



## Enforceable Undertaking

### Australian Securities & Investments Commission Section 93AA

The commitments in this Undertaking are offered to the Australian Securities & Investments Commission ("ASIC") by:

**Ross James Honeyman**

**116 Pittwater Road**

**GLADESVILLE NSW 2111**

#### 1. Background

- 1.1 Between 21 July 1999 and 27 June 2000 Mr Ross James Honeyman ("**Mr Honeyman**") was a director of Flinders Asset Management Pty Limited [ACN 079 571 476], previously known as Flinders Asset Management Limited ("**Flinders**"), the holder of securities dealers licence number 172087.
- 1.2 Between 8 September 1994 and 10 March 2000 Mr Honeyman was a director of Commercial Nominees of Australia Limited [ACN 054 235 853] ("**CNA**").
- 1.4 Flinders was Manager of the Confidens Investment Trust ("**Confidens**"), which was established by Deed made between Flinders and CNA on 23 March 1998 ("**Trust Deed**"). The Trust Deed was approved by ASIC on 15 April 1998 pursuant to section 1067 of the pre-July 1998 Corporations Law ("**old Law**").
- 1.5 CNA was Trustee of Confidens.

#### 2. The Confidens Prospectus

- 2.1 On 7 August 1998 Confidens lodged a prospectus dated 7 August 1998 with ASIC ("**First Prospectus**"). The First Prospectus was registered by ASIC on 11 August 1998.
- 2.2 A Supplementary Prospectus, dated 2 September 1998, relating to a change in directors, was lodged with ASIC on 11 September 1998.
- 2.3 The First Prospectus expired on 6 August 1999 and ASIC approved an extension of this prospectus by one month. A Second Supplementary Prospectus was lodged with ASIC on 6 August 1999. Mr Honeyman was one of the Flinders directors who signed the Second Supplementary Prospectus.
- 2.4 On 24 August 1999 Confidens lodged a prospectus dated 7 September 1999 with ASIC ("**Second Prospectus**"). The Second Prospectus was registered by ASIC on 26 August 1999. Mr Honeyman was one of the Flinders directors who signed the Second Prospectus.

2.5 The First and Second Prospectuses made representations to the effect that a portion of the money the Participants paid to Confidens would be kept in a high liquidity cash account and that neither CNA or its directors had any interest in the promotion, or property proposed to be acquired, by Confidens, other than as was disclosed in the prospectuses ("**the representations**").

### **3. The Enhanced Cash Management Trust**

3.1 The Commercial Nominees' Enhanced Cash Management Trust ("**ECMT**") was established by CNA by deed made on 30 June 1998.

3.2 The ECMT Deed was not an approved deed within the meaning of section 1066 of the old Law.

3.3 The cash component of all moneys invested by investors in Confidens ("**Participants**") was deposited in ECMT, from commencement of fundraisings by Confidens from August 1998 until 25 July 2000.

3.4 The cash component invested in ECMT included the initial 5% of Participants' investments, as well as moneys deposited in Confidens, redemptions of equity investments, and dividends received by Participants pending investment or reinvestment in authorised investments.

### **4. Concerns of ASIC**

4.1 ASIC has conducted an investigation into suspected contraventions of the Corporations Law and the Corporations Act relating to the administration of Confidens and the conduct of the directors of CNA and Flinders and has identified a number of concerns which give rise to ASIC having reason to believe:

4.1.1 The representations made in the Confidens Prospectuses were misleading and Mr Honeyman may have contravened section 996 of the old Law and section 728 of the Corporations Act, in having authorised or caused the issue of a prospectus in which either a material statement was false or misleading or in which there was a material omission;

4.1.2 In the alternative, Mr Honeyman failed to ensure Participants' funds were invested in accordance with the representations made in the Prospectuses;

4.1.3 Mr Honeyman failed to cause the lodgement of a supplementary prospectus when he may have been required to do so, pursuant to sections 1023A and 1024 of the Corporations Law;

4.1.4 Mr Honeyman failed to exercise due care and diligence in failing to ensure ECMT was liquid and constituted a "Cash Account", consistent with the statements made in the Confidens prospectus;

4.1.5 Having become aware of the illiquid nature of ECMT, Mr Honeyman failed to take adequate and timely steps to notify Participants and failed to stop further deposits being made into ECMT;

- 4.1.6 Mr Honeyman did not comply with covenants in the Confidens Trust Deed prohibiting the investment of moneys in any prescribed interests unless there was a trust deed approved by ASIC and may have contravened section 1073 of the old Law;
- 4.1.7 Mr Honeyman failed to provide Participants with adequate information regarding the underlying investments of Confidens in accordance with the requirements specified in ASIC Class Order 96/1580 dealing with Member Discretionary Master Funds;
- 4.1.8 Mr Honeyman may not have performed efficiently, honestly and fairly the duties of a representative of a dealer or of an investment adviser as provided in subsection 829(f) of the Corporations Act 2001 (“the Act”), irrespective of whether any contravention of the Act is established;
- 4.1.9 Mr Honeyman may not in the future perform efficiently, honestly and fairly the duties of a representative of a dealer or of an investment adviser, as provided in subsection 829(g) of the Act, irrespective of whether any contravention of the Act is established.

## **5. Acknowledgement of ASIC's Concerns**

- 5.1 ASIC has the power pursuant to sections 829 and 830 of the Corporations Act to make an order banning a natural person who contravenes a securities law or who fails to act efficiently honestly and fairly from doing an act as a representative of a dealer or an investment adviser either permanently or for a specified period.
- 5.2 Mr Honeyman offers the commitments in this undertaking as an alternative to ASIC exercising its powers.

## **5 Undertakings**

- 6.1 Mr Honeyman provides the following undertakings for the purposes of section 93AA of the Australian Securities and Investments Commission Act.
- 6.2 Mr Honeyman undertakes that **for a period of five (5) years** from the date ASIC accepts and signs this undertaking (“the relevant period”):
  - 6.2.1 He will not manage a corporation (being defined as those activities set out in subparagraphs (a) to (c) of subsection 206A(1) of the Corporations Act 2001) that is a Licensable Entity;
  - 6.2.2 He will not consent to act as a director or apply to ASIC to be a director of any Licensable Entity;
  - 6.2.3 He will not consent to act as a secretary or apply to ASIC to be a secretary of any Licensable Entity;
  - 6.2.4 He will not apply to ASIC for an Australian Financial Services Licence (“AFSL”);

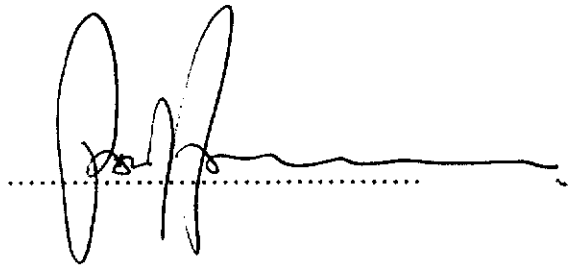
- 6.2.5 He will not apply to a holder of an AFSL to become a representative of such a licence holder;
  - 6.2.6 He will not do any act or engage in any conduct as a representative of a securities dealer, an investment adviser, a futures broker, a futures adviser, or a securities representative or futures representative including holding himself out to be such a representative;
  - 6.2.7 He will not do an act for which an AFSL or an authorisation from an AFSL holder is or would be required by law.
- 6.3 Mr Honeyman will complete a course accredited by the Financial Planning Association of Australia or the Securities Institute of Australia and approved by ASIC in relation to regulation and ethics prior to applying, after the expiration of the relevant period, for a AFSL or applying to a holder of an AFSL to become a representative of such a licence holder.
- 6.5 For the purposes of clause 6.2, "Licensable Entity" means an entity that would be required to hold an AFSL based on the requirements of Part 7.6 of the Corporations Act (as in force as at the date of this undertaking).

## **7. Acknowledgements**

- 7.1 Mr Honeyman acknowledges and agrees that ASIC:
- 7.1.1 may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC that led to its execution;
  - 7.1.2 may from time to time publicly refer to this undertaking; and
  - 7.1.3 will make this undertaking available for public inspection.
- 7.2 Mr Honeyman 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.
- 7.3 Mr Honeyman acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.
- 7.4 Mr Honeyman acknowledges that this undertaking has no operative force until accepted by ASIC.
- 7.5 If a clause in this undertaking is invalid, illegal or unenforceable, then that clause to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this undertaking. All other clauses of this undertaking remain in full force and effect.

Signed this      day of October 2003

by Ross James HONEYMAN

A handwritten signature in black ink, appearing to read 'Ross James Honeyman', written over a horizontal dotted line.

in the presence of:

A handwritten signature in black ink, appearing to read 'Liljana Marsanic', written above a horizontal dotted line.

Witness signature


Liljana Marsanic

Printed Name

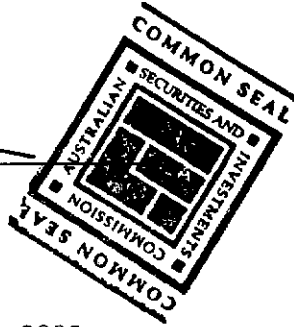
Mt Dritchard NSW 2170

Address

**ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION PURSUANT TO ASIC ACT S93AA BY ITS DULY  
AUTHORISED DELEGATE:**



Allen Turton  
Director, Enforcement



This 10 day of December 2003.