



## Enforceable Undertaking

### Australian Securities & Investments Commission Act 2001

#### Section 93AA

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

**Landy DFK Securities Ltd**  
ACN 080 919 786  
Level 9, 31 Queen St  
Melbourne Vic 3000

#### 1. Background

1.1 Landy DFK Securities Ltd ACN 080 919 786 ("Landy Securities") is the holder of a restricted dealers licence ("Licence") issued pursuant to section 784 of the old Corporations Act ("Corporations Act"), as defined in section 1410(1) of the Corporations Act 2001.

1.2 The Licence permits Landy Securities to carry on a securities business only in relation to the following securities:

- (a) prescribed interests;
- (b) debentures, stocks or bonds issued or proposed to be issued by a government; and
- (c) debentures of a body corporate or an unincorporated body.

1.3 Corporations Regulation 7.3.02 provides that all licences are subject to the condition that the holder of the licence must ensure that each representative of the holder:

- (a) is adequately supervised in the performance of the duties that he or she is required by the holder to perform; and
- (b) is sufficiently trained in relation to those duties before acting as a representative; and
- (c) keeps up to date in relation to those duties by means of continuing training programs.

1.4 ASIC has conducted an investigation into the conduct of, among others, Landy Securities. ASIC is concerned that Landy Securities may have contravened the Corporations Act, the Corporations Regulations and its Licence by:

- (a) operating and advising in relation to the following unregistered managed investment schemes that may require registration, in contravention of section 601ED of the Corporations Act:
  - (i) the Faithful Street (Wangaratta) Property Trust; and

(ii) the Fyans Street (Geelong) Property Trust; and

(b) failing to adequately supervise and train its proper authority holders in contravention of Corporations Regulation 7.3.02.

1.5 On 19 April 2002, ASIC filed proceeding V3052 of 2002 in the Federal Court of Australia, against six defendants, including Landy Securities. This undertaking is not intended to have any affect whatsoever on the proceedings.

1.6 ASIC has been informed by James Stanley Phillips, director of Landy Securities, that during the week commencing 3 June 2002, Landy Securities wrote to all of its proper authority holders informing them of Landy Securities' intention to cancel its Licence on 30 June 2002.

1.7 Landy Securities wishes to continue to maintain its Licence until 7 July 2002 in order to allow sufficient time for its current proper authority holders to make alternative arrangements.

## 2. ASIC's powers

2.1 ASIC is required by section 837 of the Corporations Act to provide Landy Securities with the opportunity of a hearing before ASIC decides what, if any, action should be taken against Landy Securities as a result of Landy Securities' conduct. If findings were made against Landy Securities at such a hearing, ASIC could take the following action:

(a) revoke Landy Securities' Licence under section 826(1) of the Corporations Act;

(b) suspend Landy Securities' Licence under section 827(1)(c) of the Corporations Act;

(c) prohibit Landy Securities, either permanently or for a specified period, from doing specified acts, being acts of a licensee under section 827(1)(d) of the Corporations Act;

(d) impose further conditions on Landy Securities' Licence under section 786(1)(b) of the Corporations Act;

(e) vary conditions of Landy Securities' Licence under section 786(7) of the Corporations Act.

2.2 Landy Securities has offered and ASIC has agreed to accept an enforceable undertaking in the terms set out below as an alternative to determining whether or not ASIC should exercise the powers set out in paragraph 2.1 above.

## 3. Undertaking

3.1 Pursuant to section 93AA of the *Australian Securities and Investments Commission Act*, Landy Securities undertakes that:

- (a) Landy Securities will take all necessary steps to ensure that its Licence is cancelled by 4pm on 8 July 2002;
- (b) In particular, but without limiting the generality of sub-paragraph 3.1(a), Landy Securities must, by 4pm on 8 July 2002:
  - (i) complete and sign ASIC Form 703, entitled '*Notice of particulars or cessation or change in relation to the holder of a licence*';
  - (ii) lodge that Form at the ASIC Business Centre, located at Level 17, 485 Latrobe St, Melbourne; and
  - (iii) attach to that Form, at the time of lodgement, a cheque for \$30 made payable to the Australian Securities and Investments Commission; and
- (c) Landy Securities will take all necessary steps to inform its current proper authority holders by 4pm on 8 July 2002, that the proper authorities issued to them by Landy Securities have been revoked effective immediately.

#### **4. Acknowledgments**

- 4.1 Landy Securities acknowledges that it has been provided the opportunity to obtain legal advice in relation to the content and effect of this undertaking.
- 4.2 Landy Securities acknowledges that ASIC:
  - (a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this undertaking; and
  - (c) will make this undertaking available for public inspection.
- 4.3 Landy Securities acknowledges 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.

4.4 Landy Securities acknowledges that ASIC's acceptance of an enforceable undertaking does not affect its power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary penalty order.

The Common Seal of Landy DFK Securities Ltd )  
(ACN 080 919 786) was duly affixed to this undertaking )  
on June 2002 in the presence of and the sealing is )  
attested by: )



*[Handwritten Signature]*  
.....  
Director

*[Handwritten Signature]*  
.....  
Director / Secretary

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

Date this ...<sup>1<sup>st</sup></sup>...day of *JULY*...2002

*[Handwritten Signature]*  
.....  
A J Orchard  
Director, Enforcement  
South / West