

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001

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

1. Background

- 1.1 Mr David Richard Smith is a director (**Director**) of ACN 003 135 475 Pty Ltd (ACN 003 135 475) (formerly LifeTrack Management Limited) ("LML"). LML is an approved trustee within the meaning of the *Superannuation Industry (Supervision) Act* ("SIS").
- 1.2 LML was the trustee for the AM Pooled Superannuation Trust SFN 509636012, LML Superannuation Fund SFN 1017 669 49; AM Pooled Superannuation Trust No. 1, SFN 4549 959 77 and the AM Securitised Traded Policies Trust No.1 SFN 5096 350 11 prior to its retirement as trustee which occurred on 28 March 2003.
- 1.3 LML was the Responsible Entity for AM Investment Trust ARSN 093 226 861, AM Wholesale Investment Trust ARSN 096 192 586 and AM Property Plus Trust ARSN 096 632 165 prior to its retirement as trustee which occurred on 28 March 2003.
- 1.4 In June 2002 the Australian Prudential Regulation Authority ("APRA") commenced an investigation into the affairs and operation of the AM Pooled Superannuation Trust. Mr Joseph Catanzariti ("the Inspector") was appointed by APRA as an inspector to conduct the investigation. The focus of the investigation was the investment by the AM Pooled Superannuation Trust in traded policies.
- 1.5 In June 2002 the Australian Securities and Investments Commission ("ASIC") raised concerns with LML about the disclosure provided to investors about traded policies and the closure of the Diversified Traded Policy Fund. Following ASIC's intervention LML provided further disclosure to investors on 8 July 2002.
- 1.6 On 28 January 2003 the Inspector delivered his report of the investigation. In summary, the Inspector asserted that LML may have breached the following provisions of SIS:
 - section 52(2)(b) of SIS which deals with the requirement to exercise the degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with the property of another for whom the person felt morally bound to provide in that LML:
 - failed to implement a formal liquidity management plan for various traded policy funds;
 - continued to purchase traded policies when the traded policy funds were experiencing low and negative liquidity.
 - section 52(2)(c) of SIS which deals with the requirement to ensure that a trustee's duties and powers are performed and exercised in the best interests of beneficiaries in that LML:

- caused other diversified funds under its trusteeship to purchase traded policies;
 - continued to purchase traded policies when the traded policy funds were experiencing low and negative liquidity;
 - merged a number of traded policy funds.
- section 97 of SIS which deals with the prohibition on borrowing money;
 - section 109 of SIS which deals with the requirement of a trustee to deal at arm's length, or on terms no more favourable than those which it is reasonable to expect would apply if the trustee was dealing at arm's length in its dealings with PolicyLink Pty Ltd, a company of which the Director was a director and shareholder.
- 1.7 The Report did not assert that the Director acted dishonestly or had committed any criminal offence. The Report also did not conclude that the directors were in breach of any provisions of SIS including their directors' duties under section 53(2)(b) of SIS.
- 1.8 After reviewing the Inspector's report and the results of its own inquiries ASIC has concerns about the Director's ability to:
- hold an Australian Financial Services License;
 - be involved in the management of corporations holding Australian Financial Services Licences; and
 - be involved in the management of corporations with responsibility for investing investor funds.
- 1.9 The Director, whilst acknowledging ASIC's concerns, contends that he has not breached or been involved in any breach of any law, and by entering into this Undertaking makes no admission.
- 1.10 Nonetheless, the Director has offered, and ASIC has accepted, the commitments in this enforceable undertaking.
- 2. Undertakings**
- 2.1 The Director provides the following undertakings for the purposes of section 93AA of the *ASIC Act*.
- 2.2 The Director will not be involved in any of the following activities for a period of 10 years from the date of this undertaking:
- (a) personally applying for an Australian Financial Services Licence;
 - (b) accepting or seeking an appointment as, or acting as a director of, a Licenseable Entity; and
 - (c) accepting or seeking an appointment as, or acting as an officer of, a Licenseable Entity.

- 2.3 The Director will not apply for or accept authorisation from the holder of an Australian Financial Services Licence ("the licensee") to provide financial services on behalf of the licensee for a period of 5 years from the date of this undertaking.
- 2.4 The Director will not accept, or seek an appointment or act as a director or officer of, a Listed Investment Company for a period of 5 years from the date of this undertaking without first seeking and obtaining the prior written approval of ASIC.
- 2.5 For the purposes of clauses 2.2 and 2.4:
- (a) "Corporations Act" means the provisions of the *Corporations Act 2001* and the *Corporations Regulations 2001* as in force at the date of this undertaking;
 - (b) "Licenseable Entity" means an entity which would be required to hold an Australian Financial Services Licence based on the requirements of Part 7.6 of the Corporations Act (as in force as at the date of this undertaking); and
 - (c) "Listed Investment Company" means a company which :
 - (i) has been granted official quotation by the Australian Stock Exchange;
 - (ii) carries on a business of investment in securities, interests in land or other investments; and
 - (iii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act) made on terms that the funds subscribed would be invested.
- 2.6 For the avoidance of doubt a Licenseable Entity does not include a charitable entity, being an entity which has bone fide charitable objects and purposes.
- 3. Acknowledgments**
- 3.1 The Director 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;
 - (c) will place a copy of the executed undertaking on a Public Register.
- 3.2 The Director acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct.
- 3.3 The Director 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 The Director acknowledges that this undertaking has no operative force until accepted by ASIC.

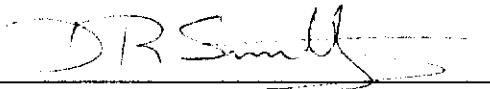
4. **Counterparts**

4.1 This Undertaking:

- (a) may be executed in any number of counterparts;
- (b) will not be effective until signed by all parties hereto; and
- (c) all of those counterparts taken together shall constitute one and the same document.

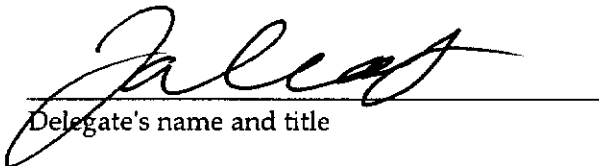
EXECUTED on 18 AUG 2003

SIGNED by David Richard Smith:



Signature

**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