

## 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:

**Brian Patrick Kingston (Mr Kingston)**  
**835 Cannon Creek Road**  
**Bapaume Queensland 4352**

### 1. Definitions

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

**2012 Audit** means the audit of the financial report of Wickham for the year ended 30 June 2012.

**2012 Financial Report** means the financial report of Wickham for the year ended 30 June 2012.

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

**Australian Auditing Standards** means the auditing standards in force from time to time pursuant to section 336 of the Corporations Act.

**CALDB** means the Companies Auditors and Liquidators Disciplinary Board.

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

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

**Wickham** means Wickham Securities Limited ACN 111 421 811 (in liquidation).

### 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.

2.1.2 ASIC is also responsible for the registration of company auditors under Part 9.2 of the Corporations Act. Registered auditors must satisfy specified educational and practical experience standards and be otherwise a fit and proper person to be registered as an auditor, and in forming an opinion about whether financial statements audited by them

comply with the Australian Accounting Standards and present a true and fair view, must comply with the Australian Auditing Standards.

- 2.1.3 ASIC is empowered to bring disciplinary proceedings pursuant to section 1292(1)(d)(i) of the Corporations Act in the CALDB against registered auditors who have failed to adequately and properly carry out the duties of an auditor.

## **2.2 Details and role of Mr Kingston**

- 2.2.1 Mr Kingston is an auditor registered pursuant to section 1280 of the Corporations Act. Mr Kingston was registered on 17 December 1982 and issued auditor registration number 6101.
- 2.2.2 Mr Kingston is a member of the National Tax and Accountants' Association.
- 2.2.3 Mr Kingston was the individual auditor responsible for the 2012 Audit.
- 2.2.4 Mr Kingston issued an unqualified audit opinion in respect of the 2012 Audit on 27 September 2012.
- 2.2.5 Section 307A(1) of the Act provides that if an individual auditor conducts an audit or review of the financial report for a financial year, the individual auditor must ensure that the audit or review is conducted in accordance with the Australian Auditing Standards.

## **2.3 Wickham**

- 2.3.1 The principal activity of Wickham was the raising of funds from investors via prospectus for the issue of unsecured deposit notes and advancing those funds as secured loans to borrowers to finance property investments and development.
- 2.3.2 The majority of investors in Wickham were self-managed superannuation funds.
- 2.3.3 According to the 2012 Financial Report, Wickham had approximately \$27 million of unsecured deposit notes on issue and approximately \$27.4 million in secured loans advanced.
- 2.3.4 Grant Sparks and David Leigh of PPB Advisory were appointed as administrators of Wickham on 21 December 2012 and as liquidators of Wickham on 6 February 2013. In their report to creditors pursuant to section 439A of the Corporations Act, dated 29 January 2013, the administrators reported that the estimated range for gross realisations of Wickham's loan portfolio was between approximately \$1.7 million and \$6.2 million.

### **3. ASIC's Investigations and Concerns**

3.1 As a result of the investigations conducted by ASIC into the collapse of Wickham, ASIC formed the view that Mr Kingston failed to carry out or perform adequately and properly the duties of an auditor within the meaning of section 1292(1)(d)(i) of the Corporations Act and Mr Kingston failed to conduct the 2012 Audit in accordance with the Australian Auditing Standards as required by section 307A of the Corporations Act by reason of the following matters:

- 3.1.1 sufficient appropriate audit evidence to support material financial balances contained in the Income Statement, Balance Sheet, Statement of Changes in Equity, Cash Flow Statement and the Notes to the Financial Statements of the 2012 Financial Report was not obtained in accordance with the Australian Auditing Standards;
- 3.1.2 an unqualified audit opinion was rendered without sufficient appropriate audit evidence upon which to conclude as to the appropriateness of the going concern basis of accounting underlying the preparation of the 2012 Financial Report;
- 3.1.3 an adequate level of professional scepticism was not demonstrated when relying on representations from Wickham management and directors and no audit procedures were performed to corroborate or confirm those representations;
- 3.1.4 there is no evidence of any planning procedures required by the Australian Auditing Standards being undertaken, including preliminary engagement activities, setting an overall audit strategy, developing an audit plan, determining materiality and risk assessment procedures; and
- 3.1.5 there is no evidence of any audit completion procedures required by the Australian Auditing Standards being undertaken, including performing final analytical procedures, obtaining written representations from management, evaluating the overall presentation of the financial report and disclosures, performing concluding procedures on the going concern assumption and assembling the final audit file on a timely basis after the date of the auditors' report.

### **4. Acknowledgement of ASIC's Concerns**

4.1 Mr Kingston acknowledges ASIC's concerns detailed in clause 3 and acknowledges that they are reasonably held, although this acknowledgement does not constitute any admission by Mr Kingston.

## 5. Undertakings

- 5.1 Under section 93AA of the ASIC Act, Mr Kingston has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to the CALDB for an order under section 1292(2) of the Corporations Act, the following undertakings:
- 5.1.1 Mr Kingston will, within 7 days of acceptance by ASIC of this enforceable undertaking and notification of that acceptance to Mr Kingston or his solicitor, submit pursuant to section 1290 of the Corporations Act a duly completed Form 905, accompanied by the prescribed fee, requesting ASIC to cancel his registration as an auditor.
  - 5.1.2 After cancellation of his registration as an auditor pursuant to paragraph 5.1.1, Mr Kingston will not ever:
    - (a) re-apply for registration as an auditor under the Corporations Act; or
    - (b) perform any duty or function which requires the person performing such duty or function to be registered as an auditor under the Corporations Act.
  - 5.1.3 Mr Kingston undertakes to pay the costs of compliance with this enforceable undertaking.
  - 5.1.4 Mr Kingston will provide all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking.


## 6. Acknowledgements

- 6.1 Mr Kingston acknowledges that ASIC:
- (a) 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;
  - (b) may from time to time publicly refer to this enforceable undertaking; and
  - (c) will make this enforceable undertaking available for public inspection.
- 6.2 Further Mr Kingston acknowledges that:
- (a) 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; and

(b) 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.


6.3 Mr Kingston acknowledges that pursuant to section 127(4)(d) of the ASIC Act, ASIC may refer documentation relating to the matters that led to ASIC's acceptance of this enforceable undertaking to relevant professional bodies.

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

  
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**Brian Patrick Kingston**

Dated: 17.6.2013  
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**Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:**

  
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**George Stogdale**  
Delegate of Australian Securities and Investments Commission

Dated: 27 June 2013  
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