



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

913A.

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

*Opus Capital Limited
ACN 095 039 366
Lower Ground, 283 Elizabeth Street
BRISBANE QLD 4000*

DEFINITIONS

The following definitions are used:

AAT means Administrative Appeals Tribunal.

Accounting Standards has the meaning given to that term in the Corporations Act.

AFSL means Australian financial services licence.

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

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

DTA has the meaning given to that term in the Accounting Standards.

NTA means net tangible assets as defined in clause 9 of OCL's AFSL.

OCL means Opus Capital Limited ACN 095 039 366.

Sale and Performance Fee Assets means those assets recorded on OCL's financial statements relating to fees payable to OCL on the sale of properties held by registered managed investment schemes operated by OCL, but excludes fees that have been received by OCL.

BACKGROUND

ASIC's role

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 in the financial system.

Details of conduct

2. On 21 April 2009, OCL notified ASIC of a breach of its AFSL relating to its NTA position.
3. On 24 May 2010, OCL submitted to ASIC that it had rectified the breach, as OCL had not been including in its calculation of NTA certain assets, including DTA and Sale and Performance Fee Assets.
4. On 21 June 2010, OCL received a notice of hearing under section 915C of the Corporations Act from ASIC requiring it to attend a hearing on Thursday, 8 July 2010.
5. On 26 August 2010 and following the hearing on 8 July 2010, a delegate of ASIC determined to cancel the AFSL issued to OCL. The delegate decided that OCL had breached the NTA condition of its AFSL. Specifically, the delegate determined that the DTA and Sale and Performance Fee Assets which OCL was including in its calculation of NTA for AFSL purposes should not be included on the basis these amounts were intangible assets.
6. OCL appealed the decision of the ASIC delegate to the AAT and on 20 September 2010, the AAT granted OCL's appeal on the basis the DTA could be included in OCL's calculation of its NTA for AFSL purposes. The AAT did not decide on the Sale and Performance Fees Assets issue, as the DTA was a sufficient amount that, if included in OCL's NTA calculation, would mean OCL met its NTA requirement.
7. ASIC subsequently appealed the decision of the AAT to the Federal Court.
8. On 31 August 2011, the Federal Court ordered that the decision of the AAT be set aside and the matter be remitted to the AAT for further consideration in accordance with law.
9. The parties have agreed to consent to the AAT making orders setting aside the decision of the ASIC delegate of 26 August 2010 and disposing of the AAT proceedings without further hearing on the basis that OCL now complies with its NTA requirements without including either the DTA or Sale and Performance Fee Assets in its calculation of NTA.

ASIC's concerns

10. ASIC is concerned that OCL is in breach of condition 9 of its AFSL and has breached its obligations under subsection 912A(1)(b) and Chapter 2M of the Corporations Act.

Acknowledgement of concerns

11. OCL acknowledges ASIC's concerns and has offered an enforceable undertaking in the terms set out below.

12. ASIC acknowledges the cooperation and assistance of OCL and its directors in relation to this enforceable undertaking.

UNDERTAKINGS

13. Under section 93AA of the ASIC Act, OCL has offered, and ASIC has agreed to accept as an alternative to pursuing the matter in the AAT, the following undertakings:
- 13.1.1. OCL undertakes that it will not include the DTA or Sale or Performance Fee Assets as an “adjusted asset” for the purposes of calculating its NTA.
 - 13.1.2. For the 24 month period from the date of this undertaking, OCL will provide to ASIC within fifteen business days of the end of each quarter, a report as to OCL's compliance with the financial conditions of its AFSL.
 - 13.1.3. In all financial reports relating to any period from and including the year ending 30 June 2010 (and to avoid doubt, for the purposes of calculating NTA), OCL undertakes to, in relation to the Sale and Performance Fee Assets—
 - 13.1.3.1. classify those assets as intangible assets
 - 13.1.3.2. not recognize the Sale and Performance Fee Assets as revenue, except to the extent that a particular fee relates to an asset that has been sold, the sale has settled and the fee is due and payable under the constitution of the relevant fund, and
 - 13.1.3.3. use an amortised cost of the Sale and Performance Fee Assets of zero rather than its fair value.
 - 13.1.4. OCL undertakes that it will pay the costs of its compliance with this enforceable undertaking.
 - 13.1.5. OCL will provide all documents and information requested by ASIC from time to time for the purpose of assessing OCL's compliance with the terms of this enforceable undertaking.

ACKNOWLEDGEMENTS

14. OCL acknowledges that ASIC—
- 14.1.1. 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
 - 14.1.2. may from time to time publicly refer to this undertaking, and
 - 14.1.3. will make this undertaking available for public inspection.
15. Further, OCL acknowledges that—
- 15.1.1. ASIC's acceptance of this undertaking does not effect 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, and

15.1.2. 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.

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

17. OCL acknowledges that the terms of this EU are intended to operate in addition to the terms of the OCL AFS Licence.


Signed by Opus Capital Limited
095 039 366 in accordance with
section 127 of the Corporations Act
by



Secretary/Director

PAUL DAVID ASHTON

Name (please print)

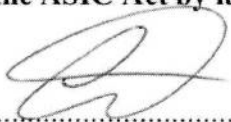


Director

ROWAN T WARD

Name (please print)

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


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[name] Gerard Fitzpatrick
Delegate of Australian Securities and Investments Commission

[date] 10 October 2011