



ENFORCEABLE UNDERTAKING

Australian Securities & Investment Commission Act 2001

Section 93AA

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

Mr Jonathan Pye
c/- 680 George Street
SYDNEY NSW 2000

1. BACKGROUND

ASIC's role

- 1.1 ASIC is, pursuant to section 1 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 1.2 ASIC is also responsible the registration of company auditors. Registered auditors must satisfy specified educational and practical experience standards, and must comply with Australian Auditing Standards (AUS) and Professional Conduct Standards and ensure that financial statements audited by them comply with the Australian Accounting Standards.
- 1.3 ASIC is empowered to bring disciplinary proceedings in the Companies Auditors and Liquidators Disciplinary Board (Board) against auditors who have failed to properly carry out the duties of an auditor.

Collapse of HIH

- 1.4 In March 2001 HIH Insurance Ltd (**HIH**), one of Australia's largest general insurance companies, was placed into provisional liquidation. In August 2001 HIH, and 17 related companies, were placed in official liquidation. The collapse of HIH had a widespread impact on policy-holders, creditors, employees and shareholders.
- 1.5 In June 2001 the Commonwealth Government announced the establishment of a Royal Commission to investigate and report on the causes of and the circumstances of the collapse of HIH (**HIH Royal Commission**).
- 1.6 In April 2003 the HIH Royal Commission delivered its report: "The Failure of HIH Insurance" ("**The Report**"). The Commissioners recommended that a number of matters be referred to ASIC for further investigation. Relevantly, the HIH Royal Commission found that Andersen's audit work in relation to the HIH 2000 financial report was characterised by a lack of sufficient audit evidence to support its conclusions and findings in respect of the audit of several specific transactions.

Mr Pye's involvement with HIH

- 1.7 Jonathan Pye (**Mr Pye**) is a registered auditor pursuant to section 1280 of the *Corporations Act 2001* (**Corporations Act**). Mr Pye obtained his registration as an auditor on 28 February 2000 and holds audit registration number 196188.
- 1.8 Mr Pye commenced employment with the firm Arthur Andersen (**Andersen**) in December 1987, where he filled the roles of staff accountant, senior accountant and manager, and partner. After Mr Pye's registration as an auditor he became eligible to accept engagements to conduct company audits and sign off on audit reports.
- 1.9 Andersen was the auditor of HIH at time of its collapse. Mr Pye was the support engagement partner for the audit of the HIH financial report for the 2000 financial year. In this role he was responsible for providing assistance to the engagement partner, John Robert Buttle, who had ultimate responsibility for the quality of the audit and the resulting auditor's report, as well as the day-to-day management of the audit

and the Andersen audit group. In this role Mr Pye also signed an unqualified audit report dated 30 November 2000 in respect of the financial statements of FAI Insurances Limited (FAI), a subsidiary of HIH, for the 2000 financial year.

ASIC's Investigations

- 1.10 ASIC commenced investigations into matters raised in the Report in April 2003.
- 1.11 As a result of those investigations and the findings of the HIH Royal Commission, ASIC has formed a view that the audit of FAI for 2000 was inadequate in that:
- (a) Mr Pye signed off on FAI's financial statements which included a \$200 million preference share issue in the reported share capital without a note to the accounts being included disclosing that the share issue had not been approved or issued until after 30 June 2000;
 - (b) Mr Pye overlooked the important matter of the inclusion of a note to the accounts making appropriate disclosure regarding the preference share issue; and
 - (c) if the matters referred to in (a) and (b) had been taken into account the financial statements would have reflected the true share capital position of FAI as at 30 June 2000 and that FAI was in breach of debt covenants it had given to financiers.
- 1.12 In view of the matters referred to in 1.6 to 1.11, ASIC is concerned that Mr Pye failed to carry out or perform adequately and properly the duties of an auditor in relation to the 2000 audit of FAI.

Acknowledgement of concerns

- 1.13 Whilst Mr Pye does not agree with all aspects of ASIC's concerns, he acknowledges those concerns and has offered, and ASIC has agreed to accept, the commitments in this enforceable undertaking (**undertaking**) as an alternative to ASIC making an application to the Board for an order under section 1292 of the Corporations Act.
- 1.14 In agreeing to accept the undertaking ASIC has taken into account the following matters:
- (a) the HIH Royal Commission finding (with which ASIC agrees) that his signing off on the FAI 2000 financial statements was neither dishonest, nor was it a result of bad faith or inattention that amounted to recklessness;
 - (b) Mr Pye has cooperated with ASIC's investigations since the HIH Royal Commission released its report and has provided statements to ASIC in relation to a number of criminal prosecutions;
 - (c) Mr Pye was the support engagement partner to the senior engagement partner John Robert Buttle;
 - (d) Mr Pye left Andersen in May 2002 when that firm ceased practising, and joined Ernst & Young in a non-partnership role. Mr Pye has not accepted engagements to conduct company audits, and has not signed off on any audits, since May 2002; and
 - (e) during his employment at Ernst & Young:
 - (i) Mr Pye's work has been supervised by registered auditors, and has been subject to the quality control and peer review procedures in place at that firm; and

- (ii) Mr Pye has completed continuing professional development in excess of the standard requirements.

2. UNDERTAKINGS

Under Section 93AA of the ASIC Act, Mr Pye has offered, and ASIC has agreed to accept, the following undertakings:

Suspension from audit work to continue to 30 June 2007

2.1 Mr Pye undertakes that he will not:

- (a) fulfil the duties and responsibilities as a registered auditor; or
- (b) sign any audit reports,

until after 30 June 2007.

2.2 Mr Pye will, by 13 July 2007 give to ASIC a statutory declaration in which he states that he has not signed any audit reports between May 2002 and 30 June 2007.

Supervision of future audits

2.3 For each of the first five times that Mr Pye is engaged to conduct an audit (a related-entity group to be treated as a single audit) after 30 June 2007 Mr Pye will, at his own cost:

- (a) appoint a registered auditor (**Reviewing Auditor**), approved by ASIC prior to their appointment, to conduct a review of his conduct of each of the audits;
- (b) obtain a written statement from the Reviewing Auditor that each of the audits has been conducted to the standards of an auditor acting with due skill and care; and

- (c) not sign the audit report until he has supplied ASIC with a copy of the written statement from the Reviewing Auditor.

Provision of Information

- 2.4 Mr Pye undertakes to provide ASIC with any documents or information relevant to ascertaining his compliance with the undertakings in paragraphs 2.1 to 2.3 inclusive within 7 days of ASIC requesting such documents or information.

3. ACKNOWLEDGMENTS

Acknowledgments by Mr Pye

- 3.1 Mr Pye acknowledges that ASIC:

- (a) 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;
- (b) may from time to time publicly refer to this undertaking;
- (c) will make this undertaking available for public inspection.

- 3.2 Mr Pye further acknowledges that this undertaking:

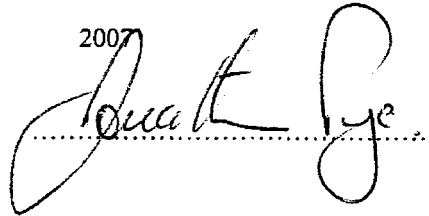
- (a) in no way derogates from the rights and remedies available to ASIC or any other person or entity relating to or arising from any conduct described in this undertaking;
- (b) does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any or all of the conduct described in this undertaking or any contravention arising from future conduct; and

(c) has no operative force until accepted by ASIC.

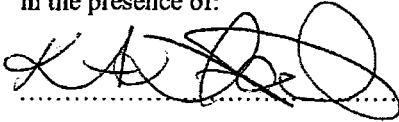
Signed this 26th day of APRIL

2007

by JONATHAN PYE



in the presence of:



witness

KYLIE AXFORD

name (print)

C/- 680 GEORGE STREET
SYDNEY NSW 2000

address

ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
PURSUANT TO ASIC ACT S93AA BY ITS DULY AUTHORISED DELEGATE:



[name] ALLEN TURTON

Delegate of the Australian Securities & Investments Commission

Dated this 28th day of May 2007