

AUSTRALIAN SECURITIES
& INVESTMENTS COMMISSION

017029059

ENFORCEABLE UNDERTAKING
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT

Section 93AA

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

Mint Financial Group Pty Limited (A.C.N. 094 448 549)

1. Background

- 1.1 Mint Financial Group Pty Limited ("MFG"), trading as Fat Prophets, carries on business as investment advisors.
- 1.2 MFG has an unrestricted Investment Advisers Licence issued by the Australian Securities and Investment Corporation ("ASIC") (Licence number 202842).
- 1.3 Part of MFG's business is the publishing of an online stockmarket newsletter ("the newsletter"). The newsletter makes recommendations about which stock to buy and sell. MFG also operates a web page: www.fatprophets.com.au ("the Fat Prophets web page"). The Fat Prophets web page has both a public domain and an area available to subscribers to the newsletter.
- 1.4 For each recommendation the newsletter gives a recommended time frame that MFG believes a stock will need to achieve performance. According to the newsletter, these terms have the following meanings.
- 1.4.1 "Short term" means up to 3 months.
- 1.4.2 "Medium term" means 3 to 12 months.
- 1.4.3 "Long term" means over 12 months.
- 1.5 The recommendations are described in the newsletter as being "low risk", "medium risk" or "high risk". In the section of the Fat Prophets web page headed "Frequently asked Questions", MFG states that as a general rule, it believes that it is best to allocate less capital to high risk recommendations and more capital to the ones containing lower risk, but in any event advises investors to seek out professional advice on the issue of individual acceptable risk..
- 1.6 Since June 2001 MFG has published advertisements ("the Fat Prophets Advertising") which refer to:

- 1.6.1 the percentage of completed recommendations which made money;
and

- 1.6.2 the average percentage return rate on successful recommendations.
- 1.7 By way of example, on 12 May 2002, MFG caused an article to be published in the Sun-Herald's Investor Section titled "Fat Returns for Investors" which promoted the newsletter ("the May Advertisement").
- 1.8 The May Advertisement contained the following statements:
- 1.8.1 "Predictions with 85.4% accuracy win investors over to Fat Prophets."
- 1.8.2 "This inventive stockmarket newsletter has achieved an amazing 27.3% return on their successful recommendations."
- 1.8.3 "...Fat Prophets has recorded significant success, with 85.4% of past recommendations, returning an average profit of 27.3%."
- 1.9 ASIC has the following concerns about the May Advertisement.
- 1.9.1 The calculation of the percentage returns was based on "successful" recommendations. However, nowhere in the advertisement, the newsletters or the Fat Prophets web page, is there any statement of the average return on all recommendations. The return figure for all recommendations would have been significantly lower.
- 1.9.2 When calculating the percentage of recommendations that were successful, MFG did not take account of the time period over which stocks were predicted to be profitable. At the time the advertisement was published there were a number of buy recommendations ("in limbo recommendations") in relation to which:
- (a) the period within which a profit was predicted had expired;
 - (b) the value of the of the recommended stock had either fallen or risen; and
 - (c) there had been no sell recommendation.
- If the time period for the recommendation was taken into account, the percentage of recommendations which made money could have been lower.
- 1.9.3 The May Advertisement also did not disclose that the calculation of the average return on recommendations was based upon the assumption that an equal amount is invested in each recommendation regardless of their risk. This assumption is contrary to the general advice given by MFG to investors on the Fat Prophets web page, as set out in 1.5 above.
- 1.10 All of the Fat Prophets Advertising since June 2001 contained figures calculated in the same way as the figures in the May Advertisement.

Accordingly, ASIC has similar concerns to those identified in paragraph 1.9 about all of the Fat Prophets Advertising.

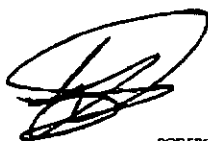
- 1.11 ASIC is of the view that, in these circumstances, the Fat Prophets Advertising may have misled or deceived investors and could thereby be in breach of Section 12DA of the Australian Securities and Investments Commission Act 2001 ("ASIC Act").
- 1.12 ASIC is responsible for monitoring and promoting consumer protection in relation to financial services. Under section 12GD of the ASIC Act ASIC may, inter alia, seek injunctions preventing a person from engaging in certain conduct, require that person to do any act or thing and/or place corrective advertisements. Under sections 12GM and 50 of the ASIC Act, ASIC may commence proceedings for or on behalf of the consumers who have suffered damage by reason of any breach of the ASIC Act.
- 1.13 On 20 May 2002, ASIC brought to the attention of MFG its concerns about the Fat Prophets Advertising identified in paragraph 1.9 and MFG has at all times co-operated with ASIC's inquiries.
- 1.14 Whilst MFG does not admit that it has breached any law, it acknowledges ASIC's concerns and has agreed to give ASIC the undertakings set out in paragraph 2 below..

2. Undertakings

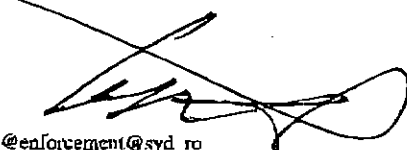
Pursuant to section 93AA of the ASIC Act, MFG offers the following undertakings to ASIC:

- 2.1 By [date 1 month after undertaking] MFG will publish in an edition of its newsletter a notice in the form of Annexure "A". The notice will be the first item in the newsletter. MFG will also send the notice, by ordinary pre-paid post, to any person who was a subscriber at any time after 1 June 2001 but is no longer a subscriber.
- 2.2 MFG will provide ASIC with a copy of the published notice referred in 2.1 within 7 days from the date of publication.
- 2.3 MFG will provide ASIC with a copy of its internal complaints resolution scheme procedures at least 14 days prior to the publication of the notice referred to in 2.1 above.
- 2.4 MFG will finalise any complaint received as a result of the publication of the notice referred to in 2.1 above within 45 days of receiving that complaint.
- 2.5 MFG will take all reasonable steps to ensure that any statements in promotional material about the accuracy of predictions and rates of return:

2.5.1 are accurate;



conrad.gray@enforcement@syd.ro



Page 3

4/10/2002

- 2.5.2 are based upon reasonable assumptions; and
- 2.5.3 disclose those assumptions.
- 2.6 Without limiting the obligations set out in paragraph 2.5 above, MFG will:
- 2.6.1 ensure that any statement of the percentage of recommendations which are stated to be successful take into account the period within which a profit was predicted;
- 2.6.2 only count a recommendation as successful if it is profitable within the period in which it is predicted to be profitable;
- 2.6.3 whenever it makes a statement in promotional material about an average rate of return, include a figure for the average return on all recommendations, including both successful and unsuccessful recommendations, which is at least as prominent as any other return figure;
- 2.6.4 whenever it uses statements about the proportion of successful recommendations and/or the rate of return on recommendations in promotional material use a methodology which is in accordance with the Investment and Financial Services Association Guidance Note No. 1 Australian Investment Performance Standards.
- 2.7 Without limiting the obligations set out in 2.5 above, whenever MFG uses statements about the proportion of successful recommendations and/or the rate of return on recommendations in promotional material, MFG will calculate those figures using a methodology and assumptions prepared by a suitably qualified person approved by ASIC.
- 2.8 On 31 December 2002, 31 March 2003 and 30 June 2003 MFG will provide ASIC with a report, signed by the Managing Director, that:
- 2.8.1 sets out the steps taken by MFG to comply with its obligations set in in 2.1 above.
- 2.8.2 lists the number of complaints received (whether before or after the publication of the notice;
- 2.8.3 details how the complaints were decided and, in relation to any claims rejected, the reasons for the decision .

3. Acknowledgements

3.1. MFG acknowledges that ASIC



conrad.gray@enforcement@syd.ro



Page 4

4/10/2002

- 3.1.1 may issue a media release on execution of this Enforceable Undertaking referring to the terms of the Enforceable Undertaking and the concerns of ASIC which led to its execution;
- 3.1.2 may from time to time refer publicly to this Enforceable Undertaking;
- 3.1.3 will make a copy of the executed Enforceable Undertaking available on a Public Register.

3.2. Further, MFG acknowledges that:

- 3.2.1. This Enforceable Undertaking in no way derogates from the rights and remedies available to ASIC or any other person arising from any conduct described in this Enforceable Undertaking;
- 3.2.2. ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's powers to investigate a contravention arising from future conduct;
- 3.2.3. the Enforceable Undertaking has no operative force until accepted by ASIC.

The Common Seal of Mint)
 Financial Group Pty Limited)
 (A.C.N. 094 448 549) was duly)
 affixed to this undertaking on)
 July 2002 in the)
 presence of:)

.....
 Director **JASON MCINTOSH**

.....
 Director/ Secretary **ANGUS**

GEDDES

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
 COMMISSION PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS
 DULY AUTHORISED DELEGATE

.....
 Allen Turton
 Director, Enforcement North East

Dated: **16.10.2002**

