



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Gregory Michael Gordon O'Shaughnessy
3 Wilkinson Road
Para Hills SA 5096

1 Definitions

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

6FT2 means 6FT2 (Aust) Pty Ltd (ACN 101 281 254), at all relevant times the fund manager and issuer of interests in the Teak Investment Fund

AFSL means Australian Financial Services Licence

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

Audit Opinion means the opinion required to be lodged by Newstar as outlined in paragraph 2.2.11 below

Consultant's Report means a written report by the external consultant engaged by Newstar as outlined in 2.2.8.1 below

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

Mr Gordon means Roger Charles Gordon, former responsible person and sole key person for Newstar's AFSL and authorised representative of Newstar

Mr O'Shaughnessy means Gregory Michael Gordon O'Shaughnessy, date of birth 18 March 1974

Mr Turner means Colin Douglas Turner, former authorised representative of Newstar

Newstar means Newstar Securities Pty Ltd (ACN 084 290 111)

2 Background

2.1 ASIC's role

Under s1 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

Background

- 2.2.1 Newstar was incorporated in South Australia on 10 September 1998.
- 2.2.2 From 9 September 2005 Newstar has carried on a financial services business and has held AFSL No. 278342 to enable it to do so.
- 2.2.3 Mr Turner and Mr Gordon were each appointed as an authorised representative of Newstar on 7 October 2005. Mr Turner's authorisation was revoked on 28 February 2007 and Mr Gordon's on 28 August 2007.
- 2.2.4 Mr Gordon was a responsible person for the purposes of Newstar's AFSL and he was also the sole key person for Newstar's AFSL from 9 September 2005 to 6 November 2006.
- 2.2.5 Mr O'Shaughnessy was appointed a director of Newstar on 13 February 2006 and has been the sole director of Newstar since that date.
- 2.2.6 On 29 August 2007 the Federal Court of Australia ordered that Newstar be wound up and appointed Bruce James Carter as liquidator.
- 2.2.7 On 3 September 2007 Newstar requested that ASIC cancel its AFSL.

Requirement to lodge reports with ASIC

- 2.2.8 Condition 4 of Newstar's AFSL sets out Newstar's obligation to:
 - 2.2.8.1 engage an external consultant to review a representative sample of client files and to report on, *inter alia*, whether Newstar had a reasonable basis for advice as required by sections 945A and 945B of the Corporations Act;
 - 2.2.8.2 ensure completion of the first Consultant's Report by 14 February 2006 and the second no later than one calendar month after 31 March 2006;

- 2.2.8.3 ensure that a copy of each Consultant's Report was lodged with ASIC within 7 calendar days after due completion of the report; and
- 2.2.8.4 provide a report to ASIC within 7 calendar days after due completion of each Consultant's Report on the steps to be taken for the implementation of any recommendations in the Consultant's Report pursuant to condition 4(d)(ii) of its AFSL.
- 2.2.9 The first Consultant's Report was completed on 14 February 2006 and lodged with ASIC on 21 February 2006. The second Consultant's Report was completed on 1 May 2006 and lodged with ASIC on 2 May 2006.
- 2.2.10 Newstar did not provide ASIC with reports as required by condition 4(d)(ii) of its AFSL in relation to either the first or second Consultant's Reports until 30 May 2006.

Requirement to lodge company auditor opinion with ASIC

- 2.2.11 Condition 18 of its AFSL required Newstar to lodge with ASIC an opinion by a registered company auditor setting out specified matters for each financial year at the same time that it was required to lodge its Statement of Financial Position under Part 7.8 of the Corporations Act.
- 2.2.12 Newstar was required to lodge the Audit Opinion in respect to the financial year ending 30 June 2006 by 30 September 2006.
- 2.2.13 As at 29 August 2007 Newstar had not lodged the Audit Opinion for the financial year ended 30 June 2006.

Requirement to prepare true and fair profit and loss statement and balance sheet and an auditor's report, and lodge these with ASIC

- 2.2.14 Under section 989B(1) and (2) of the Corporations Act Newstar must, in respect of each financial year, prepare a true and fair profit and loss statement and balance sheet and lodge them with ASIC, in accordance with Subdivision C of Division 6 of Part 7.8 of the Corporations Act. Under section 989(3) of the Corporations Act, Newstar must lodge, together with the profit and loss statement and balance sheet, an auditor's report with ASIC.
- 2.2.15 Under section 989D(1) of the Corporations Act, Newstar was required to lodge its profit and loss statement, balance sheet and auditors report for the financial year ended 30 June 2006 by 30 September 2006.

2.2.16 As at 29 August 2007 Newstar had not lodged its profit and loss statement, balance sheet or auditor's report for the financial year ended 30 June 2006.

Mr Gordon and Mr Turner's associations, relationships and interests with managed investment schemes that they recommended to clients

2.2.17 Mr Gordon and Mr Turner, whilst authorised representatives of Newstar, held associations, relationships and interests with the following managed investments schemes:

- Coaster Investment Fund;
- Cashews Group Investor Trust;
- Ginseng and PPP Partners Group Partnership;
- Tumba Firewood Partnership;
- Extra D Investment Fund; and
- Ginseng Investors Group Trust and Partnership.

2.2.18 Mr Gordon and Mr Turner, in their capacity as authorised representatives of Newstar, provided financial services guides to clients and made recommendations to clients in statements of advice about the managed investment schemes listed in paragraph 2.2.17.

2.2.19 Mr Gordon and Mr Turner, in their capacity as authorised representatives of Newstar, procured clients to sign application forms to invest in the managed investment schemes listed in paragraph 2.2.17.

2.2.20 The financial services guides referred to in paragraph 2.2.18 did not disclose Mr Gordon's or Mr Turner's respective interests in the managed investment schemes listed in paragraph 2.2.17.

2.2.21 Mr Gordon and Mr Turner did not disclose their respective interests in the managed investment schemes listed in paragraph 2.2.17 at the time that they made recommendations to clients to invest or at the time that they procured clients to sign application forms to invest in those schemes.

2.2.22 Newstar knew or ought to have known of Mr Gordon and Mr Turner's associations, relationships and interests and ought to have taken reasonable steps to ensure that these associations, relationships and interests were disclosed in Newstar's financial services guides, in statements of advice produced by its authorised representatives and when Mr Gordon and Mr Turner caused or procured clients to sign the application forms to invest in those managed investment schemes.

Mr Gordon and Mr Turner recommended investing in the Teak Investment Fund after its issuer had been deregistered

2.2.23 The Teak Investment Fund is a managed investment scheme that was included in Newstar's approved product list.

2.2.24 Mr O'Shaughnessy was a director of 6FT2 at all relevant times from 8 July 2002 and its sole director from 1 September 2004.

2.2.25 6FT2 was deregistered on 8 January 2006.

2.2.26 Mr Gordon and Mr Turner, in their capacity as authorised representatives of Newstar, made recommendations to clients to invest in the Teak Investment Fund after 6FT2 had been deregistered.

2.3 ASIC's investigation and analysis

2.3.1 Mr O'Shaughnessy, in his capacity as sole director of Newstar, failed to ensure that Newstar complied with condition 4(d)(ii) of its AFSL between 22 February 2006 and 30 May 2006.

2.3.2 In his capacity as sole director of Newstar, Mr O'Shaughnessy failed to ensure that Newstar complied with condition 18 of its AFSL by lodging the Audit Opinion for the financial year ended 30 June 2006 as required by condition 18.

2.3.3 In his capacity as sole director of Newstar, Mr O'Shaughnessy failed to ensure that Newstar complied with section 989D(1) of the Corporations Act by lodging its profit and loss statement, balance sheet or auditor's report for the financial year ended 30 June 2006 as required by section 989d(1).

2.3.4 Mr O'Shaughnessy in his capacity as Newstar's sole director failed to take reasonable steps to ensure that Newstar's representatives complied with financial services laws, in particular sections 947C(f)(i) and (ii), section 942C(2)(g) and section 1041H of the Corporations Act, as required by section 912A(1)(ca) of the Corporations Act.

2.3.5 Mr O'Shaughnessy in his capacity as sole director of Newstar failed to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, as required by section 912A(1)(a) of the Corporations Act and particularly he failed to ensure that:

2.3.5.1 appropriate due diligence was undertaken by Newstar, so as to ascertain that 6FT2 was deregistered;

2.3.5.2 the Teak Investment Fund was removed from Newstar's approved product list when 6FT2 was deregistered; and

2.3.5.3 Mr Gordon and Mr Turner did not recommend the Teak Investment Fund to clients of Newstar.

2.4 ASIC's concerns

By reason of the above, ASIC has concerns that Mr O'Shaughnessy:

- 2.4.1 does not have the ability or the capacity to ensure compliance with the conditions of an AFSL and with financial services laws;
- 2.4.2 does not understand the obligations of a financial services licensee and is not able to properly discharge the duties of a financial services licensee or a representative of a financial services licensee; and
- 2.4.3 does not have the ability or capacity to maintain the high standards required of a financial services licensee or a representative of a financial services licensee.

2.5 Acknowledgement of concerns

Mr O'Shaughnessy acknowledges ASIC's concerns and has offered, and ASIC has agreed to accept, enforceable undertakings in the terms of paragraph 3.1 and 3.2 below.

3 Undertakings

- 3.1 Under s93AA of the ASIC Act, Mr O'Shaughnessy has offered, and ASIC has agreed to accept, as an alternative to seeking a banning order under section 920 of the Corporations Act, the following undertakings.
 - 3.1.1 Mr O'Shaughnessy undertakes that from the time this undertaking is accepted he will not for a period of ten years:
 - (a) carry on a financial services business;
 - (b) hold out that he holds an AFSL (as defined in the Corporations Act);
 - (c) provide a financial service (as defined in the Corporations Act);
 - (d) apply to ASIC under section 911A of the Corporations Act for an AFSL;
 - (e) become an authorised representative of an AFSL holder;

- (f) hold out that he is the authorised representative for an AFSL holder,
 - (g) act as a responsible officer of an AFSL holder;
 - (h) act as a director or hold any other managerial role with an AFSL holder;
 - (i) act as a director or hold any other managerial role with a corporate representative of an AFSL holder.
- 3.1.2 Mr O'Shaughnessy will provide all documents and information as requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking.
- 3.1.3 Mr O'Shaughnessy undertakes that he will pay the costs of his compliance with this undertaking.

4 Acknowledgements

- 4.1 Mr O'Shaughnessy 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 O'Shaughnessy acknowledges that:
- (a) 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;
 - (b) 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 Mr O'Shaughnessy acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraph 3.1.1 to paragraph 3.1.3 above.

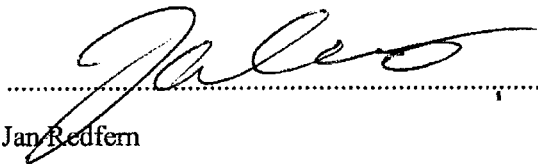
4.4 Mr O'Shaughnessy acknowledges that this undertaking has no operative force until accepted by ASIC, and the Company and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.



Gregory Michael Gordon O'Shaughnessy

Dated this 11 day of January 2008

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:



Jan Redfern

Delegate of the Australian Securities and Investments Commission

Dated this 27th day of January 2008