

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001**

**UNDERTAKING TO THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
GIVEN FOR THE PURPOSES OF SECTION 93AA**

**By Citibank Pty Limited ABN 88 004 325 080**



**1. Background**

1.1 Citibank Pty Limited ("**Citibank**") is an Australian authorised deposit-taking institution within the meaning of the *Banking Act 1959*.

1.2 As part of its banking business, Citibank offers to its customers a product known as the Premium Deposit Account.

1.3 By investing in a Premium Deposit Account a customer assumes a foreign exchange risk. More particularly, the Premium Deposit Account has the following features:

- (a) the investor nominates the currency in which the investment is made, as well as an alternative currency in which the investor is willing to be repaid;
- (b) at the time of the investment, the investor is provided with a range of exchange rates between the two currencies, and a predetermined rate of interest corresponding to each exchange rate. The investor selects which exchange rate, and therefore which pre-determined rate of interest, applies to their investment;
- (c) on maturity Citibank informs the investor whether they will be repaid in their deposit currency, or the alternate currency. The investor has no say in this decision; and
- (d) if the investor is repaid in the alternate currency, then when viewed in terms of the currency of deposit, the investor will achieve a lesser return than the pre-determined rate of interest and may suffer a capital loss.

1.4 In March 2002, Citibank commenced a campaign to promote the Premium Deposit Account. Promotional materials used in the campaign included newspaper advertisements, brochures and direct mail ("**Promotional Materials**"). The Promotional Materials included the following features:

- (a) the Promotional Materials used phrases such as "term deposit with a difference" in relation to the Premium Deposit Account;
- (b) historical interest rates were used in the Promotional Materials without taking into account the impact of exchange rate fluctuations on actual returns; and
- (c) the Promotional Materials used phrases such "while an ordinary term deposit pays you in the same currency as your original investment, the Citibank Premium Deposit repays your principal and interest upon maturity, either in your original or another currency of your choice, as a pre-agreed rate of exchange" in relation to the Premium Deposit Account.

1.5 In September 2002, ASIC raised with Citibank the following concerns in relation to aspects of the Promotional Materials:

- (a) ASIC is of the view that the phrase "term deposit" has a well-established meaning for investors. It is used to describe a product that is very low risk and has an interest component that is predetermined. Products such as the Premium Deposit Account carry a foreign exchange rate risk and accordingly, ASIC is of the view that the use of the phrase "term deposit" in relation to the Premium Deposit Account may have been misleading and deceptive; and
  - (b) ASIC is concerned that advertising historical returns without taking into account the impact of exchange rate fluctuations on those returns may have been misleading and deceptive. For example, exchange rate fluctuations may mean that an investor will receive less than the advertised return or even a negative return if the investment is converted back into the currency of deposit;
  - (c) ASIC is concerned that the Promotional Materials did not clearly explain that the investor did not have any control over whether they would be repaid in the currency of deposit or the alternative currency.
- 1.6 Citibank does not believe any investors have been misled by the Promotional Materials as investors in the Premium Deposit Account must meet with a Citibank Financial Consultant and complete a risk profile and suitability confirmation guide. Investors are also taken through a verbal explanation of the terms of the product, presented with and asked to acknowledge a risk disclosure statement, and required to read and execute a Premium Deposit Account Agreement which sets out the terms of the product in writing. Citibank believes that, largely as a result of this process, customers who have invested in the Premium Deposit Account have a high level of satisfaction with the product, as evidenced by the fact that over 75% of investors in the Premium Deposit Account have reinvested in a Premium Deposit Account during the period from 1 May 2002 to 28 February 2003 (the period for which this information is available).
- 1.7 Once Citibank was made aware of ASIC's concerns in relation to the Promotional Materials, Citibank took steps to withdraw the Promotional Materials and made no further publication of any advertisement in relation to the Premium Deposit Account.
- 1.8 Since that time, Citibank has also reviewed its internal compliance and control self-assessment program, introduced a new policy on sales and marketing materials specific to Australia and provided training to marketing staff to ensure that Citibank adheres to high disclosure standards in all its advertising.
- 1.9 While Citibank considers that the actions taken since the publication of the Promotional Materials have been adequate to remedy any defects in Citibank's promotion of the Premium Deposit Account, and that the changes made to Citibank's internal compliance systems and policies will ensure future advertising of the Premium Deposit Account will address the concerns raised by ASIC, Citibank nevertheless acknowledges ASIC's concerns and has offered, and ASIC has accepted, the commitments in this enforceable undertaking.

## 2. Undertakings

Citibank undertakes the following for the purposes of section 93AA of the *ASIC Act*:

- 2.1 Citibank will not use the words "term deposit" in promotional material for the Premium Deposit Account or any other product where the product structure involves the conversion of currencies or is otherwise subject to foreign exchange risk. (Citibank will, however, continue to use the words "term deposit" to refer to a deposit in foreign

currency for an agreed term at an agreed rate of interest where at maturity the customer will receive their principal and interest in the currency of deposit).

- 2.2 Citibank will ensure that the investment risks associated with the Premium Deposit Account are clearly and fully disclosed in promotional material for the Premium Deposit Account.
- 2.3 Citibank will ensure that any past performance figures used in promotional material for the Premium Deposit Account are adjusted to disclose actual exchange rate fluctuations and otherwise comply with ASIC's guidelines for the use of past performance material in advertising.
- 2.4 Citibank will place on its website a notice, which will be flagged on the Citibank home page, in relation to the promotion of the Premium Deposit Account in 2002, in a form and at a location agreed with ASIC addressing the concerns raised by ASIC. This notice will remain on the Citibank website for the longer of:
  - (a) three months; or
  - (b) until the time an in-use notice is lodged with ASIC with respect to the product disclosure statement for the Premium Deposit Account in accordance with section 1015D of the *Corporations Act 2001*.

This undertaking will be implemented by Citibank as soon as possible after agreement with ASIC as to the form and location of the notice and no later than 5 business days after the date of agreement.

- 2.5 Citibank will appoint its Compliance Manager to monitor the implementations of these undertakings and to report to ASIC in accordance with an agreed timetable.

### **3. Acknowledgements**

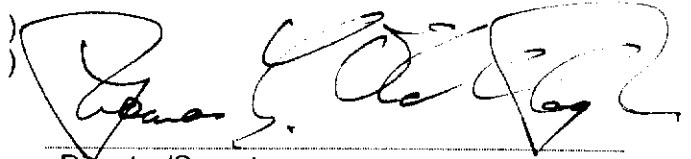
- 3.1 Citibank acknowledges that ASIC:
  - (a) may from time to time publicly refer to this undertaking;
  - (b) may issue a media release on execution of this undertaking referring to its terms and concerns of ASIC which led to its execution; and
  - (c) will place a copy of the executed undertaking on a Public Register.
- 3.2 Citibank acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct.
- 3.3 Citibank acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- 3.4 Citibank acknowledges that this undertaking has no operative force until accepted by ASIC.

EXECUTED on 8 April 2003

SIGNED for and on behalf of **CITIBANK PTY LIMITED** ABN 88 004 325 080 by:



Director



Director/Secretary

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



.....  
Delegate's name and title

Enforcement Counsel North East