

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:

Nufarm Limited
ACN 091 323 312
103-105 Pipe Road
Laverton VIC 3026

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);

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

Infringement Notice means the infringement notice issued under Part 9.4AA of the Corporations Act by ASIC to Nufarm dated 30 November 2010;

Nufarm means Nufarm Limited ACN 091 323 312.

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 ASIC's investigation and concerns

- 2.2.1 On 19 May 2010 ASIC commenced an investigation pursuant to section 13(1) of the ASIC Act into suspected contraventions by Nufarm and its officers, agents and/or employees of sections 674(2) and 674(2A) of the Corporations Act (**the Investigation**).
- 2.2.2 As a result of the Investigation:
- 2.2.2.1 ASIC believes that Nufarm may have contravened section 674(2) of the Corporations Act. ASIC has issued and Nufarm has complied

with the Infringement Notice. Details of the alleged contravention are contained in the Infringement Notice; and

- 2.2.2.2 ASIC has concerns that Nufarm's financial reporting systems did not operate to give it sufficiently up to date information on its financial performance and on current market conditions to enable it to have a more precise view of its likely half yearly results at the time of the alleged contravention.

2.3 Acknowledgement of concerns

- 2.3.1 Nufarm acknowledges ASIC's concerns and has offered an enforceable undertaking in the terms of part 3 below.
- 2.3.2 ASIC acknowledges the cooperation and assistance of Nufarm and its directors in relation to this enforceable undertaking.

3. Undertakings

- 3.1 Under section 93AA of the ASIC Act, Nufarm has offered, and ASIC has agreed to accept, as an alternative to court proceedings and determinations pursuant to sections 708AA(3), 708A(2) and 713(6) of the Corporations Act, the following undertakings.
- 3.2 Nufarm will engage an appropriate person (**the External Consultant**) to conduct a review of Nufarm's financial reporting and continuous disclosure systems.
- 3.2.1 The External Consultant is to be independent of Nufarm and its officers. The terms of engagement of the External Consultant are to be approved by ASIC.
- 3.2.2 The External Consultant must be engaged within 30 days of the date of this enforceable undertaking.
-
- 3.2.3 The External Consultant is to identify any deficiencies in Nufarm's:
- (a) financial reporting systems, and recommend amendments which are reasonably required to ensure that they are appropriate for a company of the size and kind of Nufarm; and
 - (b) disclosure systems, and recommend amendments which are consistent with industry best practice for a company of the size and kind of Nufarm and that are reasonably required to ensure that they meet the requirements of, respectively, Listing Rule 3.1 and section 674 of the Corporations Act
- (together, **the Recommendations**).

- 3.2.4 The Recommendations may include (but are not limited to) any recommendations concerning:
- (a) enhancement to financial reporting systems;
 - (b) amendments to internal management reporting processes;
 - (c) changes to Nufarm's reporting structure;
 - (d) additional finance team resources; and
 - (e) continuous disclosure protocols.
- 3.2.5 The External Consultant is to recommend a timeframe within which it would be reasonable for Nufarm to implement the Recommendations (**the Timeframe**).
- 3.2.6 The External Consultant is to prepare a report setting out any deficiencies identified and containing the Recommendations and the Timeframe (**the First Report**), which must be provided to ASIC and Nufarm within three months of the date of this enforceable undertaking.
- 3.2.7 The External Consultant is to prepare a report assessing the implementation and effectiveness of the Recommendations and giving an opinion on whether the Recommendations have been effectively implemented (**the Second Report**), which must be provided to ASIC and Nufarm no earlier than six months after the date of the First Report.
- 3.3 Nufarm will pay the costs of its compliance with this enforceable undertaking, including all remunerations and costs associated with the External Consultant.
- 3.4 Nufarm will provide all reasonable assistance to the External Consultant including permitting the External Consultant to have access to books, interview Nufarm officers and employees and give the External Consultant any information or explanation reasonably requested.
- 3.5 Nufarm will:
- 3.5.1 ensure that ASIC is provided with a copy of the First Report and the Second Report at the same time Nufarm is provided with these reports;
 - 3.5.2 implement each of the Recommendations within the Timeframe (unless the Timeframe is modified or extended by agreement with ASIC).

- 3.6 Nufarm will conduct training in relation to its continuous disclosure obligations for all of its directors, senior managers and regional managers within 3 months of the date of this enforceable undertaking.
- 3.7 Nufarm will not:
- 3.7.1 give a notice under paragraph 708A(5)(e) of the Corporations Act in relation to any securities of Nufarm;
 - 3.7.2 give a notice under paragraph 708A(12C)(e) of the Corporations Act (as notionally inserted into the Corporations Act by ASIC Class Order [10/322] *On-sale for convertible notes issued to wholesale investors*) in relation to any securities of Nufarm;
 - 3.7.3 offer or issue securities in reliance on subsection 708AA(2) of the Corporations Act;
 - 3.7.4 offer or issue securities in reliance on section 713 of the Corporations Act;
 - 3.7.5 offer or issue securities in reliance on subsection 713(1A) of the Corporations Act (as notionally inserted into the Corporations Act by ASIC Class Order [CO 10/321] *Offers of vanilla bonds*);
 - 3.7.6 offer or issue securities in reliance on ASIC Class Order [CO 00/195] *Offer of convertible securities under s713*;
 - 3.7.7 offer or issue securities in reliance on ASIC Class Order [CO 09/425] *Share and interest purchase plans*; or
 - 3.7.8 offer or issue securities in reliance on any other class order made by ASIC that Nufarm would not be *entitled* to rely on if ASIC had made determinations under subsections 708AA(3), s708A(2) and s713(6) of the Corporations Act in relation to Nufarm,

until all of the following has occurred:

- 3.7.9 the External Consultant has given an opinion that the Recommendations have been effectively implemented;
 - 3.7.10 ASIC has been provided with a copy of the Second Report; and
 - 3.7.11 9 months has elapsed since the date of this enforceable undertaking.
- 3.8 Nufarm will provide all documents and information requested by ASIC from time to time for the purpose of assessing Nufarm's compliance with the terms of this enforceable undertaking.

4. Acknowledgements

4.1 Nufarm 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 any reports provided to ASIC pursuant to this undertaking; and
- (c) will make this undertaking available for public inspection.

4.2 Further Nufarm 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 ASIC's concerns in 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 Nufarm does not admit any contravention of section 674(2) or 674(2A) of the Corporations Act and does not otherwise make any admission by entry to this enforceable undertaking, Nufarm acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of part 3 above.

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

5. Notification

5.1 The address for providing ASIC with any document or notification which this enforceable undertaking requires to be provided to ASIC is:

Senior Executive Leader, Corporations
Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE VIC 3001

5.2 The address for providing Nufarm with any document or notification is

c/- Arnold Bloch Leibler

Attention: Zaven Mardirossian

21/333 Collins Street

Melbourne VIC 3000

EXECUTED by NUFARM

LIMITED (ACN 091 323 312)
in accordance with Section 127(1) of
the Corporations Act 2001 (Cth)

Dated: 1 December 2010

)
)
)
)
)
)
.....
Director

.....
Director/Secretary

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

.....
Name: SHANE TREGILLIS

Delegate of Australian Securities and Investments Commission

Dated: 1 DECEMBER 2010

