



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 John Robert Buttle
c/- Baker & McKenzie
Level 27, AMP Centre
50 Bridge 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 for 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 it believes may 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 proposed 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 On 16 April 2003 the HIH Royal Commission delivered its report: "The Failure of HIH Insurance" ("The Report"). 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 documented to support conclusions and findings in respect of the audit of several specific transactions.

Mr Buttle's involvement with HIH

- 1.7 John Robert Buttle (**Mr Buttle**) is a registered auditor pursuant to section 1280 of the *Corporations Act 2001* (**Corporations Act**). Mr Buttle obtained his registration as an auditor on 31 May 1983 and holds audit registration number 3031.
- 1.8 Mr Buttle was appointed a partner with the firm Arthur Andersen (**Andersen**) in October 1999. As a registered auditor Mr Buttle was eligible to conduct company audits on behalf of Andersen and sign off on audit reports.
- 1.9 Andersen was the auditor of HIH at the time of its collapse. Mr Buttle was the engagement partner in respect of Andersen's audit of HIH's financial report for the 2000 financial year. In this role Mr Buttle had ultimate responsibility for the quality of the audit and the resulting auditor's report.

- 1.10 On 16 October 2000 Mr Buttle signed an unqualified audit report for the HIH financial report for the 2000 financial year, but which contained an emphasis of matter in relation to reinsurance.

ASIC's Investigations

- 1.11 ASIC commenced investigations into matters raised in The Report in April 2003.
- 1.12 As a result of those investigations and the findings of the HIH Royal Commission, ASIC has formed a view that the audit of HIH for 2000 was inadequate in that:
- (a) Andersen failed to take effective action properly to manage the risk that auditing HIH posed despite the requirements of paragraphs 6 and 8 of AUS 206 and Andersen's 'Audit Objectives and Procedures' manual.
 - (b) Andersen's audit working papers did not contain sufficient appropriate audit evidence as was required by AUS 502 with respect to:
 - a. the recognition of future income tax benefits as an asset of HIH group companies as at 30 June 2000;
 - b. income tax balances disclosed in the 2000 financial reports; and
 - c. the assessment of the recoverable amount of deferred acquisition costs; and
 - (c) Andersen's audit working papers did not contain sufficient appropriate audit evidence to resolve the substantial doubt and significant uncertainty that existed as to the appropriateness of the going concern assumption.

- 1.13 In view of the matters referred to in 1.6 to 1.12, ASIC is concerned that Mr Buttle, as the engagement auditor, may have failed to carry out or perform adequately and properly the duties of an auditor in relation to the 2000 audit of HIH.

Acknowledgement of concerns

- 1.14 Whilst Mr Buttle does not agree with all aspects of ASIC's concerns, he acknowledges that ASIC has 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.
- 1.15 In agreeing to accept the undertaking ASIC has taken into account the following matters:
- (a) Mr Buttle has cooperated with ASIC's investigations into the collapse of HIH since the HIH Royal Commission released its report, and provided ASIC with statements relevant to criminal proceedings in respect of the failure of HIH;
 - (b) The HIH Royal Commission report acknowledged Mr Buttle's emphasis of matter in HIH's June 2000 financial statements, and his insistence that the HIH Board report the Pacific Eagle transaction to ASIC;
 - (c) Mr Buttle has not acted as an engagement partner for a company audit, nor signed off on any audit reports, since 2004. He has not signed any significant audits since 2002. Mr Buttle is currently not practising as a registered company auditor.

2. UNDERTAKINGS

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

- 2.1 Mr Buttle undertakes that within 7 days after acceptance by ASIC of this undertaking he will request ASIC to cancel his registration as an auditor.
- 2.2 Mr Buttle undertakes that he will not re-apply to ASIC for registration as an auditor until after 1 March 2010.

3. ACKNOWLEDGMENTS

Acknowledgments by Mr Buttle

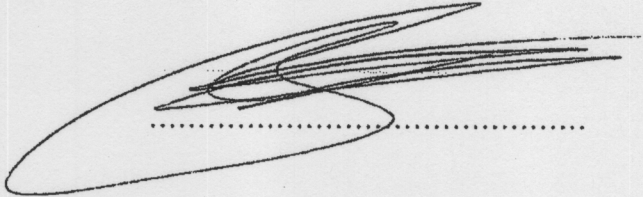
- 3.1 Mr Buttle acknowledges that ASIC:
 - (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (b) may from time to time publicly refer to this undertaking;
 - (c) will make this undertaking available for public inspection.
- 3.2 Mr Buttle 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

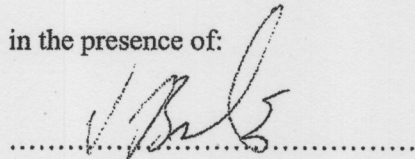
(c) has no operative force until accepted by ASIC.

Signed this 28th day of July 2008

by **JOHN ROBERT BUTTLE**



in the presence of:



witness

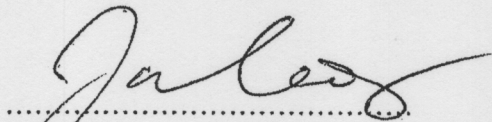
STEPHANIE BRONK.....

name (print)

50 BRIDGE ST, SYDNEY NSW 2000

address

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



[name] JAN REARDON.

Delegate of the Australian Securities & Investments Commission

Dated this 28 day of July 2008