

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001
UNDERTAKING TO THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION GIVEN FOR THE PURPOSE OF SECTION 93AA

By Macquarie Investment Management Limited (ABN 66 002 867 003)

1 Background

- 1.1 Macquarie Investment Management Limited (ABN 66 002 867 003) ("MIML") is a member of the Macquarie Bank Group and carries on business as a fund manager.
- 1.2 MIML is the responsible entity for Macquarie Private Equity Trust II ("MPET II"), a trust which enables retail investors to invest in private equity investments held via registered managed investment schemes such as Macquarie Investment Trust IV.
- 1.3 The private equity investments which underlie MPET II are managed by Macquarie Direct Investment A Limited and Macquarie Direct Investment B Limited ("MDI").
- 1.4 On 9 April 2002, MIML lodged with ASIC the prospectus by which it offered retail investors the opportunity to invest in MPET II (the "Prospectus").
- 1.5 Prior to 9 April 2002, a representative of MDI conducted some interviews with journalists the purpose of which was to publicise the offering to retail investors. It was the MDI representative's understanding that his interviews with these journalists would not be published until after the Prospectus was lodged with ASIC. He informed the journalists with whom he spoke that the interviews were under an embargo and could not be published until the Prospectus was lodged with ASIC.
- 1.6 On 5 April 2002, an article was published in an investment magazine, and reported some of the MDI representative's remarks concerning the public offering.
- 1.7 When MIML became aware that the article had been published before the Prospectus was lodged with ASIC, it promptly notified ASIC that this had occurred.
- 1.8 ASIC is concerned that a breach of section 734(2) of the Corporations Act may have occurred. That section prohibits a person from advertising or publicising an offer of securities where a disclosure document is required for the offer and no disclosure document has yet been lodged with ASIC. MIML accepts that the retail offering of MPET II was publicised (through the article) before the Prospectus was lodged with ASIC. It is not suggested by MIML or ASIC that the journalist who wrote the article or publisher of the magazine are at fault.
- 1.9 In his interview with the journalist, the MDI representative said words to the effect that the MPET II fund was aiming to achieve a return for retail investors that was 5% above the All Ordinaries Index, which he expected to achieve a return of 9 to 10% over the next ten years.
- 1.10 In April 2002, after the Prospectus had been lodged with ASIC, two officers of MDI conducted a media briefing for a group of financial journalists from Business Review Weekly, Money Management, Investor Weekly, AP Dow Jones and The Australian. At this briefing, the MDI representatives said words to the effect that MPET II had targeted returns, after fees and taxes, of 14% for retail investors.

1.11 The Prospectus did not state either:

(a) that the MPET II fund was aiming to achieve a return for retail investors that was 5% above the All Ordinaries Index, which was expected to achieve a return of 9 to 10% over the next ten years; or

(b) that MPET II had a target return, after fees and taxes, of 14% for retail investors, although an earlier draft of the Prospectus had contained a statement that the target return for the trust was 14% p.a. and that this return was expected to be 5% above the S&P/ASX 300 Accumulation Index. This statement was removed from the final draft of the Prospectus because MIML was uncertain whether it amounted to a financial forecast within the meaning of ASIC's Policy Statement 170 and, if it was, whether MIML had the necessary evidence to support it as required by the guidelines set out in the Policy Statement.

1.12 MIML considers that the statements made to the journalist and at the media briefing were consistent with the information contained in the Prospectus, but admits that there are no identical statements made in the Prospectus.

1.13 ASIC has the following concerns about the actions of MIML in publicising MPET II.

(a) The legislative provisions dealing with prospectuses are designed to ensure all relevant information required by investors to make an informed decision is included in the Prospectus. This information will generally include any relevant financial forecast.

(b) The law also requires that a financial forecast included in a prospectus should be properly supported. ASIC's Policy Statement PS 170 includes guidance on what material is required to support a financial forecast.

(c) The use of the term "target return" by MIML in the publicity for MPET II may have been taken by investors to be a financial forecast.

(d) MIML's use of the statement of a target return in the publicity for MPET II in the absence of such a statement in the prospectus may have been, even if inadvertently, contrary to the spirit and intent of these legislative provisions.

1.14 MIML acknowledges ASIC's concerns and has offered the undertakings to put in place the compliance measures set out below in order to ensure best practice in its dealings with the media in relation to public offerings.

1.15 In accepting these undertakings ASIC has taken account of the fact that no investor has suffered any loss or damage to date, nor has ASIC received any complaints from investors.

2 Undertakings

2.1 MIML will not publish, or cause to be published, in any promotional material, whether written or oral, published to retail investors, any statement in relation to "targeted return" or "target return" in relation to the public offering of a retail financial product unless

substantially the same statement or statements are used in the Prospectus or other relevant Disclosure Document.

2.2 MIML will, within 60 days of the date of this undertaking, amend its internal policies concerning advertising and communications with the media in respect of public offerings to provide that:

- (a) material distributed to the media will be reviewed and approved by MIML's internal lawyers prior to distribution; and
- (b) MIML will for any advertisements or promotional material containing prospective financial information apply to that information the standards set out in Policy Statement 170.

2.3 Within 60 days of the date of this undertaking, MIML will:

- (a) identify which executives are likely within the foreseeable future to speak to the media in connection with public offerings; and
- (b) ensure that those executives attend seminars dealing with:
 - (i) the policies of the Macquarie Bank Group that relate to such communications with the media;
 - (ii) the contents of ASIC's Policy Statement 170; and
 - (iii) the contents of ASIC's Guide on the Use of Past Performance in Promotional Material, issued in July 2003.

2.4 MIML will, within 90 days of the date of this undertaking, provide to ASIC:

- (a) confirmation that the seminar referred to in 2.1(b) has occurred;
- (b) a copy of all materials used in the seminar referred to in 2.1(b); and
- (c) a copy of the amended policy referred to in 2.2.

3 Acknowledgments

3.1 MIML 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 MIML acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate:

- (a) complaints arising from the conduct described in this undertaking; and
- (b) a contravention arising from future conduct;

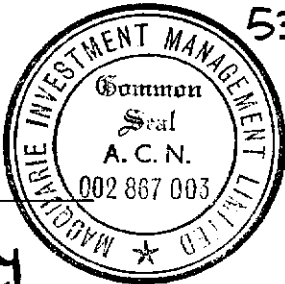
- 3.3 MIML acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- 3.4 MIML acknowledges that this undertaking has no operative force until accepted by ASIC.

EXECUTED on 8th September 2003

SIGNED for and on behalf of MACQUARIE INVESTMENT MANAGEMENT LIMITED

(ABN 66 002 867 003) by:

THE COMMON SEAL OF MACQUARIE
INVESTMENT MANAGEMENT LIMITED
WAS HERETOFORE APPLIED IN ACCORDANCE
WITH THE COMPANY'S CONSTITUTION

Dennis Leong  *P. N...*
 Director **secretary** 53/03 Director
Dennis Leong

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

Jan Redfern
.....
Jan Redfern

Delegate's name and title

Deputy Executive Director
Supervent