



## Enforceable Undertaking

### Australian Securities and Investments Commission Act 2001

#### Section 93AA

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

**Gary Bruce Holbrook**

Suite 301, Level 3  
304-318 Kingsway  
Caringbah, New South Wales 2229

#### 1 BACKGROUND

- 1.1 Gary Bruce Holbrook ('Mr Holbrook') is registered as a company auditor pursuant to section 1280 of the *Corporations Act 2001* ('the Act'). He was first registered as an auditor on 29 September 1998 and was allocated registration number 181978.
- 1.2 Mr Holbrook is a partner of the New South Wales partnership of PKF (ABN 83 236 985 726), a firm of chartered accountants and business advisers. Mr Holbrook is a member of the Institute of Chartered Accountants in Australia ('ICAA') and he uses the designation 'Chartered Accountant'.
- 1.3 As a registered auditor, Mr Holbrook should comply with statements as to audit engagements issued on behalf of the ICAA. These include Australian Auditing Standards ('AUSs') issued by the Australian Accounting Research Foundation.
- 1.4 In December 2004, ASIC commenced a review of:
  - a. the compliance plan audits of the Obelisk Mortgage Trust ARS 090 724 708 for the financial years ended 30 June 2003 and 30 June 2004.
  - b. the compliance plan audits of the Obelisk Pooled Mortgage Trust ARS 101 985 399 for the financial years ended 30 June 2003 and 30 June 2004.
  - c. the compliance plan audit of the Eclipse Prudent Mortgage Fund ARS 090 994 326 ('EPMF') for the financial year ended 30 June 2004.
- 1.5 Mr Holbrook was the auditor responsible for the compliance plan audits of the Obelisk Mortgage Trust, the Obelisk Pooled Mortgage Trust and EPMF.

#### 2 ASIC's CONCERNS

- 2.1 As a result of the review, ASIC considers that Mr Holbrook may have failed to carry out or perform adequately and properly the duties of an auditor in relation to the compliance plan audits for the Obelisk Mortgage Trust, the Obelisk Pooled Mortgage Trust and EPMF.

**The Obelisk Mortgage Trust audits for 2003 and 2004**

- 2.2 On 29 September 2003, Mr Holbrook gave an unqualified audit report in relation to the Obelisk Mortgage Trust compliance plan audit for the financial year ended 30 June 2003.
- 2.3 On 29 September 2004, Mr Holbrook gave an unqualified audit report in relation to the Obelisk Mortgage Trust compliance plan audit for the financial year ended 30 June 2004.
- 2.4 ASIC contends that Mr Holbrook failed to comply with AUSs in his conduct of the Obelisk Mortgage Trust compliance plan audits in that he:
- a. failed to provide evidence in the audit working papers for the year ended 30 June 2004 of the adequacy of compliance plan procedures in relation to internal accounting controls and segregation of duties with regards to the Obelisk Mortgage Trust's accounting and distribution functions (AUS 502.02, AUS 208.02, AUS 208.06).
  - b. failed to document or to record in the audit working papers for the financial year ended 30 June 2004 all audit procedures performed for the resolution of an audit query relating to the financial conditions of the responsible entity's Australian Financial Services Licence (AUS 208.02, AUS 208.06).
  - c. failed to document or to record in the audit work papers for the financial year ended 30 June 2003 his consideration of compliance with, and the adequacy of the compliance plan dated 28 September 2001 which was in operation until 22 September 2002 (AUS 208.02, AUS 208.06).
  - d. failed to provide evidence in the audit work papers for the financial year ended 30 June 2003 that he considered the adequacy of compliance plan procedures in light of the interim stop order placed by ASIC on the Product Disclosure Statement on 28 March 2003 (AUS 502.02, AUS 208.02, AUS 208.6).
  - e. failed to provide evidence in the audit work papers for the financial years ended 30 June 2003 and 30 June 2004 of audit procedures for comprehensive consideration of compliance with the licence conditions or whether the compliance plan covered the licence conditions (AUS 502.02, AUS 208.02, AUS 208.06 ).

**The Obelisk Pooled Mortgage Trust audits for 2003 and 2004**

- 2.5 The Obelisk Pooled Mortgage Trust was registered as a managed investment scheme on 23 September 2002 but did not commence operation in the financial years ended 30 June 2003 and 30 June 2004.
- 2.6 On 29 September 2004, Mr Holbrook gave an unqualified compliance plan audit report in relation to the Obelisk Pooled Mortgage Trust audit for the financial year ended 30 June 2004.

- 2.7 On 11 April 2005, Mr Holbrook gave an unqualified compliance plan audit report in relation to the Obelisk Pooled Mortgage Trust audit for the financial year ended 30 June 2003.
- 2.8 ASIC contends that Mr Holbrook did not complete an audit of the compliance plan of the Obelisk Pooled Mortgage Trust for the financial year ended 30 June 2003 within 3 months of that date, namely by 30 September 2003, as required by section 601HG(3) of the Act.
- 2.9 ASIC contends that Mr Holbrook failed to comply with AUSs in that the audit working papers for the Obelisk Pooled Mortgage Trust 2003 and 2004 audits indicate that audit procedures were not documented to support the unqualified audit reports for those periods (AUS 208.02, AUS 208.06).

#### **Eclipse Prudent Mortgage Fund audit for 2004**

- 2.10 On 23 September 2004, Mr Holbrook gave an unqualified audit report in relation to the EPMF compliance plan audit for the financial year ended 30 June 2004.
- 2.11 ASIC contends that Mr Holbrook failed to comply with AUSs in relation to the EPMF audit in that he did not qualify the audit report for the financial year ended 30 June 2004 to record a breach in compliance plan procedures arising from a failure to ensure that the EPMF held certificates of current insurance for a number of properties that were security for mortgage loans (AUS 502.02, AUS 208.02).
- 2.12 While Mr Holbrook does not agree with all ASIC's concerns he acknowledges those concerns and has offered and ASIC has agreed to accept an enforceable undertaking in the terms of paragraphs 4.1 to 4.5 below.

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

- 3.1 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, amongst other things, apply to the Companies Auditors and Liquidators Disciplinary Board ('the CALDB') pursuant to section 1292 of the Act, for the suspension or cancellation of an auditor's registration. ASIC may also impose conditions on the registration of auditors pursuant to section 1289A 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 (Regulation 9.2.08 Corporations Regulations 2001).
- 3.2 Mr Holbrook has offered, and ASIC has agreed to accept, this Enforceable Undertaking as an alternative to ASIC exercising its powers or commencing proceedings against Mr Holbrook.

#### **4. UNDERTAKINGS**

- 4.1 Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001*, Mr Holbrook has offered, and ASIC has agreed to accept, the following undertakings.

**Undertaking to take part in continuing education**

- 4.2 Mr Holbrook undertakes to participate in an additional ten (10) hours Continuing Professional Education ('CPE') on audit related matters within 12 months of signing this enforceable undertaking 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**

- 4.3 Mr Holbrook undertakes that, commencing the signing of this Enforceable Undertaking, the next six audits of compliance plans for which he is responsible will be the subject of a review by the National Technical Director of PKF (from time to time) who is to certify to ASIC that those audits have been properly conducted in accordance with established Australian audit practices and procedures.

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

- 4.4 Mr Holbrook undertakes that, in the event of non-compliance with any of the undertakings set out in paragraphs 4.2 and 4.3 above, and without derogating from any other rights and remedies available to ASIC, he or the National Technical Director of PKF will notify ASIC in writing within 3 business days of such non-compliance occurring.
- 4.5 Any written notification to ASIC pursuant to this Enforceable Undertaking is to be provided to the Team Leader ASIC Audit Surveillance Team.

**5. GENERAL ACKNOWLEDGMENTS**

- 5.1 Mr Holbrook acknowledges ASIC's concerns and views stated in this Enforceable Undertaking.
- 5.2 Mr Holbrook acknowledges that ASIC:
- a may issue media release(s) 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 Mr Holbrook 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 Mr Holbrook acknowledges that ASIC's acceptance of an Enforceable Undertaking does not affect its powers to investigate, conduct a surveillance, to pursue a criminal prosecution or to lay charges or to seek a pecuniary penalty order.

5.5 Mr Holbrook acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.


**GARY BRUCE HOLBROOK**

 12/10/2005  
New South Wales Partner PKF

(Registered Auditor (No. 181978))

GARY BRUCE HOLBROOK

Name (Please print)

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**Witness**

MELONIE LITTLE

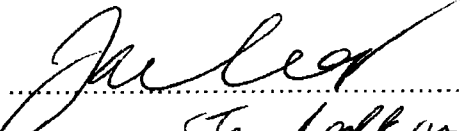
**Name (Print)**

301/304-318 KINGSWAY  
CARLINGBATH NSW 2229

**Address**

Accepted by the Australian Securities and Investments Commission pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* by its duly authorised delegate.

Dated this 12<sup>th</sup> day of October 2005

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Ms Julie Read *Julie Read*  
Director, Enforcement  
Australian Securities and Investments Commission