertaking:
- (a) provide its auditor with a copy of ASIC's letter dated 12 November 2001 addressed to Mr Jeffrey Tidswell of Tidswell Administration Limited ("**the Letter**") cause its auditor to review, assess, make recommendations and report in writing to the Company and ASIC its recommendations for implementation of the actions required by ASIC in the Letter within 30 days of the date of this undertaking; and

- (b) cause its auditor ("**the Auditor**") in respect of each quarterly audit report of the Compliance Plans of each of the PMMI Scheme and the DMMI Scheme, to review, assess, make recommendations and report in writing to ASIC on and concerning:
 - (i) the adequacy of the assessment of mortgage loan applications approved in the quarter under review;
 - (ii) the adequacy of the provision for doubtful debts; and
 - (iii) the adequacy of the monitoring of the mortgage loan portfolio.

3.12 The Company will:

- (a) allow the Auditor to have access to the books of the Company;
- (b) give the Auditor any information or an explanation requested by the Auditor of any matter in any way connected with the matters referred to in clause 3.9; and
- (c) otherwise assist the Auditor in conducting the review and assessment referred to above.
- (d) implement any recommendation made by the Auditor under clause 3.9 within 30 days of that recommendation;

3.13 The Company undertakes that, within 14 days of the breach of any undertaking made in clauses 3.1 to 3.10, it will ask ASIC in writing to revoke its Dealer's Licence pursuant to section 825 of the Act.

3.14 The Company undertakes that it will bear the costs of complying with each and every term of this undertaking and shall not seek reimbursement of the costs from the assets of any of the managed investment schemes operated by it.

4. **ACKNOWLEDGMENTS**

4.1 The Company acknowledges that it has had the opportunity to obtain legal advice in relation to the content and effect of this enforceable undertaking.

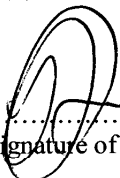


4.2 The Company acknowledges that the responsible officers who sign this enforceable undertaking have full authority to sign and enter into the undertaking on behalf of the Company.

4.3 The Company acknowledges that ASIC:

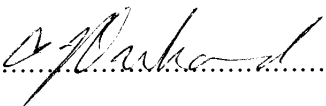
- (a) will make this enforceable undertaking available for public inspection;

- (b) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution; and
 - (c) may from time to time publicly refer to this enforceable undertaking.
- 4.4 The Company acknowledges that this 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.
- 4.5 That Company acknowledges that ASIC's acceptance of an enforceable undertaking does not effect ASIC's power to investigate; pursue a criminal prosecution, lay charges or seek a pecuniary order arising from future conduct.
- 4.6 The Company acknowledges that this undertaking has no operative force until accepted by ASIC.

The Common Seal of Tidswell Administration Limited (ACN 010 810 607) was affixed to this undertaking on 17. DECEMBER.....2001 in accordance with its articles of Association in the presence of

 Signature of Director/Secretary		 Signature of Director/Secretary
<u>MICHAEL JOHN TELLE</u> Full name of Signatory		<u>STEPHEN JOHN HEATH</u> Full name of signatory

Accepted by the Australian Securities and Investment Commission pursuant to section 93AA of the Australian Securities and Investment Commission Act 2001 by its duly authorised delegate.


 Date: 21/12/01

MEDIA RELEASE



ASIC

Australian Securities &
Investments Commission

Friday 21 December 2001

01/460

TIDSWELL ADMINISTRATION LIMITED GIVES ENFORCEABLE UNDERTAKING

The Australian Securities and Investments Commission (ASIC) has accepted an enforceable undertaking from Tidswell Administration Limited (Tidswell), a South Australian promoter and operator of managed investment schemes.

ASIC found that Tidswell promoted and managed two unregistered managed investment schemes, and that there were a number of deficiencies in its loan approval procedures in another registered scheme.

The unregistered managed investment schemes were known as the Commonwealth House Unit Trust and the 55 Gawler Place Joint Venture.

The Commonwealth House Unit Trust had invested \$13,508,154 from 224 investors in five commercial Adelaide properties. Tidswell has undertaken not to seek further investments in this scheme unless and until it obtains a variation of its securities dealers licence allowing it to manage the scheme and the scheme is then registered with ASIC.

The 55 Gawler Place Joint Venture had \$394,000 invested in five strata units at 55 Gawler Place, Adelaide. Tidswell has undertaken not to seek further investments in this scheme and to hold a meeting of investors to vote on whether to register the Joint Venture as a managed investment scheme or to wind it up. The scheme must be registered with ASIC if it is not wound up.

ASIC was also concerned that Tidswell would not take adequate care when deciding whether to approve loans made using investors' funds in connection with another registered scheme it managed.

Tidswell has undertaken to appoint a person approved by ASIC to approve loans made by two registered schemes it operates - the Pooled Mortgage Managed Investment Scheme and the Direct Mortgage Managed Investment Scheme.

'ASIC acted to ensure that investors in the schemes operated by Tidswell can be confident that the schemes are being managed correctly, and that they have the full protection the law can offer them', ASIC Director Enforcement, Jamie Orchard said.

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