



ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

SECTION 93 AA

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

**ROBERT WALSH
NEIL RICHARD ASHTON
PETER FREDERICK MCNALLY
MCNALLY AUSTRALIA PTY LTD (ACN 088 530 063)
427 Stafford Road
STAFFORD QLD 4053**

1. BACKGROUND

- 1.1 McNally Australia Pty Ltd (ACN 088 530 063) ("McNally Australia") is a private company the directors of which are Neil Richard Ashton and Peter Frederick McNally. McNally Australia also operates a Queensland registered business name "Save Australia Buyers Club" registration number BN17396505. The Save Australia Buyers Club is a Royalty Reward Shopping Voucher system that is open to membership by the public.
- 1.2 Robert Walsh is the Chairman of Foltainer International Ltd ACN 094 365 036 ("Foltainer"), an unlisted public company. Foltainer was seeking to raise funds to develop an invention in relation to a folding shipping container ("Foltainer invention").
- 1.3 ASIC has received certain complaints and made certain enquiries relating to the offer of investments by McNally Australia, Foltainer and AusInvest Pty Ltd ACN 098 936 273 (a company associated with Robert Walsh) which relate to ASIC concerns regarding compliance with the Corporations Act and has identified matters of concern to it in clause 2 of this undertaking
- 1.4 Between February 2001 and January 2002, approximately fifty nine members of the Save Australia Buyers Club ("the investors") entered into thirty nine loan agreements with McNally Australia. McNally Australia agreed to pay interest on the amount invested at 15% per annum with payments to occur each three months. McNally Australia in return guaranteed to each investor that the investment amount would be used for the development, administration and marketing of the Foltainer invention and other Australian inventions until the lender requested the return of the funds. A total of \$722,000 had been raised by the above loan agreements.

The loan funds were pooled into an account of McNally Australia and the investors did not have day-to-day control of the funds.

- 1.5 The intended placement of loan funds in Foltainer was promoted by Robert Walsh orally to the investors who were then invited to enter into written loan agreements with McNally Australia that were signed by Neil Richard Ashton and Peter Frederick McNally.

2. ASIC's CONCERNS

- 2.1 ASIC has concerns that McNally Australia, Neil Ashton and Peter McNally:
 - 2.1.1 operated an unregistered managed investment scheme;
 - 2.1.2 conducted a securities or investment advice business;
 - 2.1.3 did not hold a securities licence or a licence to provide investment advice;
 - 2.1.4 have not made adequate disclosure to investors.
- 2.2 ASIC is concerned that Robert Walsh:
 - 2.2.1 conducted a securities or investment advice business;
 - 2.2.2 did not hold a securities licence or a licence to provide investment advice;
 - 2.2.3 has not made adequate disclosure to investors.
- 2.3 ASIC has the power to make application to the Court for injunctions restraining McNally Australia, Neil Ashton, Peter McNally and Robert Walsh from contravening the Corporations Act.

3. ACKNOWLEDGEMENT OF CONDUCT

- 3.1 McNally Australia, Neil Ashton Peter McNally and Robert Walsh, acknowledge the concerns of ASIC set out above.
- 3.2 McNally Australia, Neil Ashton, Peter McNally and Robert Walsh offers, and ASIC has agreed to accept the commitments in this Enforceable Undertaking as an alternative to the exercise of the powers referred to in paragraphs 2.3 above.

4. UNDERTAKINGS

- 4.1 Pursuant to Section 93AA of the Australian Securities and Investments Commission Act, McNally Australia, Neil Ashton and Peter McNally undertake to:
 - 4.1.1 Provide a copy of this enforceable undertaking to each investor and repay the loan principal and interest due according to the terms of the loan agreement signed by the investors mentioned in clause 1.4 who loaned funds to McNally Australia by 1 October

2002.

- 4.2.1 provide ASIC with written confirmation and a schedule indicating investor payments on 2 October 2002 signed by each of the McNally Australia, Neil Ashton and Peter McNally confirming that all investors mentioned in 1.4 have been repaid their funds and advised that all obligations pursuant to the loan agreements are at an end.
- 4.2 Pursuant to Section 93AA of the Australian Securities and Investments Commission Act, McNally Australia, Neil Ashton Peter McNally and Robert Walsh undertake:
- 4.2.1 they will write to each investor confirming that they will be paid the full amount of the loan and interest according to the terms of their loan agreement within 14 days from the date of this undertaking;
 - 4.2.2 they will not give investment advice or carry on or hold out that they carry on a securities or investment advice business or offer any investment product or fundraising activity without first obtaining appropriate legal advice and complying with the Corporations Act;
 - 4.2.3 they will not give investment advice or carry on or hold out that they carry on a securities or investment advice business or offer any investment product or fundraising activity which is purported by them to be excluded from compliance with the Corporations Act, without first giving ASIC 7 days notice in writing of their intention to do so, together with particulars of the exclusion relied upon for a period of five years from the date of this enforceable undertaking.

5. ACKNOWLEDGEMENTS



- 5.1 McNally Australia, Neil Ashton Peter McNally and Robert Walsh acknowledge that they have obtained legal advice in relation to the content and effect of this undertaking.
- 5.2 McNally Australia, Neil Ashton, Peter McNally and Robert Walsh acknowledge that ASIC:
 - 5.2.1 may issue a media release on execution of this undertaking, referring its terms and the concerns of ASIC which led to its execution;
 - 5.2.2 may from time to time publicly refer to this undertaking; and
 - 5.2.3 will make this undertaking available for public inspection.
- 5.3 McNally Australia, Neil Ashton Peter McNally and Robert Walsh 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.


5.4 McNally Australia, Neil Ashton, Peter McNally and Robert Walsh acknowledge 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.

5.5 McNally Australia, Neil Ashton, Peter McNally and Robert Walsh acknowledge that this undertaking has no operative force until accepted by ASIC.

The Common Seal of
McNally Australia Pty Ltd
ACN 088 530 063 was duly affixed
to this undertaking on 16 July, 2002
in the presence of and the sealing is
attested by:

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Signed by Robert Walsh at Brisbane this 16th day of July 2002.



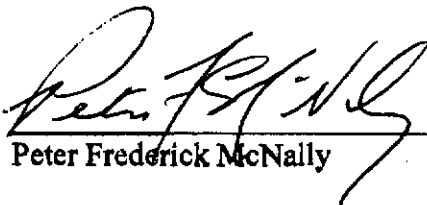
Robert Walsh

Signed by Neil Ashton at Brisbane this 16th day of July 2002.



Neil Richard Ashton

Signed by Peter Frederick McNally at Brisbane this 16th day of July 2002.



Peter Frederick McNally

**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: 17 July , 2002



Jan Speijs

Assistant Director

Enforcement

Queensland Regional Office