



ASIC

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 and Investments Commission (ASIC) by:

**Elderslie Finance Corporation Limited**

(ACN 008 678 233)

Level 12

9-11 Castlereagh St

Sydney NSW 2000

1. **Background**
  - 1.1 Since 1992 Elderslie Finance Corporation Limited ("Elderslie") has issued unsecured deposit notes to individual noteholders pursuant to rolling annual prospectuses but without having a trust deed in place with respect to the unsecured deposit notes.
  - 1.2 In November 2000 Elderslie initiated a review of previously issued secured and unsecured deposit notes and discovered that the issue of the outstanding unsecured deposit notes without a trust deed breached s.260FA(1) of the Corporations Law (Now s.283AA(1) of the Corporations Act).
  - 1.3 In July 2000 Elderslie notified ASIC that it had been in contravention of the Corporations Law and further advised that it had;

- a) Initiated a thorough review of the basis on which it issued unsecured deposit notes to establish the extent of the breach, the period that the breach may have subsisted, the circumstances giving rise to the breach, the seriousness of the breach, and the course of action that it should follow to rectify its inadvertent breach;
  - b) Immediately amended the draft prospectus for the Year 2001 to provide that it only covered the offer of secured notes to investors;
  - c) not issued any further unsecured deposit notes since it became aware of the situation;
  - d) entered into a new trust deed with Permanent Nominees (Aust.) Limited ("Permanent") pursuant to which Permanent will act as trustee for the holders of future unsecured deposit notes to be issued by Elderslie;
  - e) undertaken to Permanent that it will not issue a new prospectus for unsecured deposit notes or otherwise issue unsecured deposit notes until such time as it has reached an arrangement satisfactory to ASIC with respect to unsecured deposit notes currently on issue; and
  - f) undertaken to continue to honour the repayment of all principal and all interest to the holders of the unsecured deposit notes.
- 1.4 On 4 December 2001, at the request of ASIC, Elderslie issued a Special Purpose Prospectus ("Prospectus") which offered the unsecured noteholders the option of:
- a) Redeeming the unsecured note at face value, including any accrued interest to the date of redemption; or
  - b) Rolling over the investment into new unsecured notes which are subject to the new trust deed with Permanent referred to in paragraph 1.3(d).
- 1.5 In February 2002 Elderslie informed ASIC that 4 noteholders ("4 noteholders") (Nos. N01933 - exp 15/01/2003, N02568 - exp 13/07/2003, N02817 - exp 22/12/2002, N03049 - exp 31/01/2003) did not make an election under the Prospectus because Elderslie were not able to contact them, and that the total value of the unsecured deposit notes held by those noteholders was \$14,203.33
- 1.6 ASIC is concerned that the 4 noteholders may be prejudiced as a result of the contravention of s.260FA(1) of the Corporations Law by Elderslie.
- 1.7 In agreeing to offer the commitments in this undertaking Elderslie acknowledges ASIC's concerns set out in paragraph 1.6 above and its breach of s.260FA(1) of the Corporations Law.

## 2. Undertakings

Pursuant to section 93AA of the Australian Securities and Investments Commission Act ('ASIC Act'), Elderslie undertakes that:

This undertaking will commence on the date of signing and will continue until 31 July 2003.

- 2.1 The total monies due to the 4 noteholders upon maturity of their unsecured deposit notes (being the face value plus accrued interest) will be:
- a) held in trust by its legal representative until the relevant maturity date for those notes; and
  - b) that those notes will accumulate interest at the same rate as was specified in the original agreement for those notes.
- 2.2 Elderslie will provide ASIC with quarterly trust account statements evidencing 2.1.
- 2.3 Upon maturity of each note Elderslie will
- a) if unclaimed, deal with the money in accordance with the requirements for unclaimed monies; and
  - b) provide ASIC with details of how the funds were distributed.
- 3. Acknowledgements**
- 3.1 Elderslie acknowledges that:
- 3.1.1 ASIC may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which lead to its execution;
  - 3.1.2 ASIC may from time to time publicly refer to this undertaking; and
  - 3.1.3 ASIC will make this undertaking available for public inspection.
- 3.2 Elderslie acknowledges that ASIC's acceptance of this undertaking in no way derogates from the rights and remedies available to any third party arising from the conduct described in this undertaking.
- 3.3 Elderslie acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate and take appropriate action in the following circumstances:
- a) in relation to future conduct or conduct not described in this undertaking; and/or
  - b) if Elderslie breaches this undertaking; and/or
  - c) where ASIC becomes aware of any evidence or information not known to it at the time of accepting this undertaking in relation to the conduct of Elderslie which gives rise to new concerns.

In such cases, ASIC may take into account and/or rely upon any aspect of the conduct described in this undertaking when taking any action and/or exercising any remedies available to it.

3.4 Elderslie acknowledges that this undertaking has no operative force until accepted by ASIC.

SIGNED by: JOSEPH EDWARD CROGAN - MANAGING DIRECTOR

X *J. Crogan*

This 7th day of June 2002

In the presence of:

*[Signature]*

Witness:

Luis Pedro Garcia

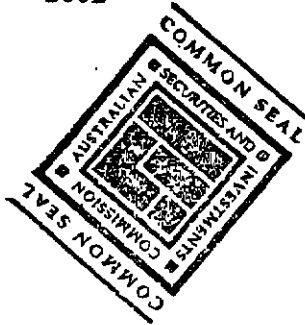
Name: (print)

25 HARRIS ROAD, NORMANHURST NSW 2076

Address:

This 7th day of June 2002

ACCEPTED BY the Australian Securities & Investments Commission pursuant to the ASIC Act 2002 section 93AA by its duly authorised delegate



*[Signature]*

Allen Turton

Director, Enforcement North/East

Australian Securities and Investments Commission

This 12 day of June 2002