

**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:**

**Coles Myer Ltd**  
**(ACN 004 089 936)**  
**800 Toorak Road,**  
**Tooronga**  
**Vic 3146**

**1. Background**

- 1.1 Coles Myer Ltd ("CML") is a major retailer in Australia.
- 1.2 CML promotes a credit facility provided by GE Capital Finance Australia, ABN 42 008 583 588 (trading as "GE Money"), known as the Coles Myer Source MasterCard ("CMSMC").
- 1.3 "*Coles Myer Source*" is a registered trademark of CML.
- 1.4 The Australian Securities & Investments Commission ("ASIC") is responsible, inter alia, for monitoring and promoting consumer protection in relation to financial services, including the provision of credit facilities, and for enforcing the consumer protection provisions contained in Part 2 of the Australian Securities & Investments Commission Act 2001 ("the ASIC Act").
- 1.5 From on or about 3 June 2005 CML has promoted the CMSMC to consumers in respect of the 8 cents fuel discount offer referred to in clause 1.7 below, in the following media:-
  - a. television;
  - b. radio;
  - c. print;
  - d. an internet website with the domain names - *sourcecard.com.au* & *8cents.com.au*; and
  - e. in store signage and visual displays,

and, from in or about 13 June 2005, CML has promoted the CMSMC to consumers in respect of the 10% discount offer referred to in clause 1.8 below in:

- f. a brochure containing an application form for the CMSMC.

(In this Enforceable Undertaking "the advertising" refers:

1. in relation to the 8 cents fuel discount offer, to the promotional material described in clause 1.5 a. to 1.5 e. above;
2. in relation to the 10% discount offer, to the promotional material described in clause 1.5 f. above).

1.6 The advertising has promoted 2 offers as follows:

1.7 Firstly an offer referred to as the "8 cents fuel discount offer", available as from 13 June 2005, to applicants for the CMSMC whereby holders of the CMSMC can receive a discount on petrol purchases, from participating fuel outlets, in the order of 8 cents per litre of petrol/diesel/LPG purchased ("the fuel saving benefit"). Some of the advertising contains qualifications to the effect that the 8 cent per litre discount is

- a. contingent upon the cardholder making purchases from participating Coles Myer Stores of thirty dollars (\$30) or more and obtaining a receipt for such purchases ("shopper docket"); and
- b. limited to a three month introductory period and thereafter the contingent discount will be reduced to 6 cents per litre provided the cardholder uses the CMSMC to make credit purchases at participating stores of \$30 or more and also obtains the necessary shopper dockets to claim the fuel saving benefit.

1.8 Secondly an offer referred to as the "10% discount offer" to save 10% at Myer or Megamart stores to applicants for the CMSMC whereby holders of the CMSMC can receive a discount of 10% through a voucher issued with the card which can be used on a single purchase at Myer or Megamart after approval for a CMSMC and producing a voucher. The 10% discount offer also entitles the card holder to a regular 6 cents per litre fuel saving benefit. The advertising refers to in store signage at Myer or Megamart for exclusions and conditions of the 10% discount offer. The in store signage which is distributed in different locations at Myer or Megamart states the exclusions and conditions of the 10% discount offer.

1.9 ASIC is concerned that the advertising for the 8 cents fuel discount offer may have misled consumers in that the advertising does not sufficiently identify that:

- (a) the maximum on-going fuel saving benefit attributable to the use of the card is 2 cents per litre by use of a 2 cent voucher;
- (b) to obtain that fuel saving benefit customers are required to spend thirty dollars (\$30) or more at a participating CML store and obtain a shopper docket for each fill;
- (c) customers are additionally required to spend thirty dollars (\$30) or more on their CMSMC to qualify to receive a 2 cent voucher;
- (d) the 2 cent voucher has a time limit attached to it;
- (e) the 8 cent per litre advertised is only introductory and contingent upon the requirements set out in 1.9(b);
- (f) use of the CMSMC to purchase fuel does not entitle the cardholder to an 8 cent per litre fuel discount, or any discount at all.

1.10 ASIC is concerned that the advertising with respect to the 10 % discount offer may have additionally misled consumers in that the advertising does not sufficiently identify

- (a) the 10 % discount offer is limited to one transaction only;
- (b) the features described in paragraph 1.9 (a) – (d) inclusive apply to the offer of a six cents per litre discount described in the advertising; and
- (c) all the conditions and exclusions in a readily accessible and prominent form.

1.11 ASIC is also concerned that some of the advertising represents that an interest rate of 18.5% is competitive without identifying a basis for comparison.

1.12 ASIC has formed the view that the qualifications contained in both types of advertising are not sufficiently prominent, nor sufficiently clear, to ensure consumers are aware of the features and qualifications stated in paragraphs 1.9 and 1.10.

- 1.13 ASIC is particularly concerned as the both the 8 cents fuel discount and the 10% discount benefits are directly linked with the use of a credit facility that will, in some instances, attract an interest liability for the holder of the CMSMC.
- 1.14 On 23 September 2005, ASIC informed CML that, in its view, the advertising relating to the fuel saving benefit was likely to mislead or deceive consumers, by virtue of the matters detailed in paragraphs 1.9, and, accordingly, was in contravention of the ASIC Act sections 12DA and 12DB.
- 1.15 CML does not accept that the advertising is misleading. However, immediately upon receipt of the information referred to in paragraph 1.14, CML sought to address each of ASIC's concerns and offered to amend or withdraw the advertising.
- 1.16 ASIC acknowledges that CML has at all times co-operated with ASIC and has acted promptly to address the concerns stated above.
- 1.17 By letter dated 30 September 2005 CML gave certain written commitments to ASIC aimed at dealing directly with ASIC's concerns as at that time communicated to CML. These written commitments included an undertaking in the terms of paragraphs 2.1 to 2.4 (as they related to the 8 cent fuel saving advertising).
- 1.18 In view of the above, and to resolve this matter, CML has agreed to offer this Enforceable Undertaking to ASIC. ASIC has agreed to accept this Enforceable Undertaking as an alternative to seeking injunctive and/or declaratory relief.

## 2. Undertakings

Pursuant to s.93AA of the ASIC Act, CML offers the following undertakings to ASIC:

Note: In this Undertaking –

The expressions "adequately identifies", "makes clear", and "adequate prominence" shall for the purposes of this Enforceable Undertaking be interpreted not merely by having regard to the precision and adequacy of the language used in the subject

advertising material but also by having regard to the prominence given to any fuel saving or discount benefit described in such material.

### **Immediate Review of All Advertising Material**

- 2.1 CML will immediately review all its advertising and promotional material concerning the CMSMC in respect of the 8 cents fuel discount offer and the 10% discount offer. The review will be completed by 28 October 2005. That review will be aimed at ensuring that (including by the general or overall impression created by the material) all such advertising and promotional material:
- (a) Adequately identifies how any fuel saving benefit is derived from the use of the CMSMC;
  - (b) Makes clear that any such fuel saving benefit is only achieved if a 4 cent per litre shopper docket is also used;
  - (c) Adequately identifies whether the CMSMC must be used to purchase goods on credit to derive a fuel saving benefit;
  - (d) Adequately identifies whether a particular level of fuel saving or store purchase discount offer benefit is available during an introductory period, one only offer or on an on-going basis;
  - (e) Provides adequate prominence to any necessary qualifications attaching to the 8 cents fuel discount offer and the 10% discount offer features of the CMSMC;
  - (f) Adequately identifies that any 10% discount benefit is limited to one transaction;
  - (g) Adequately discloses a basis for comparison if it is represented that an interest rate of 18.5% is competitive in relation to the 8 cents fuel discount offer and the 10% discount offer; and
  - (h) Adequately discloses in a readily accessible and prominent form to applicants for the CMSMC all conditions and exclusions on the 10% discount offer.

### **Cessation and Withdrawal of Existing Advertising Material**

- 2.2 CML will by 5:00 pm Eastern Standard Time ("EST") on 10 October 2005, cease all advertising, that is not consistent with the criteria set out in paragraph

2.1 above, in the following media:-

- (a) television;
- (b) radio;
- (c) newspaper and magazines; and
- (d) internet banner advertising.

#### **Modification of Internet Site**

- 2.3 CML will by noon EST on 12 October 2005 review and modify its internet websites promoting the CMSMC so that any reference to the CMSMC appearing on such sites is consistent with the provisions of paragraph 2.1 above.

#### **Removal of In-Store Promotional Material**

- 2.4 CML will immediately instruct the managers of all relevant retail outlets to remove all promotional material in CML stores (including brochures and visual merchandising material) that is not consistent with the principles identified in paragraph 2.1 above. This process will commence on 10 October 2005 and be completed by 5:00 pm EST on 28 October 2005.
- 2.5 CML will inform GE Money, the credit facility provider, that it should ensure that GE Money's advertising and promotional material, promoting the CMSMC, complies with the criteria set out in paragraph 2.1 above. In giving this undertaking, ASIC acknowledges that CML accepts no responsibility for any advertising material independently produced by GE Money.

#### **Corrective Notification**

- 2.6 CML will prepare a notice to be forwarded, in the manner provided for in 2.7 below, to every CMSMC holder who acquired and activated a CMSMC between 13 June 2005 and the date of this Enforceable Undertaking and whose CMSMC remained active on the date of this Enforceable Undertaking, in the form of Annexure A or Annexure B (as applicable), to notify the card-holders of their

right to immediately cancel the CMSMC in the event that they are not satisfied with the benefits provided or feel that they have been misled by the advertising.

- 2.7 The notice shall be sent with each relevant card-holder's CMSMC statement commencing 17 October 2005 for the months of October and November 2005 as applicable.

### 3. Acknowledgments

- 3.1 ASIC acknowledges that nothing in this Enforceable Undertaking constitutes any admission of a contravention of the provisions of the ASIC Act by CML.

- 3.2 CML acknowledges that ASIC:

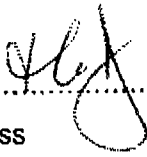
- (a) may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

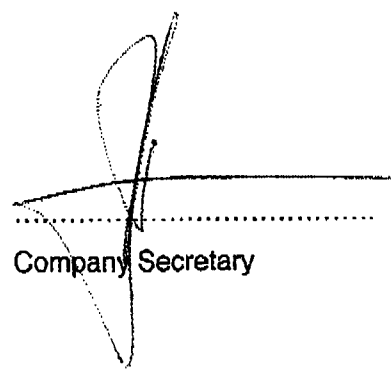
- 3.3 CML further acknowledges that:

- (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 CML, 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.


Executed on behalf of )  
 Coles Myer Ltd )  
 (ACN 004 089 936) )

this 7<sup>th</sup> day of ~~DECEMBER~~ 2005 in the )  
presence of: )

  
.....  
Witness

  
.....  
Company 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, Enforcement

Dated: this 7<sup>th</sup> day of ~~October~~ 2005



**Annexure A – Circular Notice to Cardholders who took up 8c fuel offer**

**IMPORTANT NOTICE TO CARDHOLDERS**

On [date] Coles Myer Ltd. ("Coles Myer") entered into an Enforceable Undertaking with the Australian Securities and Investments Commission ("ASIC"). ASIC is the Commonwealth agency responsible for monitoring and promoting consumer protection in relation to financial services, which includes the provision of credit facilities, including credit cards.

On 23 September 2005 ASIC raised concerns with Coles Myer about certain statements made in advertising material relating to the 8 cents fuel discount offer associated with the Coles Myer Source MasterCard (the "Offer").

ASIC was concerned that the advertising of the Offer's conditions was not sufficiently clear and that this could lead some consumers to believe that the discounts were available for a longer period, or larger in size, than in fact was the case. As a result ASIC believed that the advertising for the Offer was misleading.

Coles Myer does not accept that the advertising was misleading. However, in order to address ASIC's concerns, Coles Myer agreed to provide ASIC with an Enforceable Undertaking dated [insert].

As part of that Enforceable Undertaking, Coles Myer undertook to withdraw the relevant advertising material and send this notice to cardholders who signed up between 13 June 2005 and 30 September 2005.

**Your rights**

If you are unsure how to take advantage of the Offer, please visit our website [sourcecard.com.au/](http://sourcecard.com.au/), or contact us on 1300 552 710 and we will happily explain what you need to do.

If you are dissatisfied with any aspect of the Offer, you are entitled to close your account without penalty, provided the outstanding balance and any interest is paid in full.

Copies of the Enforceable Undertaking can be obtained from the ASIC website at [www.asic.gov.au/](http://www.asic.gov.au/).

**Annexure B – Circular Notice to Cardholders who took up the 10% discount offer**

**IMPORTANT NOTICE TO CARDHOLDERS**

On [date] Coles Myer Ltd. ("Coles Myer") entered into an Enforceable Undertaking with the Australian Securities and Investments Commission ("ASIC"). ASIC is the Commonwealth agency responsible for monitoring and promoting consumer protection in relation to financial services, which includes the provision of credit facilities, including credit cards.

In September 2005 ASIC raised concerns with Coles Myer about certain statements made in advertising material relating to the offer to save 10% off a single purchase at Myer or Megamart stores associated with the Coles Myer Source MasterCard (the "Offer") and receive regular fuel savings benefits.

ASIC was concerned that the advertising of the Offer's conditions was not sufficiently clear and that this could lead some consumers to believe that the discounts were available for a longer period, or larger in size, than in fact was the case. As a result ASIC believed the advertising for the Offer was misleading.

Coles Myer does not accept that the advertising was misleading. However, in order to address ASIC's concerns, Coles Myer agreed to provide ASIC with an Enforceable Undertaking dated [insert].

As part of that Enforceable Undertaking, Coles Myer undertook to withdraw the relevant advertising material and send this notice to cardholders who signed up between 13 June 2005 and 30 September 2005.

**Your rights**

If you are unsure how to take advantage of the Offer, please visit our website [sourcecard.com.au/](http://sourcecard.com.au/), or contact us on 1300 552 710 and we will happily explain what you need to do.

If you are dissatisfied with any aspect of the Offer, you are entitled to close your account without penalty, provided the outstanding balance and any interest is paid in full.

Copies of the Enforceable Undertaking can be obtained from the ASIC website at [www.asic.gov.au/](http://www.asic.gov.au/).