



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:

***Droga Capital Pty Ltd***

*ACN 053 560 286*

*Level 17, Westpac Plaza, 60 Margaret Street, Sydney NSW 2000*

and

***Daniel Baron Droga***

*Level 17, Westpac Plaza, 60 Margaret Street, Sydney NSW 2000*

**1. DEFINITIONS**

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

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

**Bell Potter** means Bell Potter Securities Limited ACN 006 390 772

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

**Droga Capital** means Droga Capital Pty Ltd ACN 053 560 286

**Entity** has the same meaning as that term is defined in section 9 of the Corporations Act

**FMS** means Flinders Mines Limited ACN 091 118 044 (formerly Flinders Diamonds Limited)

**Mr Droga** means Daniel Baron Droga.

**Short selling** means selling section 1020B products in contravention of section 1020B of the Corporations Act

**2. BACKGROUND**

**2.1 ASIC's role**

2.1.1 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

- 2.2.1 Droga Capital is an Australian investment firm.
- 2.2.2 Mr Droga is the sole director, secretary and shareholder of Droga Capital.
- 2.2.3 About 9:55am on Thursday 28 February 2008, Mr Droga, on behalf of Droga Capital, entered a sell order on the ASX for 1 million FMS shares at a price of 13 cents per share. By 10:27am that morning, Droga Capital's sell order had traded on the ASX.
- 2.2.4 At the time of placing the sell order, Droga Capital did not own any FMS shares. However, Mr Droga on behalf of Droga Capital has submitted that at the time of placing the sell order he believed that Droga Capital had a commitment to receive 2 million FMS shares pursuant to a Placement.
- 2.2.5 At 11:40am on 28 February 2008, FMS entered into a trading halt pending an announcement in relation to a capital raising.
- 2.2.6 Mr Droga on behalf of Droga Capital has submitted that upon learning of the trading halt referred to in paragraph 2.2.5 above, realised that Droga Capital had not received an allocation of FMS shares pursuant to a Placement.
- 2.2.7 At 3:31pm on 28 February 2008 Droga Capital received an email from Bell Potter containing details of a capital raising by FMS indicating that firm bids for placement shares would be due by 6:00pm that evening.
- 2.2.8 On 29 February 2008 Droga Capital, placed a buy order for 1 million FMS shares at a price of 11 cents per share. Due to the stock remaining in a trading halt the transaction was not executed at this time. (See paragraphs 2.2.10 and 2.2.11 below)
- 2.2.9 Also on 29 February 2008, Bell Potter sent Droga Capital a placement letter giving Droga Capital a firm allocation of 2 million FMS shares. An acceptance form was attached to the letter. The completed form was sent to Bell Potter that afternoon.
- 2.2.10 On 3 March 2008 the trading halt in respect of FMS shares was lifted and FMS announced to the market that it had successfully placed to sophisticated and professional investors 110 million fully paid ordinary shares of FMS at an issue price of 10 cents per share. Droga Capital's buy order (referred to at paragraph 2.2.8 above) was not executed on 3 March 2008 because FMS did not trade below 11.5 cents per share.
- 2.2.11 On 4 March 2008 Droga Capital's buy order for 1 million FMS shares (referred to at paragraph 2.2.8 above) traded.



- 2.2.12 On 6 March 2008 Droga Capital received its allocation of 2 million FMS shares pursuant to the Placement.
- 2.2.13 On 7 March 2008, both the sell order referred to in paragraph 2.2.3 and the buy order referred to in paragraph 2.2.8 settled.

### 2.3 ASIC's investigation

- 2.3.1 On 30 May 2008 ASIC commenced an investigation into a suspected contravention of section 1020B of the Corporations Act relating to the trading in the securities of FMS on 28 February 2008 by Droga Capital (the **Investigation**).
- 2.3.2 As a result of the Investigation, ASIC has formed the following views:
- (a) that on 28 February 2008 Droga Capital failed to comply with its obligations under section 1020B of the Corporations Act by failing to hold a presently exercisable and unconditional right to vest 1 million shares of FMS at the time it placed a sell order for 1 million shares of FMS;
  - (b) that on 28 February 2008, Mr Droga entered the sell order referred to in paragraph 2.2.3 above, on behalf of Droga Capital without having a reasonable belief that Droga Capital had a presently exercisable right to vest FMS shares in the buyer.

### 2.4 ASIC's concerns

- 2.4.1 Section 1020B of the Corporations Act prohibits a person from selling securities in Australia unless that person has or that person believes on reasonable grounds that the person has a presently exercisable and unconditional right to vest the products in the buyer (except in limited circumstances set out in the *Corporations Act 2001* and securities regulations).
- 2.4.2 ASIC is concerned that procedures in place at Droga Capital on and around 28 February 2008 were insufficient so as to prevent a breach of section 1020B from occurring.

### 2.5 Acknowledgement of concerns

- 2.5.1 Mr Droga and Droga Capital acknowledge that, based on ASIC's views as outlined above, ASIC has reason to be concerned as to the facts which are the subject of paragraph 2.2 above, and have offered an Enforceable Undertaking in the terms of paragraph 3 below.
- 2.5.2 As a result of ASIC's concerns, Droga Capital has conducted a review of Droga Capital's existing policies and procedures for dealing with compliance with section 1020B of the Corporations Act and has prepared

a compliance manual (**Compliance Manual**) in relation to such policies and procedures (**Short Selling Policies and Procedures**) and has provided a copy of the Compliance Manual to ASIC.

### 3. UNDERTAKINGS

3.1 Under section 93AA of the ASIC Act, Mr Droga and Droga Capital have offered, and ASIC has agreed to accept as an alternative to pursuing court action, the following undertakings:

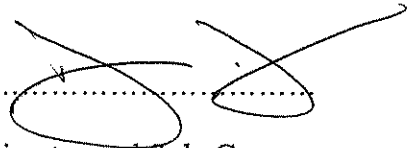
- (a) Within 30 days from the date of this Enforceable Undertaking, Mr Droga will provide to ASIC a statutory declaration signed by Mr Droga confirming that Droga Capital's Short Selling Policies and Procedures have been adopted.
- (b) Droga Capital must ensure that all relevant company employees, officers, and consultants / contractors to Droga Capital are trained in the revised Short Selling Policies and Procedures as set out in the Compliance Manual. Training is to be commenced as soon as possible and no later than 30 days from the date of implementation of the Short Selling Policies and Procedures and is to be completed no later than 30 days from the commencement of training.
- (c) Droga Capital will not engage in short selling of any kind of ASX listed securities for a **period of 3 months** from the date of this Undertaking (**Undertaking Period**). Within 7 days of the end of the Undertaking Period, Mr Droga will provide to ASIC a statutory declaration signed by Mr Droga stating that none of Droga Capital's officers, employees or consultants / contractors engaged in short selling of any kind of ASX listed securities during the Undertaking Period.
- (d) Mr Droga will not engage in short selling of any kind of ASX listed securities, either in his own capacity or in association with other entities, during the Undertaking Period. Within 7 days of the end of the Undertaking Period, Mr Droga will provide to ASIC a statutory declaration stating that he has not engaged in short selling of any kind of ASX listed securities during the Undertaking Period.
- (e) Mr Droga and Droga Capital will provide all documents and information requested by ASIC from time to time for the purpose of assessing Mr Droga and Droga Capital's compliance with the terms of this Enforceable Undertaking.



#### 4. ACKNOWLEDGMENTS

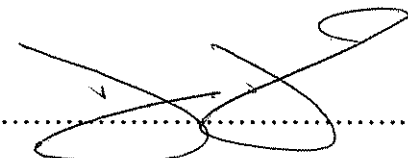
- 4.1 Mr Droga and Droga Capital acknowledge that ASIC:
- (a) may issue a media release on execution of this Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this Undertaking; and
  - (c) will make this Undertaking available for public inspection.
- 4.2 Further, Mr Droga and Droga Capital acknowledge 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 While Mr Droga and Droga Capital do not admit any contravention of section 1020B of the Act and do not otherwise make any admission by entry into this Enforceable Undertaking, they acknowledge that ASIC had reason to be concerned as to the alleged facts and have offered an Enforceable Undertaking in the terms of paragraph 3 above.
- 4.4 Mr Droga and Droga Capital acknowledge that this Undertaking has no operative force until accepted by ASIC.
- 4.5 Further, Mr Droga, Droga Capital and ASIC acknowledge that the date of this Enforceable Undertaking is the date on which it is accepted by ASIC.

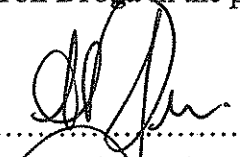
EXECUTED by DROGA CAPITAL PTY )  
LIMITED in accordance with s127of the )  
Corporations Act 2001 by:

  
.....  
Sole Director and Sole Company  
Secretary

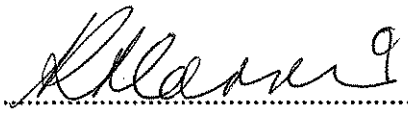
**Daniel Droga**

EXECUTED this 18<sup>th</sup> day of February 2009 by  
Daniel Baron Droga in the presence of

  
.....  
Daniel Droga

  
.....  
(Witness) S.R. Lewis.

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

  
.....

[name] Kathleen Harris.

Delegate of Australian Securities and Investments Commission

[date] 18.2.09