



## ENFORCEABLE UNDERTAKING

### AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93AA *Australian Securities & Investments Commission Act 2001*

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

**Close the Loop Limited (ACN 095 718 317) ('Close the Loop')**  
C/- Pitcher Partners  
Level 6, 161 Collins Street  
MELBOURNE VIC 3000

And its directors:

**Stephen Michael Morriss ('Morriss')**  
15 John Street  
ELTHAM VIC 3095

and

**Craig Warren Devlin ('Devlin')**  
5 Milton Street  
CANTERBURY VIC 3126

and

**Harold Victor Holden ('Holden')**  
Unit 21, 49 Albert Road  
STRATHFIELD NSW 2135

and

**Paul Frederick Woller ('Woller')**  
Unit 54, 417 Toorak Road  
TOORAK VIC 3142

### **Background**

1. During the period from 25 January 2001 to 28 February 2002 Close the Loop and/or Morriss, Devlin, Holden and Woller ('the Directors') made offers of securities in Close the Loop to the public.

2. As a result of those offers of securities, Close the Loop accepted applications for 7,916,998 ordinary shares ('the Shares') from 114 investors ('the Investor/s') for a total amount of \$1,012,491.
3. Close the Loop issued the Shares to Devlin Nominee Services Pty Ltd (ACN 005 728 227) ('Devlin') who held the Shares on trust for the Investors.
4. Devlin provided each Investor with a declaration of trust for the Shares it held for the Investor as trustee. In April 2002 Devlin transferred the legal title to the relevant Shares to each Investor ('the Investor's Shares').
5. The offers of securities in Close the Loop were offers requiring disclosure under Part 6D.2 of the *Corporations Act 2001* ('the Act').
6. In breach of section 727 of the Act, Close the Loop did not prepare and lodge a disclosure document prior to making the offers of securities.
7. Pursuant to section 1324 of the Act, ASIC may, inter alia, seek injunctions restraining a person from engaging in certain conduct and/or requiring that person to do any act or thing.
8. Close the Loop and the Directors acknowledge the concerns of ASIC set out above and have offered the undertakings (as applicable) set out in paragraphs 9 to 12 hereof. ASIC has agreed to accept the commitments set out in this enforceable undertaking as an alternative to the exercise of the powers referred to in paragraph 7 above.

## **Undertakings**

9. Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001*, Close the Loop and each of the Directors undertake that they will not:
  - 9.1. make an offer of securities; or
  - 9.2. distribute an application form for an offer of securitiesthat requires disclosure under Part 6D.2 of the Act unless a disclosure document has been lodged with ASIC.
10. The Directors each undertake that:
  - 10.1. Within 7 days of the date of this enforceable undertaking, one or more of the Directors will make an offer to each Investor to acquire all, or such portion as the Investor may elect, of the Investor's Shares ('the Offer/s').
  - 10.2. The Offer shall include the following terms and conditions:

- 10.2.1. the consideration to be paid for each Investor's Shares to which the Offer relates shall be no less than the consideration which the Investor paid to subscribe for the Investor's Shares;
    - 10.2.2. the Offer is capable of being accepted by the Investor for a period of not less than one month ('the Offer Period');
    - 10.2.3. the Offer is conditional upon the aggregate consideration, which the relevant Directors would be required to pay in connection with all accepted Offers, not exceeding [\$100,000].
  - 10.3. The Offer shall be accompanied by an explanatory letter substantially in the form of Attachment A to this undertaking and an information statement substantially in the form of Attachment B to this undertaking.
  - 10.4. They will, no later than 2 days after the end of the Offer Period, provide confirmation to ASIC that the Offer has been received by each Investor.
  - 10.5. They will notify ASIC and the Investors of:
    - 10.5.1. the number of Offers that have been accepted;
    - 10.5.2. the aggregate consideration payable in connection with the Offers that have been accepted;
    - 10.5.3. whether the Offers that have been accepted have resulted in binding contracts to acquire the Investor's Shares;no later than 2 days after the end of the Offer Period.
  - 10.6. If the Offers result in binding contracts to acquire the Investor's Shares, the payment of the consideration to the Investors under those contracts will be made within 14 days after the end of the Offer Period.
  - 10.7. One or more of the Directors will agree to subscribe for such number of shares in respect of any offer made under paragraph 11.4, as would enable Close the Loop to enter into buy-back agreements pursuant to the Buy-Back Offers referred to in paragraph 11.1, without materially prejudicing Close the Loop's ability to pay its creditors, provided that the Directors will not be required to agree to subscribe for shares if the aggregate consideration they would be required to pay in connection with the subscription exceeds [\$100,000].
11. Close the Loop undertakes that:
- 11.1. If Offers have been accepted but have not resulted in binding contracts to acquire the Investor's Shares it will, no later than 21 days after the end of the Offer Period, make an offer to each Investor to acquire all or such portion as the Investor may elect, of the Investor's Shares ('the Buy-Back Offer/s').
  - 11.2. The Buy-Back Offer shall include the following terms and conditions:
    - 11.2.1. the consideration to be paid for each Investor's Share to which the Buy-Back Offer relates shall be no less than the consideration which the Investor paid to subscribe for the Investor's Shares;

- 11.2.2. the Buy-Back Offer is capable of being accepted by the Investor for a period of not less than one month ('the Buy-Back Offer Period');
    - 11.2.3. the Buy-Back Offer is conditional on the board of directors of Close the Loop being satisfied that the buy-back agreements which would result from the Buy-Back Offers (but for the condition) would not materially prejudice Close the Loop's ability to pay its creditors.
  - 11.3. It will follow the procedures set out in Division 2 of Part 2J.1 of the Act in connection with the Buy-Back Offers.
  - 11.4. Before the last day of the Buy-Back Offer Period it will make an offer of ordinary shares in Close the Loop for issue, to each of the Directors, where the consideration to be paid for each share under the offer is no less than the greatest consideration which an Investor paid to subscribe for Shares.
  - 11.5. It will notify ASIC and the Investors of:
    - 11.5.1. the number of Buy-Back Offers that have been accepted;
    - 11.5.2. the aggregate consideration payable in connection with the Buy-Back Offers that have been accepted;
    - 11.5.3. whether the Buy-Back Offers that have been accepted have resulted in binding buy-back agreements;no later than 2 days after end of the Buy-Back Offer Period.
  - 11.6. If the Buy-Back Offers result in binding buy-back agreements, the payment of the consideration to the Investors under those buy-back agreements will be made within 14 days after the end of the Buy-Back Offer Period.
  - 11.7. It will comply with any direction by ASIC to convene a general meeting to consider a special resolution that it be wound up, which is made within 60 days of the last day on which the Buy-Back Offers are capable of being accepted by Investors.
12. The Directors each undertake that they will do all things necessary to ensure compliance by Close the Loop with paragraph 11.

### **Acknowledgements**

13. Close the Loop and the Directors acknowledge that ASIC:
  - 13.1. 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;
  - 13.2. may from time to time publicly refer to this undertaking; and
  - 13.3. will make this undertaking available for public inspection.

14. Close the Loop and the Directors 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.
15. Close the Loop and the Directors acknowledge 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 law charges or seek a pecuniary civil order.
16. Close the Loop and the Directors acknowledge that this undertaking has no operative force until accepted by ASIC.

The Common Seal of **Close the Loop Limited** (ACN 095 718 317) was duly affixed to this undertaking on the ~~29<sup>th</sup>~~ <sup>5</sup> day of ~~May~~ <sup>June</sup> 2002 in the presence of:



*[Handwritten Signature]*  
 Director/Secretary

*PAUL F. WOLLER*  
 Print Name

Signed by: *[Handwritten Signature]*  
**Stephen Michael Morriss**

In the presence of:  
*Tina Hunter*  
 Witness

*TINA HUNTER*  
 Print Name

Signed by: *[Handwritten Signature]*  
**Craig Warren Devlin**

In the presence of:  
*Tina Hunter*  
 Witness

*TINA HUNTER*  
 Print Name

Signed by: Harold Victor Holden  
**Harold Victor Holden**

In the presence of:

Deborah Monds  
Witness

Deborah Monds  
Print Name

Signed by: Paul Frederick Woller  
**Paul Frederick Woller**

In the presence of:

Tina Hunter  
Witness

TINA HUNTER  
Print Name

Accepted by the **Australian Securities  
and Investments Commission** pursuant )  
to the ASIC Act section 93AA by its )  
duly authorised delegate: )

Jamie Orchard  
**Jamie Orchard**  
Director of Enforcement South/West  
Delegate of the Australian Securities and Investments Commission

Dated this 13<sup>th</sup> day of May 2002

June