



ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Section 93AA Australian Securities and Investments Commission Act 2001

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

National Custodian Ltd (ACN 008 612 397)
Now known as Mellon Nominees Limited
Level 12, 345 Queen Street
Brisbane QLD 4000

RECEIVED

25 AUG 2004

M.S.C.

1. **BACKGROUND**

- 1.1 Effective from 1 August 2002, National Custodian Limited ("NCL") became the trustee of the Mellon Eligible Rollover Fund (formerly known as the NSP Buck Eligible Rollover Fund) ("the Fund"). The trustee NCL recently changed its name to Mellon Nominees Limited ("MNL") on 22 January 2004 and is now known as MNL.
- 1.2 In or about November 2002, Annual Statements of Benefits as at 30 June 2002 ("Statements of Benefits") were issued to members of the Fund. At the same time that the Statements of Benefits were issued an Annual Report as at 30 June 2002 ("Annual Report") was issued to members of the Fund.
- 1.3 The Annual Statements of Benefits were prepared by the administrator of the Mellon ERF, under its service agreement with the former trustee of the Mellon ERF – Royal & Sun Alliance Portfolio Services Limited and sent to members after MNL's appointment as trustee of the Fund. The administrator remained the administrator of the Fund after MNL was appointed as trustee.
- 1.4 Each Statement of Benefits contained a statement of the opening and closing balances of the member's interests in the Fund and the accretion in and the deductions from the member's interests in the Fund for the financial year

ended 30 June 2002. Each Statement of Benefits, under the heading "Account Details" contained a statement to the effect that administration fees charged to members' accounts in the financial year ending 30 June 2002 were nil or "\$0.00" ("the Statement of Fact "). The Statement of Fact in each Statement of Benefit was not properly qualified by reference to the specific parts of the Annual Report that set out information about the fees charged.

- 1.5 On the first page of the Statements of Benefits, at the bottom of the section headed "Account Details" and under the heading "Closing Balance (Withdrawal of Benefit) at 30/06/2002" the following paragraph appeared:

*"The interest allocated to your account is dependent upon the unit price on the date of transfer into the Fund and the unit price at the reporting date. For more information regarding calculation of the unit price please refer to the Trustee's Report to Members."*¹

In addition, on the second page of the Statement of Benefits under the heading "Benefits" the following paragraph appeared:

"The method of determining your withdrawal benefit at 30/06/02 is the sum of your opening balance at 01/07/01, plus transfers and investment earnings less administration fees and any withdrawals."

- 1.6 The Annual Report contained the following statements:

- a Of the earnings rate for the Fund for the year ended 30 June 2002.
- b That the investment earnings allocated to a member's account as shown on the Statement of Benefits, differs from the earnings rate in the Annual Report due to fees incurred in running the Fund.
- c The trustee and the administrator charge a fee for their services to the Fund totalling 1.6% per annum, which is deducted prior to the declaration of the unit price.

¹ The Trustee Report refers to the Annual Report sent to members at the same time as the Statements of Benefits were issued to members of the Fund.

- 1.7 ASIC has taken the view that the Statement of Fact was misleading or deceptive or likely to mislead or deceive given that, during the relevant period the then trustee and administrator did charge a fee (at the rate of approximately 1.6% of the total assets) for their services to the Fund, (as disclosed in the Annual Report), but, the Statements of Benefits, did not sufficiently qualify the Statement of Fact regarding the fees by specific reference to page 10 of the Annual Report.
- 1.8 ASIC has also taken the view that the Statement of Fact, by reason of the matters contained in paragraphs 1.4, 1.5 and 1.6 above, constituted a contravention of sections 12DA(1), 12DB(1)(a), (c), (e) and 12DF(1) of the *Australian Securities & Investments Commission Act 2001*.
- 1.9 Section 12GD of the *Australian Securities & Investments Commission Act 2001*, provides that where a person has engaged in conduct that constitutes a contravention of Division 2 of the *ASIC 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.
- 1.10 NCL (now known as MNL) acknowledges ASIC's concerns, as stated in paragraphs 1.4 to 1.7 above, and offers the undertakings set out in paragraph 2 below. ASIC has agreed to accept the commitments set out in this enforceable undertaking as an alternative to the action set out in paragraph 1.9 above.

2. UNDERTAKINGS

Pursuant to s.93AA of the *ASIC Act*, NCL (now known as MNL) offers the following undertakings to ASIC:

- 2.1 NCL (now known as MNL) undertakes that it will:
- (a) Not, by itself, its servants or agents make any statement to the effect that administration fees applicable to the fund are "\$0.00" or

nil or make any similar or like statement when that statement is not correct; and

- (b) For the next five (5) years, specifically review all Member Statements to ensure that they contain no misstatements in this regard or contain misstatements of a like or similar nature to the Statement of Fact referred to in paragraph 1.4 above; and
- (c) Within 30 days of entering into this Enforceable Undertaking issue a corrective statement to all Fund members, in the form specified in Schedule A.

3. ACKNOWLEDGMENTS

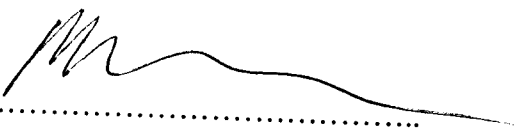
3.1 NCL (now known as MNL) acknowledges that ASIC:

- (a) May issue a Media Release on execution of this Enforceable 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 NCL (now known as MNL) further acknowledges that:

- (a) This Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking;
- (b) ASIC's acceptance of an Enforceable Undertaking does not affect ASIC's power to investigate an alleged contravention arising from the conduct of the parties, or pursue criminal prosecution, or its power to lay charges or seek a pecuniary civil order; and
- (c) This Enforceable Undertaking has no operative force until accepted by ASIC.

The Common Seal of)
 National Custodian Limited)
 (ACN 008 612 397) now known as)
 Mellon Nominees Limited was)
 duly affixed to this undertaking on)
 this *24th* day of *August* 2004 in the)
 presence of:)

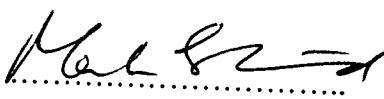


 Director



 Director/Secretary

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



 Mark Steward
 Deputy Executive Director of Enforcement

Dated: this *27th* day of *August* 2004

ANNEXURE A

[REDACTED]
[REDACTED]
[REDACTED]
Dear [REDACTED]

**CORRECTIVE NOTICE – 2002 ANNUAL STATEMENT
MELLON ELIGIBLE ROLLOVER FUND (PREVIOUSLY NAMED THE NSP BUCK
ERF)**

This notice is issued by Mellon Nominees Limited ABN 66 008 012 397 (“MNL”), the trustee of the Mellon Eligible Rollover Fund (“ERF”).

The Australian Securities and Investments Commission (“ASIC”) has conducted a review of the 2002 Annual Statements sent to all members detailing their benefits.

The Annual Statements were prepared by the administrator of the ERF under its service agreement with the former trustee of the ERF – Royal & Sun Alliance Portfolio Services Limited – and sent to members after MNL’s appointment.

Your 2002 Annual Statement contained a statement under the heading “Account Details” that “Administration Fees” were “\$0.00”. ASIC is concerned that this statement, which appeared on the Annual Statements may be misleading to members.

Members should be aware that, as stated in the 2002 Annual Report to Members, an allowance for expenses, including Trustee and Administrator fees is deducted from investment earnings before final unit prices are declared. These costs included a Trustee and Administrator fee of 1.6% per annum for the 2002 financial year², audit, APRA, legal fees and other expenses.

MNL has agreed to not make similar statements in the future. MNL has also agreed that it will scrutinise all future statements and reports to members to ensure they do not contain similar statements.

MNL has agreed to the above matters which it has formalised in an enforceable undertaking a copy of which is available to be viewed on ASIC’s web-site at www.asic.gov.au. You can also obtain a copy free of charge by calling the administrator Mellon Human Resources & Investor Solutions Pty Ltd on the number below.

² The Administrator fee was 1.595% per annum for the 2003 financial year.

If you would like a copy of the enforceable undertaking or further information regarding the contents of this notice please call the administrator, Mellon Human Resources & Investor Solutions Pty Ltd on 1800 677 306.

If you are concerned or have any complaints about this matter the fund provides an inquiry and complaints procedure for members, which together with the Superannuation Complaints Tribunal (SCT), forms the fund's dispute resolution mechanism. Under Government legislation, the trustee is required to have arrangements in place to ensure that an inquiry and complaint will be appropriately handled within 90 days. If you are not satisfied with the trustee's final decision, you may be able to lodge the complaint with the SCT. You can contact the SCT on 1300 884 114 or by writing to: Superannuation Complaints Tribunal, Locked Bag 3060, GPO Melbourne VIC 3001. However, the SCT cannot consider matters that relate to the management of the fund as a whole.

This corrective notice was provided at the request of the Australian Securities and Investments Commission.

Yours faithfully

NCL (now known as MNL) Chief Executive

Annexure B

Change of address procedure

1. NCL (now known as MNL) must send the letter at Annexure A by ordinary pre-paid post to the most recent address that NCL (now known as MNL) has recorded for each relevant person.
2. In the case of those persons whose letter is returned, NCL (now known as MNL) must carry out internet search of the Telstra White Pages On-Line at the domain name www.whitepages.com.au. In the event that:
 - 2.1. An entry which includes an address is found and that entry appears on reasonable grounds to correspond with the person sought – NCL (now known as MNL) must call the person to verify the identity of the person as a member or former member of the Mellon Eligible Rollover Fund, and if verified, send the item by ordinary pre-paid post to that different address.
 - 2.2. No entry which includes an address is found which appears on reasonable grounds to correspond with the person sought – NCL (now known as MNL) is not required to send the item by ordinary pre-paid post to that different address.
3. In the event that the internet search does not reveal a different address for those persons, NCL (now known as MNL) must update the addresses they have for such persons by using the "National Change of Address" database provided by Australia Post. If Australia Post's "National Change of Address" database reveals a different address for those persons, NCL (now known as MNL) will send the item by ordinary pre-paid post to that different address.
4. Where Australia Post notifies NCL (now known as MNL) that a person has changed address, but has not given their consent to Australia Post to the release of their new details, NCL (now known as MNL) will use the "Re-Connect" service provided by Australia Post to seek to obtain that new address. Prior to doing so, NCL (now known as MNL) will consult with ASIC and Australia Post on the content of any correspondence to be sent to persons using the "Re-Connect" service. Australia Post's "Re-Connect" service is a service whereby Australia Post writes to relevant persons advising them that NCL (now known as MNL) is trying to contact them, and asking for their consent to the release of their new address. When using the "Re-Connect" service, NCL (now known as MNL) will request that Australia Post notify the person that the purpose of the proposed communication relates to "an Enforceable Undertaking made to the Australian Securities & Investments Commission regarding disclosure of fees". In the event that:
 - 4.1. The person consents to the release of their new address to NCL (now known as MNL), NCL (now known as MNL) will send the item by ordinary pre-paid post to that different address.
 - 4.2. The person does not consent to the release of their new address to NCL (now known as MNL), NCL (now known as MNL) is not required to send the item to that person.