



## ENFORCEABLE UNDERTAKING

### Australian Securities and Investments Commission Act 2001

#### SECTION 93AA

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

**NMMT Ltd**  
ACN 058 835 573  
447 Collins Street  
MELBOURNE VIC 3000

#### 1. Background

- 1.1 NMMT Limited ("NMMT") is the responsible entity of the SUMMIT Cash Management Trust (ARSN 094 903 018) ("CMT") and holds a dealers licence to operate the CMT as the responsible entity of the CMT ("the Licence"). NMMT is a subsidiary of AXA Asia Pacific Holdings Limited (ACN 069 123 011) ("AXA").
- 1.2 On 14 November 2000, NMMT issued the CMT prospectus dated 14 November 2000. This prospectus expired on 13 December 2001.
- 1.3 On 14 December 2001, NMMT released to the public the rollover prospectus for the CMT dated 14 December 2001 ("Rollover Prospectus"). The Rollover Prospectus purported to replace the CMT prospectus dated 14 November 2000 and was not lodged with ASIC thereby contravening subsection 727(1) of the Corporations Act 2001.
- 1.4 The Rollover Prospectus was subsequently replaced by a prospectus dated 20 May 2002.
- 1.5 On 17 July 2002 NMMT lodged a Supplementary Short-form Prospectus for the CMT. This Prospectus was to advise of a closure of offer of units issued under the Rollover Prospectus.
- 1.6 On 18 July 2002 ASIC ascertained and advised NMMT that it had no record of the Rollover Prospectus being lodged with ASIC.
- 1.7 On 12 August 2002 NMMT met with ASIC and reported contraventions of sections 718 and 720 of the Corporations Act 2001 and informed ASIC of NMMT's failure to lodge the Rollover Prospectus.
- 1.8 Following NMMT's meeting with ASIC, ASIC commenced an investigation into suspected contraventions by NMMT of various provisions of the Corporations Act 2001 and the old Corporations Act (as defined in section 1410 of the Corporations Act 2001) in connection with the lodgement of disclosure documents and the issuing of securities in relation to CMT.

#### 2. Concerns of ASIC

- 2.1 As a result of ASIC's investigation, ASIC is concerned that from 14 November 2000 to 9 December 2002, NMMT has on several occasions contravened provisions of the Corporations Act 2001 relating to the requirements for and in connection with the lodgement of prospectuses, supplementary prospectuses and replacement prospectuses, in particular:
  - (a) subsection 716(1) of the Corporations Act 2001 (the requirement that a disclosure document lodged with ASIC be dated and that the date is the date on which it is lodged with ASIC);
  - (b) section 718 of the Corporations Act 2001 (the requirement that a disclosure document to be used for the offer of securities must be lodged with ASIC);

- (c) subsection 719(2) of the Corporations Act 2001 (the requirement that a supplementary document lodged with ASIC must be dated and that the date is the date on which it is lodged with ASIC);
  - (d) section 720 of the Corporations Act 2001 (the requirement that the lodgement of a disclosure document, or a supplementary or replacement document, for the offer of a body's securities have the consent of the body's directors);
  - (e) subsection 727(1) of the Corporations Act 2001 (the requirement that a person must not make an offer of securities that needs disclosure to investors under Part 6D.2 unless a disclosure document for the offer has been lodged with ASIC);
  - (f) subsection 728(1)(a)(i) of the Corporations Act 2001 (the requirement that a person must not offer securities under a disclosure document if there is a misleading or deceptive statement in the disclosure document);
  - (g) section 351 of the Corporations Act 2001 (the requirement that a document lodged with ASIC be signed by a director or secretary of the company lodging the document);
  - (h) subsection 601FC(5) of the Corporations Act 2001 (the requirement that a responsible entity shall not breach subsection 601FC(1)(b) of the Corporations Act 2001, which requires that a responsible entity of a registered scheme, in exercising its powers and carrying out its duties, must exercise the degree of care and diligence that a reasonable person would exercise if they were in the responsible entity's position).
- 2.2 ASIC is concerned that the abovementioned contraventions may have arisen from a failure by NMMT to establish and maintain adequate training, supervision and compliance procedures designed to ensure, as far as is reasonably practicable, that NMMT and its employees and agents do not contravene any provision of a securities law ("securities law" is defined in section 9 of the old Corporations Act (as defined in section 1410 of the Corporations Act 2001) and means a provision of Chapter 5C, 6, 6A, 6B, 6C, 6D or 7 of the old Corporations Act) as required under the Licence.
- 2.3 ASIC is further concerned that the abovementioned contraventions by NMMT may indicate that it may not have performed efficiently, honestly and fairly the duties of a holder of a dealers' licence and that NMMT may not perform those duties efficiently, honestly and fairly in the future.
- 2.4 ASIC has the power to take further action against NMMT and may, in specified circumstances:
- (a) pursuant to subsection 826(1) of the old Corporations Act, revoke a dealers' licence;
  - (b) pursuant to subsection 827(1)(c) of the old Corporations Act, suspend a dealers' licence;
  - (c) pursuant to subsection 827(1)(d) of the old Corporations Act, prohibit the holder of a dealers' licence, either permanently or for a specified period, from doing specified acts, being acts of a licensee;
  - (d) pursuant to subsection 786(7) of the old Corporations Act, vary the conditions of a dealers' licence.
- 2.5 NMMT has offered and ASIC has agreed to accept the commitments in this enforceable undertaking as an alternative to determining whether or not ASIC should exercise the powers referred to in paragraph 2.4 above.

### 3. Undertakings

#### *Compliance Measures and Program*

- 3.1 NMMT will, by 31 August 2003, engage an external independent compliance consultant ("Consultant"), whose appointment and terms of reference are to be approved by ASIC in writing, to review, assess and provide NMMT with a written report ("Compliance Report") by 30 September 2003:
- (a) as to the adequacy of the "Prospectus Lodgement Procedure" (annexed to this Enforceable Undertaking as Annexure A) for ensuring compliance with the relevant provisions of the Corporations Act 2001 relating to the requirements for the lodgement of

- documents with ASIC and as to the statutory requirements for and in connection with the lodgement of prospectuses, supplementary prospectuses and replacement prospectuses generally;
- (b) as to existence and adequacy of any procedures and processes currently in place relating to ensuring and monitoring that the Prospectus Lodgement Procedure has been effectively implemented;
  - (c) as to the adequacy of the training of relevant staff for the purpose of ensuring implementation of, and ongoing compliance with, the Prospectus Lodgement Procedure;
  - (d) as to the adequacy of any procedures, processes and training of relevant staff that are in place or are to be put in place to ensure that NMMT and its relevant staff understand and will comply with the new product disclosure provisions of the amended Corporations Act 2001 insofar as they relate to the lodgement (if required by the Corporations Act 2001) of appropriately dated and signed documents with ASIC; and

where the Consultant is not satisfied with the adequacy of the above, the Consultant will include recommendations for improvement to such procedures, processes or training or their implementation ("the Recommendations").

#### *Assistance to Consultant*

- 3.2 NMMT will allow the Consultant to have access to their books and provide all assistance, information or explanation as reasonably required by the Consultant.

#### *Provision to ASIC of Copy of Compliance Report*

- 3.3 NMMT will provide ASIC with a copy of the Compliance Report within two working days of having received the Compliance Report from the Consultant.

#### *Implementation of Findings arising from Compliance Report*

- 3.4 Subject to paragraph 3.4(c), upon receipt of the Compliance Report, NMMT will commence implementation of the Recommendations, if any. If NMMT does not wish to implement any of the Recommendations:
  - (a) NMMT must provide ASIC with a written report providing a full explanation and submissions as to why any of the Recommendations will not be implemented;
  - (b) upon receipt of the written report mentioned in paragraph 3.4(a) above, ASIC may assent in writing to any of the Recommendations not being implemented by NMMT; and
  - (c) if ASIC assents in writing to any of the Recommendations not being implemented by NMMT, then NMMT is not required to implement those recommendations.

#### *Completion of Implementation of Recommendations*

- 3.5 Subject to paragraph 3.4 above, NMMT will by 14 November 2003, complete implementation of the Recommendations including such of those recommendations as may relate to the training of relevant staff and NMMT will provide the Consultant with details of the staff who attend those sessions, details of the relevance of the training to the duties and responsibilities of the staff attending the training and a copy of the training materials.

#### *Final Compliance Report*

- 3.6 NMMT will, by 31 December 2003, engage the Consultant to review, assess and provide NMMT with a written report by 31 January 2004 ("Final Compliance Report"):
  - (a) as to whether the Recommendations (subject to any assent granted by ASIC pursuant to paragraph 3.4 (b) above) have been fully and effectively implemented by NMMT;
  - (b) as to the adequacy of the training provided to staff;
  - (c) as to whether procedures and processes implemented and training provided to staff have been effective in ensuring ongoing compliance with the relevant provisions of the

- Corporations Act 2001 relating to the requirements for the lodgement of documents with ASIC and as to the requirements for and in connection with the lodgement of prospectuses, supplementary prospectuses and replacement prospectuses generally; and
- (d) where deficiencies in the adequacy, effectiveness or implementation of the Recommendations are identified by the Consultant, the Final Compliance Report shall identify such deficiencies and the further steps that should be taken to remedy them.

3.7 NMMT will provide ASIC with a copy of the Final Compliance Report within two working days of having received the Final Compliance Report from the Consultant.

*Letter to Relevant Unitholders*

3.8 By 31 August 2003 NMMT will send to all unitholders who invested in the CMT under the Rollover Prospectus a letter in the form as annexed to this Enforceable Undertaking and marked as Annexure B and will provide proof of having done so to ASIC by 14 September 2003.

**4. Acknowledgments**

4.1 NMMT acknowledges that ASIC may:

- (a) issue a media release on execution of the Enforceable Undertaking referring to the terms of and the concerns of ASIC which led to the execution of the Enforceable Undertaking;
- (b) from time to time refer publicly to this Enforceable Undertaking; and
- (c) make a copy of the executed Enforceable Undertaking available on a Public Register.

4.2 Further, NMMT acknowledges that:

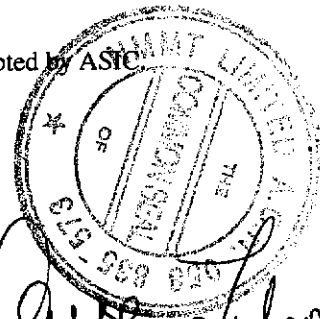
- (a) this Enforceable Undertaking in no way derogates from any right or remedy available to any person arising from any conduct described in this Enforceable Undertaking;
- (b) ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's powers to investigate and take appropriate action against NMMT for a contravention or contraventions of the corporations legislation (as defined in section 9 of the Corporations Act 2001) or any other contravention of a law of the Commonwealth, or of a State or Territory, being a contravention that concerns the management or affairs of NMMT, or involves fraud or dishonesty and relates to NMMT or financial products, arising from future conduct; and
- (c) the Enforceable Undertaking has no effect until accepted by ASIC

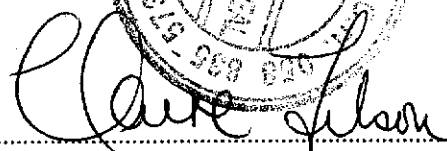
The Common Seal of NMMT is affixed in accordance with its Constitution in the presence of:

  
Signature of director

Milena Penca  
Name of director (block letters)

)  
)  
)  
)



  
Signature of ~~director~~/company secretary\*  
\*delete whichever is not applicable

Claire Filson  
Name of ~~director~~/company secretary\* (block letters)  
\*delete whichever is not applicable

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
PURSUANT TO SECTION 93AA OF THE AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION ACT 2001 BY ITS DULY AUTHORISED DELEGATE

Mark Steward

[Name/Title]

Mark Steward

[Signature]

20/8/2003

[Date]

**ANNEXURE A**

**Disclosure Document Lodgement**

**Group Compliance Pre-lodgment Checklist**

**For retention on Group Compliance's lodgement register**

Name and ARSN of Scheme:

Type of document:

Final pre-lodgment check carried out on:

By:

OK'ed for lodgement with ASIC? (Please circle) Yes No

Item no.	Yes? Please tick.	Description	Reference (Corps Act unless otherwise stated)
1		The document must be dated and the date must be the date of lodgement with ASIC.	s 716(1)
2		Document must state that a copy of the document has been lodged with ASIC	s 711(7)(a)
3		Document must state that ASIC takes no responsibility for contents of the document	s711(7)(b)
4		Must state expiry date which must not be later than 13 months after the date of the prospectus.	s 711(7)(b)
5		Document must be signed by a director or secretary of the relevant company and their name must be printed next to their signature (this is done by hand on the front cover)	s 351(1) and (3)
6		The scheme's ARSN must appear on the document [on the front page? See Reg 1.0.07(f) – the Regulations relate to general requirements for lodgement with ASIC. It appears that the legislative intent is for ASIC to be able to identify who is lodging and to identify the document and/or the purpose of lodgement. This is made clear by the Form 104. The legislative intent therefore appears to be met, notwithstanding that the ARSN might not appear on the <i>front</i> page.]	s 601EC
7		First page must bear name and ABN of the RE.  NB not clear how rest of Reg 1.0.07(f) applies in practice - covers matters such as colour and size of paper, margin sizes, requirements for fastening if more than one sheet etc.	s 153 and Reg 1.0.07(f)(i) and (ii)
8		First page must bear title of document	Reg 1.0.07(f)(iii)
9		First page must bear section number under which the document is lodged with ASIC. [Although this appears to be a clear requirement, ASIC does not seem to take issue with its absence, nor does it seem to be industry practice. The legislative intent seems to be to enable ASIC to identify the document lodged and/or the purpose of lodgement, which is satisfied by the Form 104.]	Reg 1.0.07(f)(iv)
10		A statement made by a person or said to be based on a statement by a person can only be included if the person has consented to that, the document states that the person has given their consent and the person has not withdrawn their consent before the document is lodged with ASIC.	s 716(2)

11		If the document is a supplementary document, at the beginning of the document there must be: <ul style="list-style-type: none"> <li>• a statement that it is a supplementary document;</li> <li>• an identification of the document it supplements,</li> <li>• an identification of any previous supplementary documents lodged with ASIC in relation to the offer</li> <li>• a statement that it is to be read in conjunction with the document it supplements and any previous supplementary documents.</li> </ul>	s719(2)
12		A supplementary document must be dated. The date must be the date of lodgement. NB must be signed in accordance with s351(1) and (3)	s719(2) s351(1) and (3)
13		If the document is a replacement document, there must be: <ul style="list-style-type: none"> <li>• a statement that it is a replacement document, and</li> <li>• an identification of the document it replaces.</li> </ul>	s 719(3)
14		A replacement document must be dated. The date must be the date of lodgement with ASIC. NB must be signed in accordance with s351(1) and (3)	s719(3) s351(1) and (3)
15		Every director of the body issuing the securities must consent to the lodgement of the document. Directors' consents to lodgment completed.	s720
16		Board resolutions completed, approving lodgement	
17		Disclosure document must be lodged (evidenced by Form 104). Form 104 prepared.	(s 718)
18		Three copies of disclosure document prepared – all signed by a director or company secretary, with the person's name printed next to the signature.	s351(1) and (3)
19		Covering letter to ASIC prepared	
20		OfferList forms prepared (Offer Information Sheet for signing by director or company secretary, for lodgement, copy for retention on file; Issuers Summary Sheet for completion on screen and copy for retention on file; does not have to be lodged)	
21		Cheque prepared	
22		Is this Fund offered in New Zealand under a NZ Investor Statement	
23		If YES to 22, who is responsible for sending a copy of the new prospectus to NZ legal for lodgement with the NZ Securities Commission.	

## ANNEXURE B

<date>

<name>

<address>

<address>

Dear <name>

***Re: Your investment in the Summit Cash Management Trust***  
**Account no.: <account\_number>**

You currently have an investment in the Summit Cash Management Trust (CMT). You made this investment via an application form attached to the Summit CMT prospectus dated 14 December 2001.

It is a legal requirement that all prospectuses be lodged with the Australian Securities and Investments Commission (ASIC). In this instance a copy of the Summit CMT prospectus was not lodged with ASIC. The failure to lodge the prospectus was reported to ASIC by NMMT Ltd (Summit) on 12 August 2002.

The Summit CMT prospectus dated 14 December 2001 is now available on ASIC's database and can be obtained by searching ASIC's database.

ASIC has expressed concern about the non-lodgement and in response Summit has given an enforceable undertaking to ASIC. As part of this undertaking Summit is writing to you as an investor to ensure that you are fully informed of this issue.

The current prospectus, dated 6 January 2003, has been lodged in accordance with the requirements of the old Corporations Act (as defined in section 1410 of the Corporations Act 2001).

If you have any concerns or questions about your CMT investment, or the information in this letter, please call John Barton, Summit – Senior Product Manager on (03) 9618 4962 or your adviser.

Yours sincerely

David Frost  
Summit – Market Offer Manager