

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93AA *Australian Securities & Investments Commission Act 2001*

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

W.A. Blue Gum Ltd ACN 060 179 982 ("W.A. Blue Gum")

Registered office
C/- Herbert Geer & Rundle
Level 27
385 Bourke Street,
Melbourne.
Victoria. 3000

and

Mediterranean Olives Estate Ltd ACN 091 024 396 ("Mediterranean Olives")

Registered office
C/- Herbert Geer & Rundle
Level 27,
385 Bourke Street,
Melbourne.
Victoria. 3000

And

Anthony Henry May ("AH May")

29A Aroona Road,
Caulfield
Victoria. 3162

And

Hebert Geer & Rundle (a partnership)

Carrying on practice at
385 Bourke Street,
Melbourne,
Victoria. 3000

1. Background

- 1.1. W.A. Blue Gum is and was at all material times:-
 - (a) an Australian public company limited by shares;
 - (b) the responsible entity of a registered managed investment scheme known as the W.A. Blue Gum Project ARSN 092 289 266 ("the Blue Gum Project");
 - (c) the holder of a dealers licence authorising it to operate the Blue Gum Project.
- 1.2. AH May is and was, at all times material, a director of W.A. Blue Gum.
- 1.3. Mediterranean Olives is, and at all material times was:-
 - (a) an Australian public company limited by shares;
 - (b) the responsible entity of a registered managed investment scheme known as the Mediterranean Olives Project ARSN 095 573 827 ("the Olives Project").
 - (c) The holder of a dealers licence authorising it to operate the Olives Project. This licence expressly provides that the licensee is not authorised to provide investment advice in relation to securities.
- 1.4. AH May is, and at all material times was, a director of Mediterranean Olives.
- 1.5. The licences referred to in paragraphs 1.1(c) and 1.3(c) each provided, inter alia, that-

"the licensee must establish and maintain adequate training, supervision and compliance procedures designed to ensure, as far as is reasonably practicable, that the licensee's employees and agents do not contravene:

 - (a) *any provision of a securities law;*
 - (b) *any conditions of [the] licence; or*
 - (c) *the constitution of a registered scheme operated by the licensee."*
- 1.6. At all times material the firm of Herbert Geer & Rundle ("HG&R") was
 - (a) a partnership;
 - (b) engaged in the profession and practice of providing legal services; and
 - (c) retained as solicitors for W.A. Blue Gum and Mediterranean Olives.

- 1.7. In or about May 2000 and again in or about May 2001 HG&R and W.A. Blue Gum sent out letters, signed by AH May, to over one thousand persons, which in ASIC's view encouraged the recipients to subscribe to the Blue Gum Project.
- 1.8. At the time that the letters referred to in paragraph 1.7, above, were sent neither HG&R nor AH May held a securities dealers licence. Further, at these times, and to the extent (if any) that they may have been required, neither HG&R nor AH May held a proper authority authorising either of them to act as a representative of an authorised securities dealer.
- 1.9. The Australian Securities and Investments Commission ("ASIC") is concerned that the letters referred to in paragraph 1.7 above may have contained statements likely to mislead investors or potential investors in breach of the *Corporations Act 2001*.
- 1.10. ASIC has formed the view that the conduct of HG&R, AH May and W.A. Blue Gum in sending out the letters referred to in paragraph 1.7 contravened sections 780, 806 and 995 of the old *Corporations Act* (as defined by section 1410(1) of the *Corporations Act 2001*).
- 1.11. In or about May 2002 HG&R, W.A. Blue Gum and Mediterranean Olives sent letters, signed by AH May, to more than one thousand persons, which in the view of ASIC encouraged the recipients to subscribe to the Blue Gum Project and/or the Olives Project.
- 1.12. At the time the letters referred to in paragraph 1.11 above were dispatched, and to the extent (if any) that they may have been required, neither HG&R nor AH May held an Australian Financial Services Licence.
- 1.13. ASIC has formed the view that HG&R and AH May, by their conduct in dispatching the letters referred to in paragraph 1.11 above, have contravened sections 911A and 1018A of the *Corporations Act 2001* and that W.A. Blue Gum and Mediterranean Olives, by their conduct in dispatching the said letters, have contravened section 1018A of the *Corporations Act 2001* and the conditions of their respective dealers licences.
- 1.14. The *Corporations Act 2001* section 1324 relevantly provides that where a person has engaged, is engaging or proposes to engage in conduct that constituted, constitutes or would constitute a contravention of the *Corporations Act*, ASIC may seek an injunction to restrain the person from engaging in that conduct and to require that person to do any act or thing. Further, the *Corporations Act 2001* under section 915C provides that ASIC

may suspend or cancel an Australian financial services licence if, inter alia, the licensee has not complied with its obligations under section 912A of the *Act* or if ASIC has reason to believe that the licensee will not comply with these obligations. Further, the *Corporations Act 2001* under section 920A provides that ASIC may make a banning order against any person, if, inter alia, the person has not complied with a financial services law or ASIC has reason to believe that the person will not comply with a financial services law.

- 1.15. Whilst acknowledging ASIC's concerns and views as set out in paragraphs 1.9, 1.10 and 1.13 above, HG & R, W.A. Blue Gum, Mediterranean Olives and AH May deny that the conduct, which forms the basis of ASIC's concerns and views (as referred to above), was in breach of or in contravention of any relevant law.
- 1.16. However, given ASIC's concerns and views, HG&R, W.A. Blue Gum, Mediterranean Olives and AH May offer the undertakings (as applicable) set out in paragraph 2 below. ASIC has agreed to accept the commitments set out in this enforceable undertaking as an alternative to the actions referred to in paragraph 1.14 above.

2. Undertakings

- 2.1. Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* ("the ASIC Act"), HG&R, W.A. Blue Gum, Mediterranean Olives and AH May provide the undertakings set out below.
- 2.2. HG&R and May will not create nor publish any letter or other document that:
- (a) Seeks to encourage persons to subscribe for any security or any financial product including, but not limited to, the Blue Gum Project, the Olives Project; or
 - (b) Contains or constitutes a recommendation or a statement of opinion, or constitutes a report, that is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products or could reasonably be regarded as being intended to have such an influence.
- 2.3. W.A. Blue Gum, by its officers, servants or agents, will not create, publish, issue or distribute any document that is intended to influence a person or persons in making a decision in relation to an interest in the Blue Gum Project, or which could reasonably be regarded as being so intended, unless the said document is sent and authorised by a person holding a current proper authority validly issued pursuant to the dealers licence held by W.A. Blue Gum (being licence number 62427).

- 2.4. Save for the exceptions as set out in paragraph 2.3 above, W.A. Blue Gum will not create, publish, issue nor distribute any document that is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products or could reasonably be regarded as being intended to have such an influence.
- 2.5. Mediterranean Olives, by its officers, servants or agents will not create, publish, issue or distribute any document that is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products or could reasonably be regarded as being intended to have such an influence.
- 2.6. Nothing contained herein shall prevent either W.A. Blue Gum or Mediterranean Olives from publishing, issuing or distributing any Prospectus or Offer Information Statement in accordance with the provisions of Chapter 6D of the *Corporations Act*.

Compliance Program

- 2.7. W.A. Blue Gum will, by 30 September 2003, establish a compliance system that will ensure that any document that contains or constitutes a recommendation or a statement of opinion, or constitutes a report, that is intended to influence a person or persons in making a decision in relation to a particular financial product, or an interest in a particular financial product or which could reasonably be regarded as being intended to have such an influence, complies with the disclosure requirements in *Chapter 6D and Chapter 7 of the Corporations Act 2001* and the undertakings herein given.
- 2.8. Both W.A. Blue Gums and Mediterranean Olives will, by 30 September 2003, each engage an external independent compliance consultant (whose appointment and terms of reference are to be approved by ASIC). The consultant will review, assess, identify, make recommendations and report in writing to W.A. Blue Gum, Mediterranean Olives and ASIC in relation to the respective companies' compliance with the *Corporations Act 2001*, the *Corporations Regulations*, the *ASIC Act*, and the licence conditions attached to their respective dealers licences or any future Australian Financial Services Licences which may be issued to either of the companies, and in relation to the internal controls, compliance systems and procedures that enable the companies to do so (“**the report**”). The report will include, but not be limited to, the identification and the making of recommendations for changes to ensure full compliance with the *Corporations Act 2001*, the *Corporations Regulations*, the *ASIC Act*, and the licence conditions attached to the Companies' respective Licences or any future Australian Financial Services Licence which may be issued to the Companies (or any related entity to which the Companies transfer, sell or dispose of their assets and business), in particular relating to:

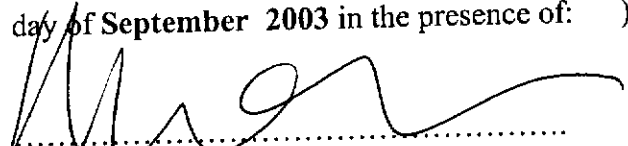
- (a) the structure, status, autonomy, independence and reporting lines of the compliance function; and
 - (b) compliance with this undertaking.
- 2.9. The report must be completed by no later than 30 October 2003. The said companies must each engage the independent compliance consultant to produce a further report ("**the subsequent report**") in relation to the matters set out in paragraph 2.7 above on the first anniversary of the initial compliance report.
- 2.10. WA Blue Gum and Mediterranean Olives will each use reasonable endeavours to enable each report (the initial and subsequent reports) to be prepared and will deliver each report to ASIC within 14 days of the relevant reporting date. In the event that either of the Companies is unable to deliver a copy of the report to ASIC within 14 days of the relevant reporting date, the defaulting Company will provide to ASIC a written explanation for the delay and an estimate of when the report will be provided. Such written explanation must be received from the relevant Company by ASIC within 16 days after the reporting date.
- 2.11. Within 30 days of receiving each report, each Company will provide ASIC with a report from their Company Board:
- (a) detailing the steps taken or to be taken by the Company to comply with any recommendations of the consultant; and/or
 - (b) providing a full explanation as to why any recommendation of the consultant has not been or will not be followed.

3. Acknowledgements

- 3.1. The members of HG&R, W.A. Blue Gum, Mediterranean Olives and AH May (collectively referred to as "the Parties") acknowledge that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (b) may from time to time publicly refer to this undertaking; and
 - (c) will make this undertaking available for public inspection.
- 3.2. The Parties acknowledge that this undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this undertaking.
- 3.3. The Parties acknowledge that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from the conduct of the parties, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.
- 3.4. The Parties acknowledge that this undertaking has no operative force until accepted by ASIC.
- 3.5. ASIC acknowledges that nothing in this document constitutes any admission by the parties to ASIC or to any other person or entity.

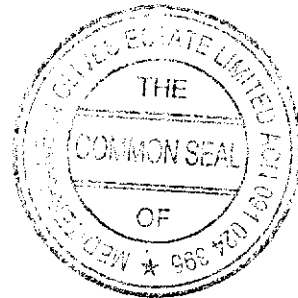
The Common Seal of **W.A. Blue Gum Ltd**)
ACN 004 885 796 was duly)
affixed to this undertaking on the 5th)
day of **September 2003** in the presence of:)

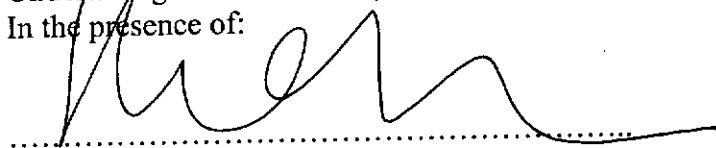



.....
Director/Secretary

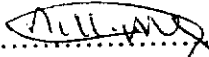
LEON GORR
.....
Print Name

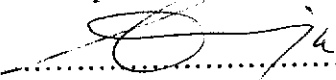
The Common Seal of **Mediterranean Olives Estate**)
Ltd ACN 091 024 396 was duly affixed to this)
Undertaking on the 5th.....day of **September 2003**)
In the presence of:)




.....
Director/Secretary

LEON GORR
.....
Print Name

Signed by: 
.....
Anthony Henry May

In the presence of:

.....
Witness

Carol Zoraja
.....
Print Name

Signed for and on behalf of **Herbert Geer & Rundle**

Principal

Witness

/Print name Carol Zeraja

Principal

Witness

/Print name Carol Zeraja

Principal

Witness

Jacqueline Gannon /Print name.
JACQUELINE GANNON

Accepted by the **Australian Securities and Investments Commission** pursuant to the ASIC Act section 93AA by its duly authorised delegate:

Mark Steward

Director of Enforcement South/West
Delegate of the Australian Securities and Investments Commission

Dated this 11th day of September 2003