

ENFORCEABLE UNDERTAKING

9 BA

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Peter Lockyer (Mr Lockyer)
c/o Trood Pratt & Co
Level 21
68 Pitt Street
Sydney NSW 2000

Definitions

1. In addition to terms defined elsewhere in this enforceable undertaking, the following definitions are used:
 - a) **ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth);
 - b) **Australian Auditing Standards** means the auditing standards in force from time to time pursuant to s 336 of the Corporations Act;
 - c) **CALDB** means the Companies Auditors and Liquidators Disciplinary Board;
 - d) **Corporations Act** means the *Corporations Act 2001* (Cth);
 - e) **Elderslie** means Elderslie Finance Corporation Limited ACN 008 678 233;
 - f) **Grenfell** means Grenfell Securities Limited ACN 075 358 075;
 - g) **Trood Pratt** means the partnership known as Trood Pratt & Co, Chartered Accountants, and which firm provides audit and assurance services;
 - h) **2006 Elderslie Audit** means the audit of Elderslie's financial report for the financial year 1 July 2005 to 30 June 2006;
 - i) **2007 Elderslie Audit** means the audit of Elderslie's financial report for the financial year 1 July 2006 to 30 June 2007;
 - j) **2008 Grenfell Audit** means the audit of Grenfell's financial report for the financial year 1 July 2007 to 30 June 2008.

ASIC's role

2. 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.

3. ASIC is also responsible for the registration of company auditors under Part 9.2 of the Corporations Act. Auditors registered under Part 9.2 of the Corporations Act must satisfy specified educational and practical experience standards, and, in forming an opinion about whether financial statements audited by them comply with Australian Accounting Standards and present a true and fair view, must comply with Australian Auditing Standards and Professional Conduct Standards as promulgated by The Institute of Chartered Accountants in Australia.
4. ASIC is empowered to bring disciplinary proceedings pursuant to s1292(1) of the Corporations Act in the CALDB against registered company auditors who, in its view, have failed to adequately and properly carry out the duties of an auditor.

Mr Lockyer's role

5. Mr Lockyer is, and has been continuously since 30 November 1999, registered as an auditor under the Corporations Act or corresponding previous legislation. Mr Lockyer's registration number is 193505.
6. Mr Lockyer was at all relevant times, and continues to be, a partner of Trood Pratt.
7. Trood Pratt was the audit firm engaged by Elderslie and Grenfell, respectively, at all material times.
8. Mr Lockyer was the lead auditor, as defined by s324AF(1) of the Corporations Act (**Lead Auditor**) for the 2006 Elderslie Audit, the 2007 Elderslie Audit and the 2008 Grenfell Audit.
9. Mr Lockyer was the Trood Pratt partner who had conduct of the 2006 Elderslie Audit, the 2007 Elderslie Audit and the 2008 Grenfell Audit.
10. On 7 November 2006, Mr Lockyer signed an unmodified audit opinion on the financial statements of Elderslie for the financial year ended 30 June 2006.
11. On 28 September 2007, Mr Lockyer signed an unmodified audit opinion on the financial statements of Elderslie for the financial year ended 30 June 2007.
12. On 26 September 2008, Mr Lockyer signed an unmodified audit opinion on the financial statements of Grenfell for the financial year ended 30 June 2008.
13. Section 307A(2) of the Corporations Act provides that if an audit firm conducts an audit of the financial report for a financial year, the Lead Auditor must ensure that the audit is conducted in accordance with Australian Auditing Standards.

Elderslie

14. Elderslie was incorporated in 1957 and its principal activities were at all material times:
 - structured finance involving operating leasing, finance leasing, hire purchase, asset backed and general finance;
 - financing and promotion of selected venture capital projects; and

- investment management involving funds management, property syndication, property development and trading.

15. Elderslie was placed under voluntary administration on 2 July 2008 and on 22 September 2008 was wound up by order of the Supreme Court of NSW.

Grenfell

16. Grenfell was incorporated on 26 August 1996 and its principal activities during the financial year of the 2008 Grenfell Audit were management of the issue of fixed interest investments for investment in the Grenfell First Mortgage Fund and the Grenfell General Fund and further investment of those funds in real estate mortgages.

17. Grenfell was the holder of an Australian Financial Services Licence.

18. Grenfell was placed in receivership on 31 October 2008.

ASIC's concerns

19. ASIC has conducted an investigation under s13(1) of the ASIC Act in relation to the 2006 Elderslie Audit, the 2007 Elderslie Audit and the 2008 Grenfell Audit.
20. Following its investigation, ASIC is concerned that with respect to the 2006 Elderslie Audit, the 2007 Elderslie Audit and the 2008 Grenfell Audit Mr Lockyer failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292(1)(d)(i) of the Corporations Act, as a result of the matters described in paragraphs 21 and 22 below.

Elderslie

21. ASIC is concerned that Mr Lockyer, as Lead Auditor of the 2006 Elderslie Audit and the 2007 Elderslie Audit, failed to ensure that each of these audits was conducted in accordance with Australian Auditing Standards as required by s307A of the Corporations Act and in particular that he, as Lead Auditor failed to ensure that:
- a) a qualified audit report was issued for the 2006 Elderslie Audit and the 2007 Elderslie Audit on account of Elderslie's financial report for each of the financial years ended 30 June 2006 and 30 June 2007 failing to comply with various accounting standards;
 - b) a modified audit report in respect of going concern was issued for the 2006 Elderslie Audit and the 2007 Elderslie Audit;
 - c) each of the 2006 Elderslie Audit and the 2007 Elderslie Audit was conducted in accordance with various auditing standards generally (including planning, documentation, consideration of fraud, understanding the entity, audit evidence, analytical procedures and external confirmations) in respect of valuation in various areas (loans, investments, property under investment, income tax, liabilities, options and deposits) and related parties; and

- d) reports were made to ASIC under s311 of the Corporations Act in respect of suspected or actual breaches of the Corporations Act.

Grenfell

22. ASIC is concerned that Mr Lockyer, as Lead Auditor of the 2008 Grenfell Audit, failed to ensure that the audit was conducted in accordance with Australian Auditing Standards as required by s307A of the Corporations Act and in particular that he, as Lead Auditor failed to ensure that:
 - a) the work performed on going concern was adequate and whether the unmodified audit opinion based on an emphasis of matter that was issued properly disclosed the seriousness of Grenfell's going concern position;
 - b) a qualified audit report was issued for the 2008 Audit on account of Grenfell's financial report for the financial year ended 30 June 2007 failed to comply with various accounting standards;
 - c) the 2008 Audit was conducted in accordance with various auditing standards generally; and
 - d) reports were made to ASIC under s311 of the Corporations Act in respect of suspected or actual breaches of the Corporations Act.

Acknowledgement by Mr Lockyer of ASIC's concerns

23. Mr Lockyer acknowledges ASIC's concerns.
24. In accepting the commitments in this enforceable undertaking, ASIC notes Mr Lockyer's view that despite ASIC's concerns:
 - a) Mr Lockyer has carried out a detailed review of ASIC's concerns relating to the 2006 Elderslie Audit, the 2007 Elderslie Audit and the 2008 Grenfell Audit and has prepared a detailed response defending ASIC's concerns; and
 - b) due to personal reasons, Mr Lockyer is prepared to enter into an enforceable undertaking with ASIC arising out of his conduct of the 2006 Elderslie Audit, the 2007 Elderslie Audit and the 2008 Grenfell Audit and is ceasing practice as an auditor and is proposing to wind down his role as a partner of Trood Pratt.

Undertakings

25. Under s93AA of the ASIC Act, Mr Lockyer has offered, and ASIC has agreed to accept as an alternative to making an application to CALDB for an order under s1292(1) of the Corporations Act, the undertakings set out in paragraphs 26 to 31 inclusive below.
26. Mr Lockyer will, within 7 days after acceptance by ASIC of this enforceable undertaking, submit pursuant to s1290 of the Corporations Act, a duly completed Form 905 accompanied by the prescribed fee, requesting ASIC to cancel his registration as an auditor

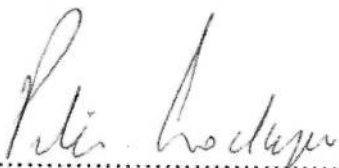
27. Following acceptance by ASIC of Mr Lockyer's request pursuant to paragraph 26 above, Mr Lockyer will not ever re-apply for registration as an auditor.
28. Following acceptance by ASIC of Mr Lockyer's request pursuant to paragraph 26 above, should Mr Lockyer perform any audit work outside of what only a registered company auditor can perform, Mr Lockyer will provide a copy of this enforceable undertaking to any person who engages him to perform that work.
29. Following acceptance by ASIC of Mr Lockyer's request pursuant to paragraph 26 above and while Mr Lockyer remains at Trood Pratt, whether or not as a partner of Trood Pratt, he will not be involved in the conduct or supervision of any audit, audit work or review.
30. Mr Lockyer will, within a reasonable period of time after receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purposes of assessing Mr Lockyer's compliance with the terms of this enforceable undertaking.

Acknowledgements as to operation of this enforceable undertaking

31. Mr Lockyer acknowledges that:
 - (a) this enforceable undertaking has no operative force until accepted by ASIC, and Mr Lockyer and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC;
 - (b) ASIC may issue a media release upon acceptance of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (c) ASIC may from time to time publicly refer to this enforceable undertaking;
 - (d) ASIC will make this enforceable undertaking available for public inspection;
 - (e) should ASIC form the view that Mr Lockyer has failed to comply with this enforceable undertaking, ASIC may take additional action including (without limitation) seeking court orders under s93AA of the ASIC Act requiring him to comply with the terms of this enforceable undertaking; and
 - (f) ASIC's acceptance of this enforceable 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.
32. This enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this enforceable undertaking or arising from future conduct.

33. Any written notification to ASIC pursuant to this enforceable undertaking is to be provided to:

The Senior Executive Leader, Financial Reporting and Audit
ASIC
Level 5, 100 Market Street
SYDNEY NSW 2000.



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Peter Lockyer

Dated: 19th October 2011

Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act by its duly authorised delegate:



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Christopher Savundra

Delegate of Australian Securities and Investments Commission

Dated: 19th October 2011