



Australian Securities and Investments Commission Act 1989

**Undertaking to the Australian Securities and Investments Commission
given for the purposes of s.93AA**

by

National Mutual Funds Management Ltd ABN 32 006 787 720

1. Background

1.1 National Mutual Funds Management Ltd ("AXA") is the responsible entity of the Australian Equity – Industrials Fund ARSN 096 853 557 ("Industrials Fund") and the US Equity – Premier Growth Fund ARSN 095 736 066 ("US Equity Fund"). Both Funds were launched in July 2001

1.2 Between the period 15 July 2001 and 14 October 2001, AXA:

(a) caused a series of commercials featuring Ross Greenwood to be placed on television in Sydney, Melbourne, Adelaide, Perth, Brisbane and Canberra, which promoted the Industrials Fund and the US Equity Fund by reference to past performance information ("TV Advertisements"); and

(b) published or caused to be published a series of print advertisements in newspapers, retail magazines, industry magazines, and AXA magazines circulated in NSW, Victoria, South Australia, Western Australia, Queensland and A.C.T. promoting the Industrials Fund and the US Equity Fund by reference to past performance information ("Print Advertisements").

1.3 The TV and Print Advertisements (the "Advertisements") advertised returns for the past five years for the Industrials Fund of 19.0% p.a. and the US Equity Fund of 25.1% p.a., based on indicative past performance information derived from underlying or wholesale funds for five years to 31 March 2001. The TV and Print Advertisements that referred to the past performance information were:

AXA Television Commercials

(a) **Commercial A: "How can AXA help you retire?"**

Mr Ross Greenwood is filmed in a city scene. The TV Commercial promotes the Industrials Fund.

(b) **Commercial B: "How can AXA help you invest overseas?"**

Mr Ross Greenwood is filmed in a lift. The TV Commercial promotes the Industrials Fund.

(c) **Commercial C: "How can the strength of AXA help you?"**

Mr Ross Greenwood is filmed at an airport. The TV Commercial promotes the US Equity Fund.

AXA Print Advertisements

1. "Seriously, can you see yourself in a granny flat?"
 2. "So you just received \$250,000 (Rotten luck)"
 3. "How to survive 35 years of unemployment."
 4. "All ordinaries extraordinaries"
 5. "Needle in a Haystack"
- 1.4 ASIC is of the view that the TV and Print Advertisements identified in paragraph 1.3 may have misled or deceived investors because of the following:
- (a) The Advertisements may have created the impression that the Industrials Fund and/or the US Equity Fund had achieved returns of 19.0% and 25.1% respectively in the past five years to March 2001 and had been in existence for more than 5 years whereas in fact the Funds were launched in July 2001;
 - (b) the returns of 19.0% p.a. and 25.1% p.a. were sourced from information obtained from other funds, but neither this information, nor the basis of the calculations was adequately disclosed in any of the Advertisements;
 - (c) a change had occurred in the underlying management of one of the funds which might impact on the performance of that Fund. This change was not disclosed in the Advertisements;
 - (d) one of the TV Advertisements included statements such as "one way to choose the best managed fund is by performance" in conjunction with the presentation of the past performance figures; and
 - (e) qualifiers appeared in the Advertisements but were in small text and, in the case of the TV Advertisements appeared for a short period of time and may not have been able to be read by all consumers.
- 1.5 On 14 October 2001, AXA ceased the publication of the Print Advertisements that referred to past performance information, and varied TV Commercials A and B to remove the references to indicative past performance of the Funds and withdrew TV Commercial C.
- 1.6 On 26 October 2001, ASIC brought to the attention of AXA its concerns about the TV and/ or Print Advertisements identified in paragraphs 1.3 and 1.4. AXA has at all times cooperated with ASIC's inquiries.
- 1.7 On or around 22 November 2001, AXA placed a notice on its Internet website to disclose to investors that both the Industrials Fund and the US Equity Fund were launched in July 2001
- 1.8 Under section 12GD and GE of the ASIC Act and/ or sections 1324 and 1324B of the Corporations Act, ASIC may, in certain circumstances, seek injunctions

preventing a person from engaging in certain conduct, requiring a person to do any act or thing or place or publish corrective statements.

- 1.9 AXA is of the view that the Advertisements identified in paragraph 1.3 were not misleading and deceptive because it believes that:
- (a) The indicative returns quoted were based on funds that were in all material respects comparable to the Funds;
 - (b) The Advertisements were each qualified by the statement that "past performance is not indicative of future performance". This is a qualifier commonly adopted by many in the industry and commonly included in prospectuses; and.
 - (c) The disclaimer on the TV Advertisements was displayed on the screen for a sufficient period of time to be read in a 30 second commercial.
- 1.10 Whilst acknowledging ASIC's concerns, AXA does not agree that the Advertisements may have misled or deceived consumers.
- 1.11 ASIC is committed to ensuring that, unitholders are given all relevant information about the Funds, including the date the Funds were launched, and the basis of the indicative past performance information. In view of the above and to resolve this matter, AXA has agreed to offer this undertaking to ASIC.

2. Undertakings

Pursuant to section 93AA of the ASIC Act, AXA offers the following undertakings to ASIC:

- 2.1 AXA will ensure that when relying on past performance information to promote managed investment funds, it will clearly disclose:
- (a) the basis of any calculations relied upon to calculate the returns;
 - (b) if relevant, the source of any data relied upon to calculate indicative returns; and
 - (c) a statement that past performance is not necessarily indicative of future performance.
- 2.2 AXA will ensure that in all future advertisements or commercials, qualifiers, disclaimers, conditions or other footnote advice are given sufficient prominence and legibility and are capable of being read by consumers.
- 2.3 AXA will, by 17 December 2001, send to all unitholders who invested in either the Industrials Fund and/ or the US Equity Fund during the period 15 July 2001 to 15 November 2001, a letter in the form that is annexed to this Enforceable Undertaking and marked "A".
- 2.4 Until 31 December 2001, AXA will include in any Prospectus for the Industrials Fund and the US Equity Fund that it provides to an investor where it responds

to a request from that consumer directly via the AXA Call Centre, an insert in the form that is annexed to this Enforceable Undertaking and marked "B".

- 2.5 AXA will, by 17 December 2001 send to all AXA authorised representatives a communication in the form that is annexed to this Enforceable Undertaking and marked "C".
- 2.6 AXA will, by 17 December 2001, or such other date as agreed with ASIC implement a complaints handling process, the terms of which will be agreed with ASIC, to handle any complaint or inquiry in relation to the TV and/ or Print Advertisements identified in paragraph 1.3 or the concerns identified in paragraph 1.4 and which is made by, or on behalf of any person who was a unitholder of either Fund during the period 14 July 2001 to 15 November 2001.
- 2.7 AXA will, by 31 January 2002 cause a review to be undertaken of the steps taken by AXA to comply with the obligations under paragraphs 2.1 - 2.6 and prepare a report to be provided to ASIC by 28 February 2002, or such other date as agreed with ASIC which must:
- (a) be made by the General Manager, Marketing and Retail Products;
 - (b) be copied to the Risk Management and Compliance Committee of AXA;
 - (c) set out in detail the steps taken by AXA to comply with the undertakings set out in paragraphs 2.1 to 2.6;
 - (d) contain a schedule setting out, for each unitholder of either the Industrials Fund and/ or the US Equity Fund;
 - (i) the date upon which a letter in the form of Annexure A was sent;
 - (ii) whether that unitholder contacted an AXA adviser or AXA in response to or as a result of receipt of that letter;
 - (iii) whether a complaint or inquiry by that unitholder was processed through the agreed complaints handling process established in accordance with paragraph 2.6 and if so, the outcome of that process; and
 - (iv) confirmation in respect of each unitholder to whom any payment is made, the amount of the refund and the amount of the initial investment.

3. Acknowledgements

3.1 AXA acknowledges that ASIC:

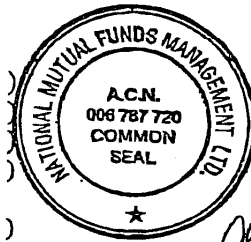
- (a) may issue a media release on execution of this Enforceable Undertaking referring to the terms of the Enforceable Undertaking and the concerns of ASIC which led to its execution;
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- (b) may from time to time refer publicly to this Enforceable Undertaking;
- (c) will make a copy of the executed Enforceable Undertaking available on a Public Register.

3.1 Further, AXA acknowledges that:

- (a) this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this Enforceable Undertaking;
- (b) ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's powers to investigate a contravention arising from future conduct;
- (c) the Enforceable Undertaking has no operative force until accepted by ASIC.

The Common Seal of National Mutual Funds Management Ltd (ABN 32 006 787 720) was duly affixed to this undertaking on 13 December 2001 in the presence of:

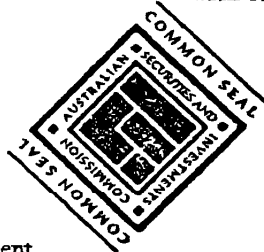


[Signature]
 Director ~~SECRETARY~~

[Signature]
 Director/Secretary

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS DULY AUTHORISED DELEGATE

[Signature]
 Jan Redfern
 Deputy Executive Director, Enforcement



Dated: 2001