



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

MMC Asset Management Limited
(ACN 071 807 684)
Level 8, 34 Hunter Street,
Sydney, NSW 2000

1. BACKGROUND

- 1.1 MMC Asset Management Limited (ACN 071 807 684) ("**MMC**") operates a funds management business and holds an Australian Financial Services Licence (No 230920) ("**AFSL**") issued pursuant to section 913B of the Corporations Act 2001 (Cth) ("**Act**").
 - 1.2 In or about February 2004 MMC sent documents it characterised as an "opportunity to sell" to the top 1000 shareholders of Ausbulk Limited (ACN 007 556 256) ("**Ausbulk**"). The documents constituting the "Opportunity to Sell" were in the form of, or substantially similar to, attachment A to this Enforceable Undertaking ("**the Documents**").
 - 1.3 On 13 May 2004, ASIC commenced an investigation into the conduct of MMC, pursuant to section 13 of the Australian Securities and Investments Commission Act 2001 (Cth) ("**ASIC Act**"), in relation to suspected contraventions of the Act, including suspected contraventions of Division 5A, Part 7.9 of Chapter 7 of the Act ("**the Investigation**").
 - 1.4 In deciding to accept this enforceable undertaking, ASIC has taken into account that MMC has:
 - (a) co-operated fully with ASIC at all times during the Investigation;
 - (b) provided ASIC with evidence that it acted at all times on the advice of its former solicitors in preparing and sending the Documents to Ausbulk shareholders;
 - (c) provided ASIC with evidence that it has not received any responses to the Documents;
 - (d) given an informal written undertaking to ASIC not to process any responses to the Documents during the Investigation;
 - (e) voluntarily amended its internal compliance matrix to ensure compliance with Division 5A, Part 7.9 of Chapter 7 of the Act.
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2. ASIC's Concern

- 2.1. As a result of the Investigation, ASIC has determined that Division 5A, Part 7.9 of Chapter 7 of the Act applies to the Documents. ASIC is of the opinion that the Documents were in the form of an offer to purchase a financial product as defined by section 1019D of the Act. ASIC is therefore concerned that the Documents may have contravened section 1019I of the Act which provides, inter alia, that:
- (a) an offer document must be dated (subsection 1019I(2)(1));
 - (b) an offer document must state the period during which the offer remains open, which cannot be more than 12 months of the date of offer (subsection 1019G(1) and subsection 1019I(2)(d); and
 - (c) an offer document must include a statement to the effect that the offer may be withdrawn by sending a withdrawal document to the offeree, but generally not within 1 month of the date of offer (subsections 1019G(2), (3) and (4) and subsection 1019I(2)(e)).
- 2.2. MMC is of the opinion that, rather than an "offer", the Documents are more properly classified as an "invitation" and that, accordingly, MMC's apparent contravention of the Act relates to a breach of section 1019F only. Section 1019F of the Act provides that a person must not invite another person to make an offer to sell a financial product in circumstances in which, if the invitation were instead an offer to purchase the financial product, that offer would be an offer to which Division 5A applies. ASIC does not agree with MMC's characterisation of the offer as an invitation.

3. UNDERTAKINGS

Pursuant to Section 93AA of the ASIC Act, MMC offers the following undertakings to ASIC:

MMC's undertakings to withdraw the Documents, not to transfer any shares pursuant to the Documents and to report to ASIC

- 3.1 MMC undertakes that it will within 1 week of acceptance of this enforceable undertaking by ASIC provide to all persons to whom the Documents were sent, a letter in the form of attachment B to this enforceable undertaking, advising those persons that:
- (a) the Documents, including any offer or invitation contained therein, are withdrawn (notwithstanding the effect of any merger to which Ausbulk was a party between the date of the Documents and the date of acceptance of this enforceable undertaking by ASIC);
 - (b) MMC has not and will not transfer any shares whatsoever as a result of responses received (if any) by MMC to the Documents;
 - (c) ASIC has accepted this enforceable undertaking from MMC as a means by which to address ASIC's concerns in relation to the Documents; and
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- (d) this enforceable undertaking is available for inspection at http://www.asic.gov.au/asic/asic_polprac.nsf/byheadline/Enforceable+Undertakings+Register?opendocument.

3.2 MMC undertakes that it will, within 1 week of dispatching attachment B, provide to ASIC a written report, signed by at least 2 directors of MMC, confirming that the requirements of paragraph 3.1 of this enforceable undertaking have been complied with.

MMC's undertakings in relation to any future unsolicited offers to purchase financial products

3.2. MMC undertakes that it will for a period of 5 years from the date of acceptance of this enforceable undertaking by ASIC:

- (a) before making any unsolicited offer to purchase a financial product, submit the offer to an independent compliance expert ("**Expert**"), who is either:
- i. a qualified lawyer who has been practising for at least the past 5 years; or
 - ii. a member of the Australian Compliance Institute (or with the approval of ASIC another appropriate professional association) and has not less than 5 years experience in the securities industry in a supervisory or compliance role;

to provide MMC with a written opinion that the particular unsolicited offer complies with all relevant provisions of the Act ("**Independent Compliance Opinion**");

- (b) not make unsolicited offers to purchase financial products unless and until it has obtained an Independent Compliance Opinion in relation to each particular unsolicited offer it may make;
- (c) provide ASIC with a copy of any Independent Compliance Opinion ASIC may request, in writing, from time to time.

MMC's Undertakings in the event of a breach of this Enforceable Undertaking

3.3. Without derogating from any other obligation on MMC to report to ASIC, if MMC forms the view that it has breached a term of this enforceable undertaking, MMC must notify ASIC in writing:

- (a) the particulars of the breach (not later than 1 working day from it forming a view that a breach has occurred);
- (b) the steps MMC intend to take to rectify the breach (not later than 5 working days from the date of the written notice referred to in subparagraph 3.3(a));

3.4. If, either as a result of receiving a written notice from MMC pursuant to paragraph 3.3, or otherwise ASIC forms the view that MMC has breached this enforceable

undertaking in a material way, then ASIC will provide a notice to MMC (pursuant to this paragraph) which specifies the steps that ASIC requires MMC to take (within 30 days of the date of the notice) in order for MMC to comply with its obligations under this enforceable undertaking.

- 3.5. If MMC is provided with a written notice pursuant to paragraph 3.4 and MMC fails to comply with such notice, then in addition to any other right or remedy ASIC may have available to it, arising from a breach of this enforceable undertaking, ASIC may seek to refer any breach to a delegate of ASIC for consideration of whether it would be reasonable to impose further conditions on, or otherwise vary, the AFSL in accordance with section 914A of the Act. Such conditions will reflect the terms of this undertaking which have (in the reasonable opinion of the delegate of ASIC) been breached ("**Conditions**").
- 3.6. If a breach of this enforceable undertaking is referred to a delegate of ASIC pursuant to clause 3.5, of this enforceable undertaking, MMC agrees that in exercising its rights pursuant to section 914A(3) of the Act it will not oppose the imposition of any Condition(s) and will only:
- (a) appear to be represented at any hearing; and
 - (b) make submissions;

in relation to the nature and form (including as to timing) or the Condition(s).

- 3.7. Any report or notification to be provided to ASIC in accordance with this enforceable undertaking is to be delivered to:

Director Financial Services Regulation – Regulatory Compliance
Australian Securities and Investments Commission
Level 13
485 La Trobe Street
Melbourne, VIC 3000

- 3.8. Any report or notification to be provided to MMC by ASIC in accordance with this enforceable undertaking is to be delivered to:

Company Secretary
MMC Asset Management Limited
Level 8
34 Hunter Street,
Sydney, NSW 2000

4. ACKNOWLEDGEMENTS

- 4.1 MMC acknowledges ASIC's concerns set out in this enforceable undertaking.

- 4.2 MMC 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;
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- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

4.3 MMC 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, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary penalty order in relation to any or all of the conduct described in this enforceable undertaking, or any contravention arising from future conduct; and
- (c) this enforceable undertaking has no operative force until accepted by ASIC.

EXECUTED for and on behalf of)
MMC ASSET MANAGEMENT LTD)
Pursuant to Section 127(1) of the)
Corporations Act by:)



Ray Kellerman
Director



Kevin Eley
Director

ACCEPTED by the Australian Securities)
and Investments Commission pursuant)
to Section 93AA of the ASIC Act by its)
duly authorised delegate:)



MARK STEWART
Deputy Executive Director, Enforcement

Dated this 28 day of ~~November~~ 2004

December Mr.

Attachment A

MMC ASSET MANAGEMENT LTD
ABN 37 071 807 684
ACN 071 807 684



Level 1, 450 Pulteney Street, Adelaide SA 5000
Telephone: (08) 8223 2066
Facsimile: (08) 8223 4899

Dear Sir/Madam,

Ausbulk Ltd Shares – opportunity to sell

MMC Asset Management Ltd ("MMC") is an Adelaide based funds manager who is looking to purchase a number of Ausbulk Limited shares ("Ausbulk shares").

On the terms set out in this letter, MMC's funds are prepared to purchase all or some of your Ausbulk shares at a price of **\$2.30 per share**. The average weighted price in January 2004 was \$2.25. Ausbulk paid a 2.25c fully franked dividend on 30th January, which means we are prepared to purchase your Ausbulk shares at a **7.25c premium** to the January weighted average price net of the dividend.

Independent Advice

MMC is not recommending that you sell your shares at **\$2.30 per share** or that you should sell them at all. If you do decide to sell your shares, you should also be aware that there may be taxation consequences for you so you should first obtain independent advice.

How to sell your Ausbulk shares to MMC

If you wish to sell your Ausbulk shares to MMC please:

- 1) Enter the number of shares in words and figures, the name of the seller, and the consideration for that amount of shares (number of shares multiplied by the price of \$2.30 per share) on the enclosed "**Standard Transfer Form**";
- 2) Sign the enclosed **Standard Transfer Form**;
- 3) **Return** the signed **Standard Transfer Form** and your **original Ausbulk Share Certificate(s)** to MMC at the above address; and
- 4) If you have lost your original Ausbulk Share Certificate(s), please notify us when you return the signed Standard Transfer Form to us.

Please note that the transfer will be to Permanent Trustee Australia Limited, who is the custodian for our funds.

We will post payment to you by cheque within 7 days after the transfer is processed.

In returning the signed Standard Transfer Form to us, you warrant that you hold the unencumbered legal title to those Ausbulk shares and that no other party has any interest in or entitlement to those shares. If any other party does have an interest in or entitlement to those shares, you must ensure that they also sign the Standard Transfer Form you return to us.

MMC wishes only to buy a certain number of Ausbulk shares and may not be able to complete the purchase of your Ausbulk shares. In such event, we will promptly return your Ausbulk Share Certificate(s) to you.

If you are unsure of the contents of this letter or have any questions please don't hesitate to call MMC on (08) 8223 2066, ask to speak to Sam Le Cornu.

Yours sincerely,

A handwritten signature in black ink that reads "Erik Metanowski". The signature is written in a cursive style with a large initial 'E'.

Erik Metanowski
MMC Asset Management
Joint Chief Investment Officer

Attachment B

[TO BE TYPED ON MMC ASSET MANAGEMENT LETTERHEAD]

[DATE]

[ADDRESS DETAILS]

Dear Sir/Madam

Offer to buy shares in Ausbulk Ltd

In or about February 2004 we sent to you a document entitled "Ausbulk Ltd Shares – opportunity to sell" in which we stated that we would prepared to purchase all or some of your shares at a price of \$2.30 per share ("the Document").

As a result of concerns raised by the Australian Securities and Investments Commission ("ASIC") relating to the compliance of the Document with Division 5A of the Corporations Act, we hereby withdraw the Document and any offer or invitation to purchase your shares in Ausbulk Ltd contained therein.

We have not previously and will not take any steps to acquire shares in Ausbulk Ltd as a result of responses received to the Document.

We have provided an enforceable undertaking to ASIC to further address its concerns relating to the Document. The enforceable undertaking is available for inspection at the following internet address:

http://www.asic.gov.au/asic/asic_polprac.nsf/byheadline/Enforceable+Undertakings+Register?opendocument

Yours faithfully

Erik Metanomski
Director
MMC Asset Management Limited
