



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:

WARREN JOHN SINNOTT (Mr Sinnott)
198 St. Aidans Road, Kennington VIC 3550

DEFINITIONS

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

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

AASB Standards means the Australian Accounting Standards Board's Accounting Standards.

ASA means the Australian Auditing Standards.

CALDB means the Companies Auditors and Liquidators Disciplinary Board.

Commencement Date means the date this enforceable undertaking is accepted by ASIC.

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

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

Except so far as the contrary intention appears in this undertaking the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act apply for the purposes of this undertaking as if the provisions of those Acts were provisions of this undertaking.

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 and consumers in the financial system.
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 standards of the AASB Standards and present a true and fair view, must comply with the ASA.
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.

Details and role of Mr Sinnott

4. Mr Sinnott is an auditor registered pursuant to section 1280 of the Corporations Act. Mr Sinnott was registered on 14 October 1987 and issued with auditor registration number 10534.
5. Mr Sinnott is a member of CPA Australia (**CPA**) and The Institute of Chartered Accountants in Australia (**ICAA**).
6. Mr Sinnott was at all relevant times a partner of Richmond Sinnott & Delahunty, Chartered Accountants (**RSD**).
7. At all relevant times, RSD was the audit firm engaged by Securities Holdco Limited ACN 088 267 690 (**SHL**); and its subsidiaries Banksia Securities Limited ACN 004 736 458 (**BSL**) and Cherry Fund Limited ACN 106 274 631 (**CFL**).
8. Mr Sinnott was the lead auditor, as defined in section 324AF(1) of the Corporations Act of SHL, BSL and CFL.

9. Mr Sinnott signed unqualified audit opinions in respect of SHL and its subsidiaries for the half years ended 31 December 2008 to 31 December 2011 (incl.) and financial years ended 30 June 2009 to 30 June 2012 (incl.).
10. 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 the ASA.

Banksia Financial Group

11. SHL is an unlisted public company and, at all relevant times, sole shareholder of 11 companies including; BSL and CFL which collectively, form part of the Banksia Financial Group (**BFG**)
12. The primary business of BSL involved raising monies from the public and advancing funds to third party borrowers primarily for property investment and development purposes.
13. CFL also raised monies from the public and invested those funds in BSL (as debentures) or advanced either with or through a related party contributory mortgage scheme.
14. On 25 October 2012, Receivers and Managers (**R&M**) were appointed by the Trustee to BSL and CFL following concerns that the entity's were insolvent or likely to become insolvent.
15. At the time of the R&Ms appointment, BSL owed debenture holders approximately \$660 million and had loan receivables from mortgage investments in respect of 956 individual loans totalling approximately \$500 million. BSL had cash, cash equivalent and term deposits of approximately \$155m, along with other assets.
16. As at the date of the R&Ms appointment, CFL had raised approximately \$10 million from debenture holders and had loan receivables from mortgage investments in respect of 37 loans totalling \$10.1 million.

ASIC's CONCERNS

17. In February 2013, ASIC commenced an investigation into the conduct of the audits of the Banksia Financial Group (BFG) by Mr Sinnott including:

Securities Holdco Limited

Financial years ended 30 June 2009 to 30 June 2012 (incl.)

Banksia Securities Limited

Half years ended 31 December 2008 to 31 December 2011 (incl.)

Financial years ended 30 June 2009 to 30 June 2012 (incl.)

Cherry Fund Limited

Half years ended 31 December 2008 to 31 December 2011 (incl.)

Financial years ended 30 June 2009 to 30 June 2012 (incl.)

(collectively, the **Audits**)

18. Since February 2013, ASIC has expressed concern to Mr Sinnott with respect to the Audits.
19. As a result of the investigation, ASIC is concerned that Mr Sinnott did not conduct the Audits in accordance with the ASA as required by section 307A(2) of the Corporations Act as, in each audit, he failed to:
- 19.1. perform sufficient audit procedures in relation to loan receivables, in accordance with paragraphs 5, 6 and 7 of ASA 330 *The Auditor's Response to Assessed Risks*;
 - 19.2. adequately test and assess whether management appropriately determined the provision for impairment of loan receivables, in accordance with paragraph 63 of AASB Standards 139 *Financial Instruments: Recognition and Measurement*, as required by paragraphs 12, 13 and 18 of ASA 540 *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures (ASA 540)*;
 - 19.3. sufficiently assess and identify whether there were indicators of possible management bias in relation to the provision for impairment of loan receivables as required by paragraph 21 of ASA 540;

- 19.4. adequately document the results of the audit procedures and his conclusion about the reasonableness of the provision for impairment of loan receivables, in accordance with paragraph 23 of ASA 540;
- 19.5. display an appropriate level of professional scepticism, in accordance with paragraph 15 of ASA 200 *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards (ASA 200)*, when auditing the valuation of loan receivables and the provision for impairment of loan receivables.
- 19.6. obtain sufficient appropriate audit evidence to reduce the risk of material misstatement of loan receivables to an acceptably low level, as required by paragraphs 11(a) and 17 of ASA 200;
- 19.7. remain alert throughout the audit, in accordance with paragraph 11 of ASA 570 *Going Concern (ASA 570)*, and identify the risk of the potential impairment of loan receivables, being an event which may have cast doubt on BSL's ability to continue as a going concern, by reason of his failure to ensure sufficient work was performed to appropriately determine the provision for impairment of loan receivables;
- 19.8. to ensure that he was aware of all relevant information in considering management's assessment of going concern, in accordance with paragraph 14 of ASA 570, by reason of his failure to sufficiently identify and assess the provision for impairment of loan receivables;
- 19.9. obtain and evaluate sufficient appropriate audit evidence about whether related party relationships and transactions had been appropriately identified, and disclosed in the financial reports, as required by paragraphs 4 and 6 of ASA 500 *Audit Evidence*; and paragraph 25 of ASA 550 *Related Parties*;
- 19.10. prepare audit documentation in accordance with paragraph 8 of ASA 230 *Audit Documentation* sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:
 - (a) the nature, timing and extent of the audit procedures performed to comply with the ASA and applicable legal and regulatory requirements;

- (b) the results of the audit procedures performed and the audit evidence obtained; and
 - (c) significant matters arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions.
- 19.11. to take responsibility of the overall quality of the audit and provide an appropriate level of supervision and review in respect of the audit work performed on; carrying value of loans and receivables, default interest, funded interest, accrued interest and debentures as required by paragraphs 8, 15 and 17 of ASA 220 *Quality Control for an Audit of a Financial Report and Other Historical Financial Information*.
20. By reason of the matters outlined in paragraph 19, ASIC is concerned that Mr Sinnott in providing unqualified auditor's reports for the Audits, failed to appropriately conclude that he had obtained reasonable assurance in relation to the material misstatement of the financial report and to form an appropriate opinion as required by paragraphs 10 to 12 of ASA 700 *Forming an Opinion and Reporting on a Financial Report (ASA 700)*.
21. Based on the matters outlined in paragraphs 19 and 20, ASIC has formed the view that the Audits were not conducted in accordance with the ASA and Mr Sinnott has 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 in respect of the Audits.

ACKNOWLEDGMENT OF CONCERNS

22. Mr Sinnott acknowledges ASIC's concerns detailed in paragraphs 19 and 20 and acknowledges that they are reasonably held.

UNDERTAKINGS

23. Under section 93AA of the ASIC Act, Mr Sinnott 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 undertakings as set out in paragraphs 24 to 32.

24. Mr Sinnott undertakes that he will not, for a period of 5 years from the Commencement Date (**Period of suspension**) perform any duty or function which requires registration as an auditor under the Corporations Act and, for the avoidance of any doubt, this includes acting as a review auditor as defined in s324AF(2) of the Corporations Act.
25. During the Period of suspension, Mr Sinnott will prior to being engaged by an existing or potential client, either directly or via a new employer, to perform any audit and/or review work for which registration as an auditor under the Corporations Act is not required, provide to the client or the new employer, as the case may be, a copy of this enforceable undertaking.
26. Mr Sinnott undertakes to participate in an additional 10 hours each year of continuing professional development on audit methodology, during the Period of suspension, in addition to the mandatory requirements of the ICAA or CPA.
27. Within 14 days after the conclusion of the Period of suspension, Mr Sinnott will provide to ASIC a statutory declaration that attests that he has not engaged in any activities during the Period of suspension that require registration as an auditor under the Corporations Act, and that he has fully complied with the undertakings at paragraphs 25 and 26.
28. Mr Sinnott will submit for review, to a registered company auditor approved by ASIC (**Review auditor**), the first three audits conducted by him following the Period of suspension that are required to be conducted by a registered company auditor under the Corporations Act, within 14 days of finalisation of each relevant audit (**Relevant audit**).
29. Within 60 days of receipt of each Relevant audit, the Review auditor must provide a written report to Mr Sinnott and ASIC, detailing whether in the Review auditor's opinion the Relevant audit has been conducted in accordance with the ASA at the time.
30. Mr Sinnott must implement any recommendations made by the Review auditor in their written reports.
31. Mr Sinnott 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.
32. Mr Sinnott undertakes to pay the costs of compliance with this enforceable undertaking.

ACKNOWLEDGMENTS

33. Mr Sinnott acknowledges that ASIC:
 - 33.1. may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 33.2. may from time to time publicly refer to this enforceable undertaking; and
 - 33.3. will make this enforceable undertaking available for public inspection.
34. Further, Mr Sinnott acknowledges that:
 - 34.1. ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillances or pursue a criminal prosecution or its power to lay charges, or seek a pecuniary civil order in relation to any contraventions not the subject of the background section of this enforceable undertaking or arising from future conduct;
 - 34.2. 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 enforceable undertaking or arising from future conduct.
35. Mr Sinnott 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.
36. Mr Sinnott acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and Mr Sinnott acknowledges that the date of the enforceable undertaking is the date on which it is accepted by ASIC.
37. ASIC acknowledges that nothing in this document constitutes any admission of liability by Mr Sinnott.

NOTIFICATION

38. The address for providing ASIC with any document or notification required by the enforceable undertaking is:

The Senior Manager
Financial Report & Audit
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

39. The address for providing Mr Sinnott with any document or notification required by the enforceable undertaking is:

Warren John Sinnott
198 St. Aidans Road
Kennington VIC 3550



.....
Warren John Sinnott

Dated: 11th June 2014.....

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



.....
George Stogdale

Delegate of the Australian Securities
and Investments Commission

Dated: 11 June 2014.....

