

## Enforceable Undertaking

### Australian Securities & Investments Commission Act 2001

#### Section 93AA

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

**George Paul Andreola**  
Level 11  
485 La Trobe Street  
Melbourne Victoria 3000

#### 1 BACKGROUND

- 1.1 George Paul Andreola ('Andreola') is registered as a company auditor pursuant to s1280 of the *Corporations Act 2001* ('the Act'). He was first registered as an auditor 1 January 1991 and was allocated registration number 53838.
- 1.2 Andreola is a partner of the Victorian partnership of PKF ('PKF Victoria'), a firm of chartered accountants and business advisers. Andreola is a member of The Institute of Chartered Accountants in Australia ('ICAA') and he uses the designation 'Chartered Accountant'. As a registered auditor, Andreola must comply with statements issued by the ICAA. These are referred to as Miscellaneous Professional Statements ('APS') and Australian Auditing Standards ('AUS') issued by the Australian Accounting Research Foundation. Further, Andreola must ensure that financial statements audited by him comply with the Australian Accounting Standards ('AASB') issued by the Australian Accounting Standards Board.
- 1.3 Under Part 9.2 of the Act, ASIC is responsible for the registration of company auditors and the monitoring and enforcement of compliance with the provisions of the Act by auditors. ASIC may, among other things, make application pursuant to s1292 of the Act to the Companies Auditors and Liquidators Disciplinary Board ('the CALDB') for the suspension or cancellation of an auditors registration. ASIC may also impose conditions on the registration of auditors pursuant to s1298A of the Act, including conditions relating to the minimum amount and nature of continuing education to be undertaken by the registered auditor and review of audit work of a registered auditor.
- 1.4 On 12 February 2004, ASIC commenced a surveillance in relation to the twelve-month audit of Poltech International Limited ACN 081 244 395 ('Poltech') for the year ended 30 June 2002 ('the 2002 Poltech audit').
- 1.5 On 8 April 2004, ASIC commenced a surveillance in relation to the twelve-month audit of Poltech for the year ended 30 June 2003 ('the Poltech 2003 audit').
- 1.6 Andreola was the auditor responsible for the 2002 Poltech audit and the 2003 Poltech audit.

- 1.7 On 29 November 2004, ASIC commenced an investigation pursuant to section 13 of the *Australian Securities and Investments Commission Act 2001* ('the ASIC Act') in relation to concerns it had with the 2002 Poltech audit and the 2003 Poltech audit.
- 1.8 As a result of its investigation, ASIC considers that Andreola failed to carry out or adequately perform the duties of an auditor in relation to the 2002 Poltech audit and the 2003 Poltech audit and that would be appropriate to refer those matters to the CALDB pursuant to s1292 of the Act.

## **2 ASIC'S CONCERNS**

### **The 2002 Poltech audit**

- 2.1 In relation to the 2002 Poltech audit, ASIC contends that Andreola:
- a. failed to reach appropriate audit conclusions.
  - b. systemically failed to properly audit the following detected risk aspects of the financial statements:
    - i. accounts receivable (current and deferred).
    - ii. intangibles.
    - iii. inventory and work in progress.
    - iv. revenue recognition.
  - c. failed to implement appropriate quality control procedures and policies in conducting this audit.
  - d. relied upon management representations that Poltech was going to receive the sum of \$4,536,477.00 in compensation for breach of contract ('the Hawaii Settlement') without obtaining sufficient appropriate audit evidence to confirm the valuation and existence of the compensation as required by AUS.
  - e. failed to consider or comment upon the incorrect amortisation of intellectual property that resulted in an overstatement of Poltech's financial performance by \$883,130 in his audit report.
  - f. failed to assess the value of work completed at balance date that was included as accrued revenue in Poltech's financial statements as required by AUS.
  - g. failed to adequately document the basis for conclusions he reached on significant issues in this audit.

### **The 2003 Poltech audit**

- 2.2 In relation to the 2003 Poltech audit, ASIC contends that Andreola:

- a. systemically failed to properly audit the following detected risk aspects of the financial statements:
    - i. accounts receivable.
    - ii. liabilities.
  - b. failed to comment upon the financial statements of Poltech containing the following material misstatements:
    - i. a current account receivable for \$4,130,406 in relation to the Hawaiian settlement whilst that litigation was still on foot.
    - ii. the use of an incorrect exchange rate for \$US to \$A at balance date.
    - iii. understating the amount owed to Poltech's US bankers.
    - iv. understating the amount Poltech owed on a loan.
  - c. failed to obtain a signed management representation letter.
  - d. failed to reach appropriate audit conclusions about audit materiality.
  - e. failed to implement appropriate quality control procedures and policies in conducting this audit.
  - f. failed to adequately document the basis for conclusions he reached on significant issues in this audit.
- 2.3 While Andreola does not agree with ASIC's concerns as set out in paragraphs 2.1 and 2.2 above, he acknowledges those concerns and has offered, and ASIC has agreed to accept, an enforceable undertaking in the terms of paragraphs 4.1 to 4.6 below.

### **3 ASIC's POWERS**

- 3.1 As a result of the matters identified during the Investigation, ASIC has formed the view that Andreola may have failed to perform his duties as an auditor adequately or properly.
- 3.2 Andreola has offered, and ASIC has agreed to accept, an Enforceable Undertaking in the terms set out below as an alternative to making an application to the CALDB for an order suspending his registration.

### **4 UNDERTAKINGS**

- 4.1 Pursuant to section 93AA of the ASIC Act, Andreola has offered and ASIC has agreed to accept the following undertakings.

### **Undertaking as to current audits**

- 4.2 Andreola undertakes that, in respect of any audits conducted by him from the date of signing this Enforceable Undertaking until and including 30 September 2005, to have another registered auditor (other than Michael John Phillips) review those audits and provide to ASIC a statement whether, in that person's opinion, those audits have been properly conducted in accordance with established Australian audit practices and procedures and in accordance with PKF's International Professional Standards manual effective as at the date of any audit.

### **Undertaking to refrain from signing off on audits**

- 4.3 Andreola undertakes not to sign off on any statutory audit engagements or act as a review partner of any statutory audit engagements for a period of twelve calendar months from 1 October 2005 ('the period of suspension').

### **Undertaking to take part in continuing education**

- 4.4 Andreola undertakes to participate in an additional ten hours continuing professional education ('CPE') on audit related matters during the period of suspension in addition to the mandatory CPE requirements imposed upon him as a consequence of him being a member of the ICAA.

### **Undertaking to submit to additional compliance checks**

- 4.5 Andreola agrees that, commencing on 1 October 2006, in respect of the next six public company audit engagements for which he is responsible, that these engagements will be the subject of a review by the Director of Professional Standards of PKF Australia Limited (from time to time) who is to provide to ASIC a statement whether, in that person's opinion, the six audits in question have been properly conducted in accordance with established Australian audit practices and procedures and in accordance with PKF's International Professional Standards manual effective as at the date of any audit.

### **Undertaking to notify ASIC of non-compliance**

- 4.6 Andreola undertakes that, on becoming aware of non-compliance with any of the undertakings set out in paragraphs 4.1 to 4.5 inclusive above, and without derogating from any other rights and remedies available to ASIC, he or Director of Professional Standards of PKF Australia Limited (from time to time) will notify ASIC in writing within 3 business days of such non-compliance occurring.

## **5 GENERAL ACKNOWLEDGMENTS**

- 5.1 Any written notification to ASIC pursuant to this enforceable undertaking is to be provided to the Team Leader ASIC Audit Surveillance Team
- 5.2 Andreola acknowledges that ASIC:

- a. may issue a media release/media releases on execution of this Enforceable Undertaking referring to its terms and the concerns of ASIC which led to its execution; and
  - b. may from time to time publicly refer to this undertaking; and
  - c. will make this Enforceable Undertaking available for public inspection.
- 5.3 Andreola acknowledges that this Enforceable 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 Enforceable Undertaking.
- 5.4 Andreola acknowledges that ASIC's acceptance of this 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.
- 5.5 ASIC acknowledges that nothing in this enforceable undertaking constitutes an admission by Andreola.
- 5.6 Andreola acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.

**GEORGE PAUL ANDREOLA**

  
.....  
Victorian Partner PKF

(Registered Auditor (No. 53838))

**GEORGE PAUL ANDREOLA**  
.....

Name (Please print)

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

Dated this 16<sup>th</sup> day of September 2005

  
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