



# ENFORCEABLE UNDERTAKING

## *Australian Securities & Investments Commission Act 2001*

### Section 93AA

The commitments in this enforceable undertaking are offered to the Australian Securities & Investments Commission ("ASIC") by:-

Russell Colin Brown  
C/- Pitcher Partners  
Level 21  
300 Queen Street  
BRISBANE QLD 4000

#### 1. Definitions

In addition to terms defined elsewhere, the following terms are also used:

**Corporations Act** means the *Corporation Act 2001* (Cth)

**ASIC Act** means the *Australian Securities & Investments Commission Act 2001* (Cth)

#### 2. Background

2.1 ASIC is, pursuant to section 1 of the *Australian Securities & Investments Commission Act 2001* ("ASIC Act"), charged with a statutory responsibility to perform its function and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

##### 2.2 Details of conduct

2.2.1 Russell Colin Brown ("Mr Brown") is a registered company auditor pursuant to section 1280 of the *Corporations Act 2001* ("the Act"). Mr Brown first obtained his registration as an auditor on 22 February 1990 and holds audit registration number 7069.

2.2.2 Mr Brown is a partner of the Brisbane partnership of Pitcher Partners, a firm of chartered accountants and business advisors and consultants of Level 21, HSBC Building, 300 Queen Street, Brisbane. Mr Brown is also a member of the Institute of Chartered Accountants in Australia ("ICAA") and is a chartered accountant. In his role as a registered company auditor, Mr Brown is required to comply with the Australian Auditing Standards ("AUS") that are formulated by the Australian Accounting Research Foundation. Mr Brown is also required to ensure that financial statements audited by him comply with the Australian Accounting Standards ("AAS") issued by the Australian Accounting Standards Board.

2.2.3 Pitcher Partners were the statutory auditors for Sam's Seafood Holdings Limited ACN 098 448 269 ("Holdings"), a company whose main business was the retail sale and wholesale supply of seafood. Holdings was listed on the Australian Stock Exchange on 21 December 2001.

2.2.4 Holdings and its 9 wholly owned subsidiary companies constituted the "Sam's Seafood Group." Each of these companies was listed in the group's 2004 annual report and was part of the "consolidated entity." The names of the subsidiary companies were as follows:-

- (a) Sam's Seafood Hamilton Limited ACN 098 448 321 ("Hamilton");
- (b) Sam's Seafood Redcliffe Limited ACN 098 448 349 ("Redcliffe");
- (c) Sam's Seafood Properties Limited ACN 098 448 296 ("Properties");
- (d) Sam's Seafood Lifestyles Pty Ltd ACN 098 448 616 ("Lifestyles");
- (e) Sam's Seafood Sunshine Coast Pty Ltd ACN 100 596 978 ("Sunshine");
- (f) Sam's Seafood Capricorn Coast Pty Ltd ACN 101 564 381 ("Capricorn");
- (g) Sam's Australia Pty Ltd ACN 067 461 143 ("Sam's Australia");
- (h) Sam's Seafood Investment Pty Ltd ACN 105 531 388 ("Sam's Investment"); and
- (i) Sam's Seafood USA Inc ("Sam's USA").

2.2.5 Hamilton was the main trading entity of the group.

2.2.6 In their role as statutory auditors for Holdings, Pitcher Partners prepared and issued an unqualified statutory audit report on Holdings' financial statements and those of the consolidated entity for the financial year ended 30 June 2004. This document was dated 30 September 2004 and was signed by Mr Brown. A copy of this report was included in the 2004 annual report for Holdings and the consolidated entity. Pitcher Partners also issued an unqualified half year statutory review report on the financial statements of the consolidated entity for the half year ended 31 December 2004. This document was dated 28 February 2005 and was also signed by Mr Brown.

2.2.7 Receivers and managers were appointed to manage assets of Holdings on 6 May 2005. On 20 May 2005 Holdings went into external administration and it remains under administration at present.

2.2.8 All the subsidiary companies (except Sam's Australia and Sam's USA) are currently in external administration.

2.2.9 On 20 May 2005 and 26 August 2005 Pitcher Partners received notices from ASIC requiring the production of certain documents that were thought to be relevant to the audit of Holdings for the financial year ended 30 June 2004. Pitcher Partners produced those documents in accordance with the notices.

### 2.3 ASIC's concerns

2.3.1 As a result of its consideration of the documents referred to in paragraph 2.2.9, ASIC is concerned that Mr Brown may have failed to carry out or perform adequately and properly the duties of an auditor, and the duties or functions required of a registered company auditor by the Act, in relation to the audit of Holdings and its subsidiary companies for the financial year ended 30 June 2004 and in relation to the half year review of the consolidated entity as at 31 December 2004.

2.3.2 ASIC contends that, as auditor of Holdings and its subsidiaries companies, Mr Brown failed to conduct the audit of Holdings and its subsidiary companies for the financial year ended 30 June 2004 and/or for the half year review as at 31 December 2004 in compliance with the AUS and, in performing his duties as auditor for Holdings and its subsidiary companies for the financial year ended 30 June 2004 and/or for the half year review as at

31 December 2004, he failed to act adequately and properly in his general conduct and methodology of the audit and review. A number of matters concerning the audit and review were not, in ASIC's opinion, undertaken adequately and a number of opinions were apparently formed without adequate investigations or evidence by Mr Brown. ASIC's contentions are (in summary) that:-

- (a) there was insufficient evidence on the audit file evidencing that Mr Brown had documented all appropriate investigations, completed all appropriate assessments and analyses, communicated appropriately with management on significant issues and made all appropriate or necessary inquiries and checks, thus, the audit file of Holdings had insufficient evidence to show that an appropriate review was performed in relation to the quality control procedures for the audit and had insufficient evidence of the audit trail of investigations conducted;
- (b) the audit process for Holdings was deficient as certain items were accepted as immaterial, when they were only immaterial when considered in isolation and compared to the financial statements as a whole; a tolerable error amount should have been set;
- (c) Mr Brown failed to obtain sufficient and appropriate audit evidence regarding the existence and valuation of inventory material of Sam's Hamilton;
- (d) Mr Brown did not consider adequately the appropriateness of the going concern basis of accounting underlying the preparation of the financial reports for Hamilton.

#### **2.4 Acknowledgment of Concerns**

2.4.1 Whilst Mr Brown does not agree with all of ASIC's contentions he acknowledges ASIC's concerns and has offered, and ASIC has agreed to accept, enforceable undertakings in terms of paragraphs 3.1 to 3.2 below.

### **3 Undertakings**

Under section 93AA of the ASIC Act, Mr Brown has offered, and ASIC has agreed to accept an enforceable undertaking in the terms set out below, as an alternative to ASIC making an application to the Companies Auditors and Liquidators Disciplinary Board (the "Board") for an order pursuant to s.1292 of the Act.

#### **3.1. Voluntary undertaking to resign as a registered company auditor**

Mr Brown has voluntarily undertaken to resign as a registered company auditor by 30 November 2006 which ASIC has accepted. Mr Brown also undertakes that he will not apply to have his resignation reinstated other than on terms to be agreed with ASIC.

#### **3.2 Undertaking to pay ASIC's costs**

Mr Brown undertakes to pay \$13,800 towards ASIC's costs of its investigation and of obtaining this undertaking.

### **4. Acknowledgements**

#### **4.1 Mr Brown acknowledges that ASIC:-**

- 4.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- 4.1.2 may from time to time publicly refer to this undertaking; and
- 4.1.3 will make this undertaking available for public inspection.

**4.2 Further, Mr Brown acknowledges that:**

- 4.2.1 ASIC's acceptance of this 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 civil order in relation to any contravention not the subject of the background section of this Enforceable Undertaking or arising from future conduct;
- 4.2.2 this 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 or arising from future conduct.
- 4.2.3 ASIC acknowledges that nothing in this enforceable undertaking constitutes an admission by Mr Brown.
- 4.2.4 Mr Brown acknowledges that this enforceable undertaking has no operative force until accepted by ASIC.

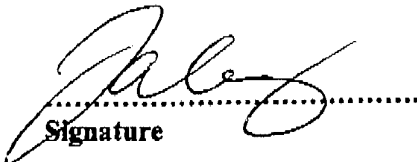


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**RUSSELL COLIN BROWN**  
Registered Auditor No. 7069

**Dated 14 November 2006**

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

Dated 20/11 2006



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Signature

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Name