



**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989**

**Undertaking to the Australian Securities and Investments Commission**

**given for the purpose of section 93AA by**

**Tolhurst Noall Limited (ACN 003 237 536)**

**Licensed Dealer No. 11673**

**1.0 BACKGROUND**

**D & D TOLHURST LIMITED ACN 004 456 053**

1.1 On 9 March 2001, the Australian Securities and Investment Commission ("ASIC") accepted from D & D Tolhurst Limited ACN 004 456 053 ("Tolhurst") Licensed Dealer No. 12551 an Enforceable Undertaking ("*Tolhurst Enforceable Undertaking*") entered into pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* ("ASIC Act"), which is annexed and marked with the letter "A".

1.2 Pursuant to the terms of the *Tolhurst Enforceable Undertaking*, Tolhurst agreed and did engage the services of an Independent External Compliance Consultant ("*Tolhurst Compliance Consultant*") to review, assess, make recommendations and report in writing ("*Tolhurst Consultants Report*") on the changes that were required to be made to Tolhurst's compliance systems, supervision systems, administrative procedures and training programs in order to:

(a) prevent, eliminate and if necessary remedy, breaches or likely breaches of all legal requirements imposed on it, its proper authority holders, designated trading representatives and other staff by the Corporations Act 2001, the Australian Securities and Investments Commission Act 2001; the Regulations made pursuant thereto, the Business Rules imposed by the Australian Stock Exchange Commission Limited ("ASX") and any conditions imposed on Tolhurst in its Dealers Licence issued to it pursuant to the provisions of the Corporations Act 2001 (hereinafter referred to as "*Tolhurst's Legal Requirements*"); and.

(b) promote a culture of compliance within Tolhurst.

The *Tolhurst Compliance Consultant's* appointment and terms of reference were to;

c) include a determination as to whether Tolhurst's compliance systems meet with Australian Standard AS 3806-1998 and if not whether any differences are justifiable and should be maintained; and

- (d) to be approved by ASIC prior to the appointment; and
- (e) the *Tolhurst Consultants Report* was delivered to ASIC on or before 30 April 2001.

*The Tolhurst Consultants Report* is annexed and marked with the letter "B".

- 1.3 The *Tolhurst Enforceable Undertaking* requires Tolhurst to develop and provide to ASIC by 30 June 2001, an action plan ("*Tolhurst Action Plan*") setting out the steps Tolhurst would follow in order to;
- (i) remedy any deficiencies identified in the *Tolhurst Consultant's Report*; and
  - (ii) give effect to any recommendations made in the *Tolhurst Consultant's Report*; and
  - (iii) Tolhurst was to commence implementation of the *Tolhurst Action Plan* no later than 29 June 2001 with the objective of completing all actions as soon as reasonably practicable but in any event no later than 28 December 2001 ("*Completion Date*").

The *Tolhurst Action Plan* was delivered and approved as required and implementation thereof has commenced.

- 1.4. The *Tolhurst Enforceable Undertaking* also required Tolhurst to instruct the *Tolhurst Compliance Consultant* to review, assess and report in writing to both Tolhurst and ASIC ("*Tolhurst Audit Report*") as at both 28 December 2001 and 28 June 2002 on the following:
- (i) the extent to which Tolhurst has implemented the *Tolhurst Action Plan*;
  - (ii) the extent to which Tolhurst, its proper authority holders, designated trading representatives and other staff have complied with the requirements of the *Tolhurst Compliance Plan*;
  - (iii) the extent to which Tolhurst has a compliance system that will prevent, and where necessary, identify and respond to, breaches of the *Tolhurst Compliance Plan* by itself, its proper authority holders, designated trading representatives and other staff; and
  - (iv) any action necessary to be taken by Tolhurst to remedy any deficiencies in its compliance systems identified in the course of the review by the *Tolhurst Compliance Consultant*.

**WILLIAM NOALL LIMITED ( a subsidiary of the NOALL GROUP LIMITED)**

- 1.5 On 22 November 2000, William Noall Limited ACN 003 237 536 ("William Noall") a dealer licensed pursuant to the provisions of the *Corporations Act 2001*, holding *Dealers Licence No.11673* (being a wholly owned subsidiary of the Noall Group ACN007 870 760) reported to ASIC that a former employee and proper authority holder was suspected of having been involved in trading irregularities, possible fraudulent activities, non compliance with the *Corporations Act 2001* and the *ASX Business Rules*.
- 1.6 As a consequence of this report, ASIC commenced an investigation ("*ASIC Investigation*") into the activities of the former employee. William Noall co-operated and assisted in the *ASIC Investigation* in that it fully and frankly disclosed its practices and procedures to ASIC.
- 1.7 The *ASIC Investigation* indicated inter alia that the former employee had;
- (i) opened and operated fictitious accounts for personal transactions;
  - (ii) opened and operated unauthorised accounts and traded on legitimate accounts without client's authority;
  - (iii) created false order records and caused William Noall to enter into securities transactions to the detriment of William Noall and its clients.
  - (iv) ignored internal operating and compliance systems of William Noall and misled William Noall by failing to inform it that the clients did not authorise orders transacted on their accounts.
- 1.8 As a result of the *ASIC Investigation*, ASIC determined that the compliance and supervisory procedures in place at William Noall were inadequate to ensure compliance with their *Legal Requirements*.
- 1.9 Whilst William Noall does not agree with all aspects of ASIC's concerns as set out in this enforceable undertaking, it acknowledges them and on its own initiative agreed to establish a number of compliance measures (including the specific requirements set out below) in order to ensure best practice in complying with the *Legal Requirements*.
- 1.10 William Noall has informed ASIC that it has reviewed and initiated action to address ASIC's concerns arising from the *ASIC Investigation* and referred to in this enforceable undertaking.

- 1.11 Pursuant to section 786 Corporations Act 2001, ASIC may at any time, subject to a hearing impose conditions and restrictions on a security dealer's licence in addition to those prescribed by the Corporations Act and may take appropriate action under Division 2, Part 2 of the ASIC Act.
- 1.12 Compliance by William Noall of the terms and conditions contained in this enforceable undertaking was and remains the intention of the parties to be an alternative to the action referred to in clause 1.11 above.
- 1.13 On or about 1 April 2001, ASIC commenced examining the possible terms and conditions it would require in an Enforceable Undertaking that it may accept from William Noall as a consequence of the matters disclosed in paragraphs 1.7 above. It advised William Noall of this possible course of action. Further, it advised that the terms and conditions of any proposed Enforceable Undertaking would be similar in terms and effect that it had accepted from other Licensed Dealers who had experienced similar breaches by their proper authority holders, designated trading representatives or other staff.

#### **MERGER OF D & D TOLHURST LTD & THE WILLIAM NOALL GROUP LTD**

- 1.14 On or about 19 April 2001, Tolhurst and the William Noall Group ("*WNG*") which includes its subsidiary and the dealers licence holder William Noall announced;
- (a) a proposed merger that would result in Tolhurst being merged into the WNG.
  - (b) that William Noall will change its name to *Tolhurst Noall Limited* ACN 003 237 536 ("*Tolhurst Noall*");
  - (c) that the entity resulting from this merger included the businesses pursued by each under their respective Dealers Licences which were issued to them pursuant to the provisions of the Corporations Act;
  - (d) that from 17 September 2001, the new entity would carry on the business of a Licensed Dealer under Dealers Licence No. 11673 , previously issued to William Noall.
- 1.15 On or about 3 August 2001, representatives of *WNG* and Tolhurst, sought a meeting with ASIC regarding the proposed William Noall Enforceable Undertaking. At this meeting it was agreed that ASIC;
- a) would not accept, at this time, as a consequence of the proposed merger of WNG and Tolhurst an *Enforceable Undertaking* from William Noall, rather;

- b) would accept from the merged entity Tolhurst Noall, an Enforceable Undertaking, the contents of which was to be similar in terms and effect to the *Tolhurst Enforceable Undertaking* accepted by ASIC on 9 March 2001, with such amendments as are required to evidence that Tolhurst Noall;
  - i) will adopt and be bound by and execute an Enforceable Undertaking in similar terms and effect as those included in the *Tolhurst Enforceable Undertaking*;
  - ii) agree and represent that the requirements and obligations contained in the *Tolhurst Enforceable Undertaking* which were to have been completed on a date that precedes the merger date and the date of the execution of the *Tolhurst Enforceable Undertaking* have been completed or complied with; and
  - iii) agree and represent that the remaining or outstanding requirements and obligations contained in the adopted *Tolhurst Enforceable Undertaking* (hereinafter referred to as the "*Tolhurst Noall Enforceable Undertaking*") would be completed by *Tolhurst Noall* on the date's provided therein.

1.17 On or about 17 September 2001, the proposed merger between WNG and Tolhurst was approved by their respective members and it was agreed that William Noall would change its name to Tolhurst Noall Limited, ACN 003 237 536 ("*Tolhurst Noall*").

1.18 However, prior to the completion of the merger there were a number of requirements made of Tolhurst Noall by the ASX; satisfying these requirements delayed the formal merger of Tolhurst and Noall until 3 December 2001. These ASX requirements have now been met and the formal merger has taken place as evidenced by the change of name from William Noall to Tolhurst Noall on 3 December 2001.

## **2.0 UNDERTAKINGS**

2.1. Tolhurst Noall agrees to adopt the appointment of the *Tolhurst Compliance Consultant* as its Compliance Consultant ("hereinafter referred to as the "*Tolhurst Noall Compliance Consultant*").

2.2 Tolhurst Noall agrees to adopt the *Tolhurst Consultants Report* as its Consultants Report, (hereinafter referred to as the *Tolhurst Noall Consultants Report*).

2.3 Tolhurst Noall agrees to adopt the *Tolhurst Action Plan* (hereinafter referred to as the *Tolhurst Noall Action Plan*) and agrees to implement and continue the implementation of the same as soon as reasonably practicable but in any event no later than the Completion

Date to wit 28 December 2001. The Completion Date may be extended by ASIC on good and sufficient cause being shown by *Tolhurst Noall* having regard to the nature and complexity of the recommendations made by the *Tolhurst Noall Compliance Consultant* and the time reasonably required to implement them.

2.3(a) ASIC has at the request of Tolhurst Noall on good and sufficient cause agreed to extend the Completion Date for the implementation of the Tolhurst Noall Action Plan from 28 December 2001 to 31 March 2002 ("*the new Completion Date*").

2.4 *Tolhurst Noall* agrees to employ the *Tolhurst Compliance Consultant* (hereinafter referred to as the *Tolhurst Noall Compliance Consultant*) to conduct the review, make an assessment on or about 28 December 2001 and again on or about 28 June 2002 (the "*Tolhurst Noall Audit Dates*") and prepare a report in writing thereon (hereinafter referred to as the "*Tolhurst Noall Audit Report*");

- (a) the extent to which Tolhurst Noall has implemented the *Tolhurst Noall Action Plan*;
- (b) the extent to which Tolhurst Noall, its proper authority holders, designated trading staff and other staff have complied with the *Tolhurst Noall Legal Requirements*;
- (c) the extent to which Tolhurst Noall has a compliance system that will prevent, and where necessary, identify and respond to, breaches of the *Tolhurst Noall Legal Requirements* by itself, its proper authority holders, designated trading representatives and other staff; and
- (d) any action necessary to be taken by Tolhurst Noall to remedy any deficiencies in its compliance systems identified in the course of the audit by the *Tolhurst Noall Compliance Consultant* at the "*Tolhurst Noall Audit Dates*".

2.4(a) ASIC has further agreed to extend the *Tolhurst Noall Audit Dates* to 31 March 2002 and 30 September 2002 respectively ("*the new Tolhurst Noall Audit Dates*").

2.5 The *Tolhurst Noall Audit Reports* will be completed and a copy provided to ASIC and Tolhurst Noall within 2 calendar months of *the new Tolhurst Noall Audit Dates*. ASIC acknowledges receipt of the *Tolhurst Noall Audit Report* prepared for the period ending 31 March 2002.

2.6 Tolhurst Noall will provide to the ASX on a "not for release" basis a copy of all documents provided to ASIC pursuant to this *Tolhurst Noall Enforceable Undertaking* contemporaneously with those documents being provided to ASIC.

### 3. ACKNOWLEDGEMENTS

3.1 Tolhurst Noall acknowledges that ASIC:

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

3.2 Tolhurst Noall acknowledges that ASIC's acceptance of this *Tolhurst Noall Enforceable Undertaking* does not preclude or fetter ASIC's power to investigate a contravention or a suspicion of a contravention arising from any conduct, pursue a criminal prosecution, lay charges, or seek a pecuniary penalty order.

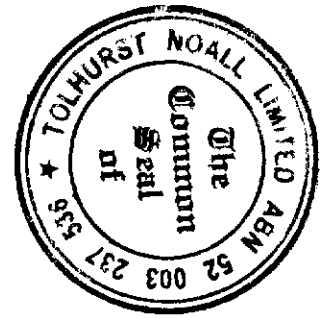
3.3 Notwithstanding clause 1.10 above, Tolhurst Noall acknowledges that ASIC's acceptance of this *Tolhurst Noall Enforceable Undertaking* does not preclude or fetter ASIC's power to take the action outlined in clause 1.11 above by reason of its concerns set out in clauses 1.1 to 1.9 thereof.

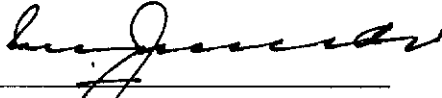
3.4 Tolhurst Noall acknowledges that this *Tolhurst Noall Enforceable Undertaking* does not derogate from the rights and remedies available to any person or entity arising from any conduct referred to herein.

3.5 Tolhurst Noall acknowledges that this *Tolhurst Noall Enforceable Undertaking* has no operative force and effect unless and until executed by ASIC.

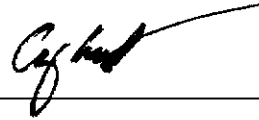
3.6 Tolhurst Noall and ASIC each acknowledge that the terms of this *Tolhurst Noall Enforceable Undertaking* can be varied only with the prior written consent of each party to thereto by its duly authorised representative.

The common seal of Tolhurst Noall Limited )  
ACN 003 237 536 was duly affixed )  
on **5** August 2002 )  
in the presence of: )



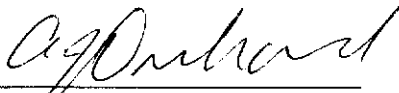


Director



Director / Secretary

Accepted by the Australian Securities and Investments Commission on **9** August 2002  
pursuant to section 93AA of the ASIC Act 2001 by its duly authorised delegate:



A. J. Orchard

Director Enforcement

Delegate of the Australian Securities and Investments Commission

Dated this **9<sup>th</sup>** day of August 2002.