

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:

Daniel Jean Civil
C/- Jirsch Sutherland
Level 2
84 Pitt St
Sydney NSW 200

1. DEFINITIONS

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

A& A Cleaning means A&A Power Cleaning (ACN 004 005 976)

AAM means Aequitas Asset Management Pty Ltd (ACN 003 072 197)

Aequitas means Aequitas Ltd (ACN 018 904 025)

Aequitas No 1 means Aequitas No 1 Ltd (ACN 002 993 222)

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

CALDB means Companies Auditors Liquidators Disciplinary Board

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

Lisbuoy means Lisbuoy Proprietary Limited (ACN 004 542 830)

Mr Civil means Daniel Jean Civil, date of birth 15 June 1952

Mr Rodgers means Mr Peter Rodgers, a partner of Rodgers Reidy Accountants

Network Graphics means Network Graphics Pty Ltd (ACN 003 689 209)

2. BACKGROUND

2.1 ASIC's role

2.1.1 ASIC is responsible for the regulation of insolvency practitioners who undertake the external administration of companies.

2.2 Details of Conduct

- 2.2.1 Mr Civil is a registered company liquidator pursuant to section 1282 of the Corporations Act. Mr Civil first obtained his registration as a liquidator on 27 June 2001, registration number 211698.
- 2.2.2 Mr Civil was registered as an official liquidator on 6 January 2005, registration number 283583.
- 2.2.3 Mr Civil is currently a partner of a firm of chartered accountants in Sydney.
- 2.2.4 Mr Civil is a former partner of Rodgers Reidy, a firm of chartered accountants of Level 8, 333 George St, Sydney. Mr Civil commenced employment with Rodgers Reidy on 3 December 2001 and was appointed a salaried partner on 1 December 2004. He resigned from the partnership of Rodgers Reidy on 21 July 2006.
- 2.2.5 The conduct which is the subject of this enforceable undertaking occurred in the course of the following appointments held by Mr Civil whilst he was a partner of Rodgers Reidy:
- Aequitas Ltd (ACN 018 904 025) (Aequitas) was incorporated on 6 June 1985. Pursuant to a resolution of members, Mr Civil was appointed joint liquidator of Aequitas on 20 December 2002 with Mr Rodgers.
 - Aequitas No 1 Ltd (ACN 002 993 222) (Aequitas No 1) was incorporated on 12 September 1985. Aequitas No 1 is a subsidiary of Aequitas. Pursuant to a resolution of members, Mr Civil was appointed joint liquidator of Aequitas No 1 on 20 December 2002 with Mr Rodgers.
 - Aequitas Asset Management Pty Ltd (ACN 003 072 197) (AAM) was incorporated on 19 March 1986. AAM is a subsidiary of Aequitas. Pursuant to a resolution of members, Mr Civil was appointed joint liquidator of AAM on 20 December 2002 with Mr Rodgers.
 - Lisbuoy Proprietary Limited (ACN 004 542 830) (Lisbuoy) was incorporated on 13 April 1962. Pursuant to a resolution of members, Mr Civil was appointed joint liquidator of Lisbuoy on 20 December 2002 with Mr Rodgers.
 - Network Graphics Pty Ltd (ACN 003 689 209) (Network Graphics) was incorporated on 13 January 1989. Mr Civil was appointed joint administrator of Network Graphics on 2 June 2004 with Mr Rodgers. At the second meeting of creditors of Network Graphics the creditors resolved that the company enter a deed of company arrangement and on 20 July 2004 a deed of company arrangement was executed by Mr Civil and Mr Rodgers.
 - A&A Power Cleaning Pty Ltd (ACN 004 005 976) (A&A Cleaning) was incorporated on 6 June 1990. Pursuant to a resolution of creditors Mr Civil was appointed liquidator of A & A Cleaning on 6 March 2006.
- 2.2.6 On 20 November 2006 ASIC received a complaint from the current partners of Rodgers Reidy concerning the conduct of Mr Civil in the course of his appointment as liquidator/administrator of the above companies (the complaint).

2.3 ASIC's investigation and analysis

2.3.1 ASIC contends that Mr Civil (in summary):

- transferred funds from Aequitas to pay a priority dividend to the Australian Taxation Office in the deed of company arrangement of Network Graphics;
- transferred funds from Aequitas to pay remuneration to and disbursements incurred by Rodgers Reidy in the liquidation of A&A Cleaning;
- transferred funds from Aequitas to pay disbursements incurred by Rodgers Reidy in the liquidation of Lisbuoy, Aequitas No 1, and Aequitas Asset Management
- altered the records of Aequitas, Network Graphics and A&A Cleaning;
- failed to pay income tax due to the Australian Taxation Office in the liquidation of Aequitas;
- paid the liquidators fees of Aequitas in excess of what was approved by shareholders; and
- lodged a form 524 at the Australian Securities and Investments Commission in the liquidation of Aequitas which contained incorrect information.

2.4 ASIC's concerns

2.4.1 ASIC is concerned that Mr Civil:

- has failed to carry out or perform adequately and properly the duties of a liquidator in respect of the winding up of Aequitas, Aequitas No 1, AAM, Lisbuoy, and A&A Cleaning;
- has failed to carry out or perform adequately and properly duties and functions required by an Australian law to be carried out or performed by a registered liquidator in respect of the administration under a deed of company arrangement of Network Graphics; and
- is not a fit and proper person to remain registered as a liquidator.

2.5 Acknowledgement of Concerns

2.5.1 Mr Civil acknowledges ASIC's concerns and, in doing so, has:

- voluntarily made admissions to ASIC;
- cooperated with ASIC during its investigation;
- reimbursed the administration of Aequitas with a payment of \$75,000.

- voluntarily sought ongoing and appropriate medical treatment.

2.5.2 Mr Civil has offered, and ASIC has agreed to accept, enforceable undertakings in terms of paragraph 3 below.

2.5.3 Mr Civil acknowledges that should ASIC form the view that Mr Civil has failed to comply with this undertaking, ASIC may take additional action including (without limitation) seeking court orders under Section 93AA of the ASIC Act requiring Mr Civil to comply with the terms of this undertaking.

3.0 UNDERTAKINGS

3.1 Under Section 93AA of the ASIC Act Mr Civil has offered, and ASIC has agreed to accept, a voluntary undertaking in the terms set out below, as an alternative to ASIC making an application to the Companies Auditors Liquidators Disciplinary Board (CALDB) for an order pursuant to s1292 of the Corporations Act.

Undertaking to transfer/resign from appointments and resign as a registered liquidator.

- 3.2 Mr Civil undertakes, within 28 days after acceptance by ASIC, to:
- (i) take all steps necessary to resign and/or transfer all external administration appointments held by him in whatever capacity. Mr Civil undertakes to pay the cost of transferring all external administration appointments held by him and that such costs will not be treated as a cost of the external administrations; and
 - (ii) request that ASIC cancel forthwith his registration as a registered liquidator and official liquidator pursuant to s1290 of the Corporations Act.

Undertaking not to reapply for registration except in certain circumstances.


- 3.3 Mr Civil undertakes not to reapply for registration as a liquidator prior to 1 July 2011.
- 3.4 Any application for re-registration is to be accompanied by a medical report prepared by an independent psychiatrist nominated by Medico-Legal Opinions Pty Ltd or Psychiatric Opinion Pty Ltd (or in the event that neither company still operates, a company that provides similar services) which states that Mr Civil is fit to undertake the tasks required of a registered liquidator. The cost of obtaining this medical report will be borne by Mr Civil.
- 3.5 In the 12 months prior to any application for re registration as a liquidator, Mr Civil will participate in 10 hours Continuing Professional Education (CPE) on

ethical issues relevant to a registered liquidator in addition to the mandatory CPE requirements imposed upon him as a consequence of him being a member of CPA Australia, or any other professional accounting body of which he is a member at that time (**Additional Continuing Professional Education**).

- 3.6 The Additional Continuing Professional Education will take the form of:
- Courses, seminars, workshops, lectures and/or other professional educational activities presented by the Institute of Chartered Accountants in Australia (**Institute**) or CPA Australia;
 - Meetings of Institute or CPA Australia technical discussion groups of not less than 1 hour duration; and /or
 - Participation in a Institute Program/CPA Program module;
- 3.7 Mr Civil will obtain documentary evidence from the provider of the Additional Continuing Professional Education confirming that he has attended the Additional Continuing Professional Education (**Documentary Evidence**).
- 3.8 Any application for re-registration by Mr Civil is to be accompanied by a statutory declaration signed by Mr Civil and stating whether the requirements of paragraph 3.5 have been complied with. Mr Civil will attach certified copies of the Documentary Evidence to this statutory declaration.

4.0 **ACKNOWLEDGMENTS**

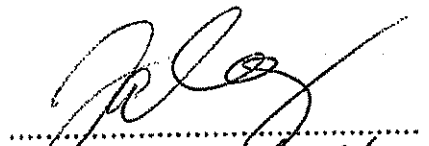
- 4.1 Mr Civil acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (b) may from time to time publicly refer to this undertaking; and
 - (c) will make this undertaking available for public inspection.
- 4.2 Further, Mr Civil acknowledges that:
- 4.2.1 this 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 undertaking; and
- 4.2.2 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 or all of the conduct described in this undertaking or any contravention arising from future conduct.
- 4.3 Mr Civil acknowledges that this undertaking has no operative force until accepted by ASIC.


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DANIEL JEAN CIVIL

Dated 26 April 2007

*Accepted by the Australian Securities & Investments Commission under section 93AA
of the ASIC by its duly authorised delegate:*

Dated 15 May 2007


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[Name] Jan Redfern

Delegate of the Australian Securities and Investments Commission