



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:

Michael John Phillips

Level 11
485 La Trobe Street
Melbourne Victoria 3000

1 BACKGROUND

- 1.1 Michael John Phillips ('Phillips') is registered as a company auditor pursuant to s1280 of the *Corporations Act 2001* ('the Act'). He was first registered as an auditor on 1 January 1991 and was allocated registration number 7453.
- 1.2 Phillips is a partner of the Victorian partnership of PKF ('PKF Victoria'), a firm of chartered accountants and business advisers. Phillips is a member of The Institute of Chartered Accountants in Australia ('ICAA') and he uses the designation 'Chartered Accountant'. As a registered auditor, Phillips must comply with statements issued by the ICAA as to audit engagements. These are referred to as Miscellaneous Professional Statements ('APS') and Australian Auditing Standards ('AUS') issued by the Australian Accounting Research Foundation. Further, Phillips 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 2001, 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, amongst 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 10 December 2003, ASIC commenced a surveillance in relation to:
 - a. the twelve-month audit of Astro Mining N.L. ACN 007 090 904 ('Astro Mining') for the year ended 30 June 2002 ('the Astro Mining audit').

- b. the twelve-month audit of Plenty River Corporation Limited ACN 009 607 676' ('Plenty River') for the year ended 30 June 2003 ('the Plenty River audit').
- 1.5 Phillips was the auditor responsible for the Astro Mining audit and the Plenty River audit.
 - 1.6 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 Astro Mining audit and the Plenty River audit.
 - 1.7 As a result of the Investigation, ASIC considers that Phillips failed to carry out or adequately perform the duties of an auditor in relation to the Astro Mining audit and the Plenty River audit and that it is appropriate to refer to those matters to the Company Auditors and Liquidators Disciplinary Board pursuant to section 1292 (1) of the Act.

2 ASIC's CONCERNS

The Astro Mining Audit

- 2.1 The principal activity of Astro Mining is diamond mining and exploration.
- 2.2 On 30 September 2002, Phillips issued an unqualified audit opinion in relation to the Astro Mining audit.
- 2.3 ASIC contends that Phillips failed to comply with AUS in that he:
 - a. failed to adequately audit the carrying value of exploration expenditure for the Bow River Diamond Mine ("BRDM").
 - b. failed to verify the carrying value of the BRDM by independent inquiry.
 - c. failed to include an emphasis of matter section in this Audit report and therefore failed to exercise an attitude of professional scepticism regarding the inherent uncertainty of the carrying value of the BRDM.
 - d. failed to investigate the circumstances in which management representations were in conflict with other audit evidence in relation to BRDM.
 - e. failed to prepare working papers that are sufficiently complete and detailed to provide an understanding of the audit.
 - f. ought to have commented upon the carrying value of BRDM in his audit opinion.
- 2.4 ASIC also contends that Phillips failed to comply with AUS in that he:

- a. failed to disclose the details of a related party loan between Astro Mining and Edensor Nominees Pty Ltd ACN 005 168 516.
- b. failed to obtain sufficient and appropriate audit evidence in examining the disclosure components of the related party loan.

2.5 ASIC also contends that Phillips failed to comply with AUS in that he:

- a. failed to adequately audit the terms of a restructure agreement ('the Astro loan') between Astro Mining and Normandy Mining Holdings Pty Ltd ('Normandy').
- b. failed to obtain sufficient appropriate audit evidence in relation to the forgiveness of debts owed by Astro Mining to Normandy in the sum of \$3,822,363.00.
- c. failed to obtain copies of documents evidencing Normandy's cancellation of the Astro loan (and interest thereon) amounting to \$2,601,913.08 and a reduction of \$1,220,499.52 in the amount owing on convertible notes that Normandy transferred to Astro Mining.

2.6 ASIC also contends that Phillips failed to comply with AUS in that he failed to comply with PKF's audit manual concerning preparation and review of working papers for the audit.

The Plenty River audit

2.7 The principal activity of Plenty River Corporation is the development of a large-scale ammonia and urea plant.

2.8 On 30 September 2002, Phillips issued an unqualified audit opinion in relation to the Plenty River audit.

2.9 ASIC contends that Phillips failed to comply with AUS in that he:

- a. failed to properly audit the amortisation of goodwill relating to a 39% equity investment that Plenty River held in Dampier Nitrogen Pty Ltd ('Dampier').
- b. failed to correctly assess the carrying value of an equity investment in Dampier by two other companies (Agrium Incorporated ('Agrium') and Thiess Holdings Ltd ('Thiess')), resulting in a material overstatement of that value.
- c. failed to regard the equity investment by Agrium and Thiess as notional goodwill in accordance with AASB and amortise that over the maximum period of 20 years, which materially misstated reported earnings for Plenty River, which had been calculated as a loss of \$146,500.00.
- d. failed to comment upon the accounting treatment of these investments in his audit opinion.

2.10 ASIC also contends that Phillips failed to comply with AUS in that he:

- a. failed to prepare working papers that are sufficiently complete and detailed to provide an understanding of the audit.
- b. failed to communicate with management about significant matters arising out of his audit, including the equity investment in Dampier and Plenty River's ability to continue as a going concern.

2.11 While Phillips does not agree with ASIC's concerns as set out in paragraphs 2.1 to 2.10 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 Phillips may have failed to perform his duties as an auditor adequately or properly.

3.2 Phillips 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, Phillips has offered and ASIC has agreed to accept the following undertakings.

Undertakings as to current audits

4.2 Phillips 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 George Paul Andreola) review those audits and provide to ASIC a statement whether, in that person's opinion, that 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 Phillips 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 six calendar months from 1 October 2005 ('the period of suspension').

Undertaking to take part in continuing education

4.4 Phillips 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 Phillips agrees that commencing 1 April 2006 in respect of the next six year end 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 Phillips 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 the 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 Phillips 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 Phillips 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 Phillips 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 Phillips.

5.7 Phillips acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.

MICHAEL JOHN PHILLIPS

Michael Phillips
.....
Victorian Partner PKF

15/9/5

(Registered Auditor (No. 7453))

MICHAEL PHILLIPS
.....

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 *16th* day of *September* 2005

Mark Steen
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