

ENFORCEABLE UNDERTAKING

Australian Securities and Investment Commission Act 2001

Section 93AA

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

PCI EQUITY PTY LTD
ACN 112 529 227
Level 2, 12 Pirie Street
ADELAIDE SA 5000
(Company)

1 DEFINITIONS

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

Accountant's Certificate means a copy of a certificate described in paragraph 761G(7)(c) of the Corporations Act

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

The AFSL means Australian Financial Services Licence numbered 286220 issued to the Company as varied from time to time

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

Expert Report means a report referred to in paragraph 3.7 hereof

Financial Services Laws means those provisions defined by section 761A of the Corporations Act as a financial services law

Independent Expert means a person appointed to be the Company's independent expert in accordance with paragraph 3.7 hereof

PDS means Product Disclosure Statement

SLF means Surplus Liquid Fund

The Trust means the Professional Capital Investment Equities Trust operated by the Company

2 BACKGROUND

2.1 ASIC's role

Under section 1 of the ASIC Act, ASIC is 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.

2.2 Details of Conduct

The Company acts as the trustee and investment manager of the Trust, an unregistered managed investment scheme that commenced trading in July 2005.

The AFSL authorises the Company to provide general financial product advice only to wholesale clients, to deal in a financial product only to wholesale clients, and to provide custodial or depository services only to wholesale clients.

From July 2005 until 30 June 2006 the Company caused units in the Trust to be issued to a total of 65 clients. 47 of these were retail clients as defined subsection 761G(7) of the Corporations Act at the time the units were issued.

In 29 cases of issues to retail clients, the Company considered the clients to be wholesale clients under paragraph 761G(7)(c) of the Act, notwithstanding that the clients did not give the Company an Accountant's Certificate before the product was provided, and treated the clients accordingly. The audited financial accounts for the Company as at 30 June 2006 disclosed a net asset position of \$29,294 and the level of net assets remained under the SLF requirement in the AFSL of \$50,000 until 12 September 2006.

A review of the Company's accounts by ASIC during a compliance surveillance in August 2006 identified the deficiency in the Company's SLF and, upon being notified, the Company lodged a breach notification with ASIC on 7 September 2006.

2.3 ASIC's investigation

Following its compliance surveillance ASIC commenced an investigation on 24 October 2006 in relation to suspected non compliance by the Company with conditions of the AFSL and in relation to suspected contraventions by the Company of the Corporations Act.

The investigation disclosed that:

- 2.3.1 from 22 December 2005 until 12 September 2006 the Company was in breach of the SLF condition of the AFSL that required it to hold at least \$50,000 in net assets;
- 2.3.2 from July 2005 the Company has offered to, and accepted applications for units in the Trust from, retail clients as defined in subsection

761G(7) of the Corporations Act in breach of the conditions of the ASFL;

- 2.3.3 the Company has issued financial products in circumstances where a section 1012B of the Corporations Act required a PDS to be provided but did not provide a PDS in connection with the issues;
- 2.3.4 the Company has issued units in the Trust to more than 20 clients in circumstances where not all of the issues of interests would not have required the giving of a PDS under Division 2 of Part 7.9 of the Corporations Act if the Trust had been registered when the issues were made, with the consequence that the Trust was required to be registered under section 601EB of the Corporations Act by virtue of section 601ED on 15 August 2005; and
- 2.3.5 the Company offered interests in the Trust in circumstances where the Trust needed to be registered and was not registered in contravention of section 1020A of the Corporations Act.

2.4 ASIC's concerns

ASIC is concerned that:

- 2.4.1 the Company has breached condition 7 of the AFSL in respect of its SLF requirement;
- 2.4.2 the Company has operated in contravention of the authorisation in the AFSL that permitted it to carry on a financial services business only in relation to wholesale clients;
- 2.4.3 the Company has contravened subsections 601ED(5) and 912A(1) and sections 1012B and 1020A of the Corporations Act; and
- 2.4.4 the Company's sole director and key person under the AFSL, Nicola Barbato, who is responsible for the management and administration of the Trust, has failed to ensure that the Company complies with its obligations under the AFSL and under the Corporations Act in the respect of the matters described in paragraph 2.3 above.

2.5 Acknowledgement of concerns

- 2.5.1 The Company acknowledges each of the concerns described in paragraph 2.4 above.
- 2.5.2 On 14 September 2006 the Company applied to ASIC for a variation to the AFSL to permit it to offer and issue interests in the Trust to retail clients in circumstances where a PDS is not required pursuant to section 1012E of the Corporations Act.

3 UNDERTAKINGS

Under section 93AA of the ASIC Act, the Company has offered, and ASIC has agreed to accept as an alternative to commencing court action to wind up the Trust and/or seeking declaratory relief and taking administrative action against the Company in respect of the breaches of the AFSL, the following undertakings:

- 3.1 The Company will not issue interests in the Trust otherwise than in accordance with the conditions contained in the AFSL as varied from time to time by ASIC.
- 3.2 The Company will, within 28 days of ASIC accepting this undertaking, write to each of:
 - 3.2.1 the 47 retail clients who were issued units in the Trust after being offered interests in contravention of the AFSL conditions; and
 - 3.2.2 all clients who were issued with units in the Trust on or after 15 August 2005;in terms agreed by ASIC, offering each of those clients the opportunity to redeem their units in the Trust. The offer will remain open to each client for a period of 14 days after receipt of the offer. The offer will state that if the client accepts the offer, the redemption unit price will be calculated as the greater of the unit price on the date of issue of each redeemed unit and the unit price on the date that the offer is accepted by the client.
- 3.3 The Company will amend the application form for the Trust to make it clear that applications for subscriptions from wholesale clients will only be accepted by the Company where the applicant has provided an Accountants Certificate or otherwise meets the criteria described in section 761G(7) of the Corporations Act. The Company undertakes that it will not accept any subscriptions for units in the Trust that are not made pursuant to the amended form.
- 3.4 The Company will:
 - 3.4.1 prepare an Information Memorandum that clearly explains the activities of the Trust, how it is administered, the applicable provisions of the Corporations Act, the manner in which the Company will report on the affairs of the Trust and the essential terms of the Trust Deed;
 - 3.4.2 update the Information Memorandum as necessary to ensure all information in the Information Memorandum remains current; and

3.4.3 provide a copy of the Information Memorandum to every person who applies for a unit or units in the Trust prior to the Company accepting an application for units from that person.

3.5 The Company will formulate a compliance program and compliance documentation within 30 days of the date of this Enforceable Undertaking to ensure that the Company is able to comply with the undertakings it has provided pursuant to this Undertaking, its obligations under the AFSL, and the Financial Services Laws including but not limited to procedures to ensure that the Company:

3.5.1 complies with the conditions contained in the AFSL;

3.5.2 has adequate resources (financial, technological and human) to provide financial services covered by the AFSL;

3.5.3 complies with the Financial Services Laws and takes reasonable steps to ensure that its representatives comply with those laws;

3.5.4 ensures that its representatives are adequately trained, and are competent, to provide the financial services covered by the AFSL and to ensure compliance with this Undertaking and the Financial Services Laws;

and the Company will review and amend the compliance program and compliance documentation as necessary in the event that the conditions of the AFSL are varied by ASIC.

3.6 The Company must ensure that all relevant Company employees, officers and authorised representatives are trained in the operations, practices and procedures set out in the compliance program and compliance documentation referred to in paragraph 3.5. Training is to be commenced as soon as possible within 30 days of the date of this Enforceable Undertaking.

3.7 Within 30 days of the date of this Enforceable Undertaking the Company will engage an Independent Expert. The Independent Expert and the Independent Expert's terms of engagement must be approved by ASIC before the Independent Expert is engaged. The terms of engagement may only be varied with the agreement of ASIC. The Independent Expert will monitor and report to ASIC on a quarterly basis for a period of 25 months from the date of this Enforceable Undertaking in relation to the Company's compliance with this Enforceable Undertaking, its obligations under the Financial Services Laws and the conditions of the AFSL. The first Expert Report will include (but is not limited to):

3.7.1 an assessment of the adequacy of the Company's compliance program and compliance documentation;

3.7.2 an assessment of the adequacy of procedures adopted by the Company to ensure that any client who is a wholesale client by virtue of Section 761G(7)(c) gives the Company an

Accountant's Certificate prior to the issue of any units in the Trust to that client;

3.7.3 a review of the Company's compliance with the condition in the AFSL relating to the Company's SLF;

3.7.4 confirmation that the Company has complied with the undertakings set out in paragraphs 3.2, 3.3 and 3.4 above.

The first Expert Report is to be provided to ASIC no later than 4 months after the date upon which this Enforceable Undertaking is accepted by ASIC. Each subsequent Expert Report shall include the matters set out in paragraphs 3.7.1, 3.7.2 and 3.7.3 above and is to be provided no later than 3 months after the previous one.

3.8 If the Independent Expert identifies deficiencies in the assessment referred to in paragraph 3.7, the terms of engagement must ensure the Independent Expert sets out in the Initial Report details of the deficiencies and a reasonable time for a rectification program to be commenced and implemented.

3.9 The Company must consider the recommendations made by the Independent Expert to rectify those deficiencies and then provide to ASIC a plan (Remedial Action Plan) setting out the action it proposes to take to rectify those deficiencies and specifying the reasonable time in which this action will be taken. The Company must provide this plan to ASIC within one month of the date that the Initial Report was received by ASIC.

3.10 The Company must implement the Remedial Action Plan within the time specified.

3.11 The process outlined in paragraphs 3.8 to 3.10 must be followed for each of the subsequent Expert Reports.

3.12 The Company will:

3.12.1 permit the Independent Expert, as reasonable, to have access to its books, to interview any present employee or to consult with ASIC;

3.12.2 give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with the Expert Report;

3.12.3 otherwise reasonably assist the Independent Expert in conducting the reviews and producing the Expert Report.

3.13 The Company undertakes that it will pay the costs of its compliance with this enforceable undertaking including but not limited to all remuneration and costs associated with the Independent Expert.

- 3.14 The address for providing ASIC with any document, including but not limited to the Expert Report, which this undertaking requires to be provided to ASIC is:

Assistant Director Enforcement
Australian Securities and Investments Commission
GPO Box 9827
Adelaide SA 5001

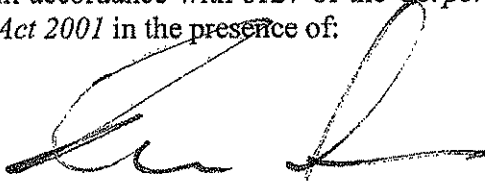
4 ACKNOWLEDGEMENTS

- 4.1 The Company 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, the Company 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 undertaking or arising from future conduct.
- 4.3 The Company acknowledges that ASIC has reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraphs 3.1 to 3.13 above.
- 4.4 The Company acknowledges that this undertaking has no operative force until accepted by ASIC and the Company and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

EXECUTED this ^{6th} day of ^{JUNE} 2007 by)
PCI EQUITY PTY LTD ACN 112 529 227)
in accordance with s127 of the Corporations)
Act 2001 in the presence of:

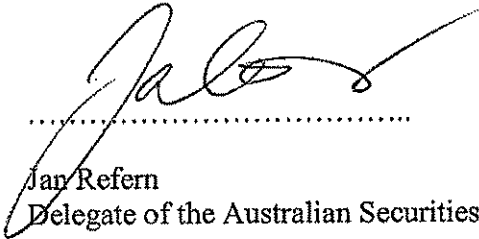


Sole Director and Sole Company Secretary



MATTHEW SELLEY
A Commissioner for taking
affidavits in the Supreme
Court of South Australia

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


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Jan Refem
Delegate of the Australian Securities & Investments Commission

Dated ^{2nd} day of ^{June} 2007