

## ENFORCEABLE UNDERTAKING

*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:

**Mr Martin George Thompson and Mr Allan Ni Kwan Kwok each a registered company auditor in the firm Wong & Mayes Chartered Accountants, ABN 33 154 816 995, of Lumley Building, Level 16, 309 Kent Street, SYDNEY NSW 2000**

### Dictionary

Unless the contrary intention appears:

**APES 110** means the Accounting Professional & Ethical Standards 110 Code of Ethics for Professional Accountants (Issued December 2010);

**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 2001* (Cth);

**Boulder Steel** means Boulder Steel Limited (ACN 009 074 588);

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

**December 2011 Review** means the review of the financial report of Boulder Steel for the half year ended 31 December 2011;

**Firm** means Wong & Mayes Chartered Accountants, ABN 33 154 816 995, of Lumley Building, Level 16, 309 Kent Street, SYDNEY NSW 2000;

**Mr Kwok** means Allan Ni Kwan Kwok, date of birth 7 February 1935;

**Mr Thompson** means Martin George Thompson, date of birth 1 May 1948;

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

**2011 Audit** means the audit of the financial report of Boulder Steel for the financial year ended 30 June 2011; and

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

## **1 Background**

### **1.1 ASIC's role**

- 1.1.1 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.
- 1.1.2 ASIC is responsible for the registration of company auditors under Part 9.2 of the Act. To be registered under Part 9.2 of the Act, company auditors must satisfy specified educational and practical experience standards and be otherwise a fit and proper person to be registered as a company auditor.
- 1.1.3 ASIC is also responsible for administering the requirements of the Act as it relates to the auditing of financial reports under Division 3 of Part 2M.3.
- 1.1.4 ASIC is empowered to bring disciplinary proceedings pursuant to section 1292(1)(d)(i) of the Act in the CALDB against registered company auditors who ASIC considers have failed to carry out or perform adequately and properly the duties of an auditor.

### **1.2 Roles of Mr Thompson and Mr Kwok**

- 1.2.1 Wong & Mayes Chartered Accountants is, and was at all material times, a firm of chartered accountants operating as a partnership offering audit, taxation and business advisory services (**Firm**).
- 1.2.2 The Firm at all material times was eligible to be appointed as auditor of a company pursuant to section 324AA of the Act.
- 1.2.3 The Firm was appointed auditor of Boulder Steel in 1990.
- 1.2.4 Mr Thompson is a partner of the Firm and obtained his registration as an auditor on 13 April 1983 and holds auditor registration number 2728.
- 1.2.5 Mr Thompson acted as lead auditor for Boulder Steel for the financial reports for the years ending 30 June 2005 – 2009. In 2010 and 2011, in response to relief applications made by Mr Thompson, ASIC granted relief from the auditor rotation requirements of the Act on the basis that there were exceptional circumstances related to the loss of other registered company auditors in the Firm. This relief enabled Mr Thompson to continue as lead auditor for Boulder Steel for a sixth and seventh consecutive financial year, being the years ended 30 June 2010 and 2011.
- 1.2.6 Mr Kwok obtained his registration as an auditor on 14 March 1983 and holds auditor registration number 2133.

1.2.7 Mr Kwok acted as lead auditor of Boulder Steel for the December 2011 Review, the 2012 Audit and the review of the financial report of Boulder Steel for the half year ended 31 December 2012.

1.2.8 Each of Mr Thompson and Mr Kwok are members of The Institute of Chartered Accountants in Australia.

## **2 ASIC's concerns**

2.1 In January 2013, ASIC identified that Mr Thompson, after acting as the lead auditor of the financial reports of Boulder Steel for the seven successive financial years ending 30 June 2005 to 2011, continued to provide non-audit services to Boulder Steel by consulting with Boulder Steel regarding technical or industry-specific issues, transactions and events, in circumstances where his Firm was conducting the December 2011 Review and 2012 Audit with Mr Kwok as lead auditor. ASIC is concerned that, by reason of these matters:

2.1.1 Mr Thompson has not complied with paragraph 290.151 of APES 110, the *Code of Ethics for Professional Accountants* and a code of professional conduct for the purposes of section 307C of the Act, which prohibits an individual who has been a key audit partner for more than seven years from consulting with a client regarding technical or industry-specific issues, transactions or events for at least 2 years; and

2.1.2 Mr Kwok has not complied with section 307C(3) of the Act in that he failed to declare to the directors of Boulder Steel that Mr Thompson had not complied with APES 110 by reason of the facts described in paragraph 2.1.

2.2 By reason of the conduct described in paragraph 2.1, ASIC is concerned that each of Mr Thompson and Mr Kwok 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 Act.

## **3 Acknowledgement of ASIC's concerns**

3.1 Each of Mr Thompson and Mr Kwok acknowledge ASIC's concerns, acknowledge that they are reasonably held, and have offered, and ASIC has agreed to accept, the undertakings as set out in section 4 below.

## **4 Undertakings**

4.1 Under section 93AA of the ASIC Act, each of Mr Thompson and Mr Kwok have offered, and ASIC has agreed to accept as an alternative to making an application to CALDB under section 1292(1) of the Act in respect of Mr Thompson and Mr Kwok in relation to ASIC's concerns outlined in paragraph 2.1, the undertakings set out in paragraphs 4.2, 4.4 and 4.5.

4.2 Each of Mr Thompson and Mr Kwok will take all steps necessary to have the Firm:

- 4.2.1 within one month of ASIC's acceptance of this enforceable undertaking, engage a registered company auditor approved in writing in advance by ASIC (**Review Auditor**) to conduct a review of the Firm's controls, safeguards and policies relating to compliance with ethical, independence and rotation requirements of the Act and code of professional conduct, including the provision of non-audit services and prepare a written report of the review (**Report**), with the review and Report to be finalised within three months of ASIC's acceptance of this enforceable undertaking;
  - 4.2.2 ensure that the Review Auditor provides a copy of the Report, including any drafts of the Report, to ASIC at the same time as it is provided to the Firm (including by ensuring that the Firm's terms of engagement with the Review Auditor provide for this);
  - 4.2.3 within six months of receiving the Report, implement any recommendations made in the Report to the satisfaction of the Review Auditor;
  - 4.2.4 within two months of receiving the Report, or such further time as agreed to in writing by ASIC, provide a written statement to ASIC:
    - 4.2.4.1 as to how the recommendations of the Report have been implemented by the Firm; and
    - 4.2.4.2 attaching written confirmation from the Review Auditor that the recommendations have been implemented to his/her satisfaction; and
  - 4.2.5 within six months of receiving the report, implement a training program on the registered company auditor rotation and independence requirements of the Act and APES 110 (to be conducted by a third party approved in advance in writing by ASIC) for all partners, consultants and staff of the Firm engaged in audits or reviews under the Act.
- 4.3 In addition, under section 93AA of the ASIC Act, Mr Thompson has offered, and ASIC has agreed to accept the following further undertakings:
- 4.3.1 Mr Thompson will participate in 20 hours of continuing professional education on ethics and auditor independence and rotation in the financial year ending 30 June 2014. These 20 hours are in addition to the mandatory requirements of The Institute of Chartered Accountants in Australia but may include the training referred to in paragraph 4.2.5.
  - 4.3.2 Mr Thompson will provide to ASIC by 31 October 2014 certificates of attendance for the 20 hours of training referred to in paragraph 4.3.1 or other written confirmation from the training provider of his attendance at the training, together with other documents to show that these 20 hours are in

addition to the mandatory requirements of The Institute of Chartered Accountants in Australia.

4.3.3 Mr Thompson will:

4.3.3.1 engage a registered company auditor who is not a partner of the Firm and is approved in advance in writing by ASIC (**Independent Auditor**), to review his next three audits for which he received the highest audit fees as notified in his Annual Statement for the period ended 12 April 2014 and which are required by the Act to be conducted by a registered company auditor; and

4.3.3.2 ensure that the terms of engagement of the reviewing auditor require the reviewing auditor to provide, within 45 days of receiving Mr Thompson's audit, a statement in writing to Mr Thompson reporting whether, in the reviewing auditor's opinion, Mr Thompson's audit has been conducted in accordance with the Act and Australian Auditing Standards as at the date of the relevant audit (**Compliance Statement**).

4.3.4 Mr Thompson will submit the three audits referred to in paragraph 4.3.3.1 to the Independent Auditor within fourteen days of completion of the relevant audit.

4.3.5 Mr Thompson will take all necessary steps to ensure he receives the Compliance Statement from the Independent Auditor within the relevant 45 day period and provides the Compliance Statement to ASIC within fourteen days of receiving it.

4.4 Mr Thompson and Mr Kwok will provide, and will take all necessary steps to have the Firm provide, all documents and information requested by ASIC from time to time for the purpose of assessing compliance with the terms of this enforceable undertaking.

4.5 Mr Thompson and Mr Kwok are liable to pay the costs of their and the Firm's compliance with this enforceable undertaking. ASIC has no responsibility for those costs.

## 5 Acknowledgements

5.1 Each of Mr Thompson and Mr Kwok acknowledge that ASIC:

5.1.1 may issue a media release on acceptance by ASIC of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its acceptance;

5.1.2 may from time to time publicly refer to this enforceable undertaking; and

- 5.1.3 will make this enforceable undertaking available for public inspection, and in particular will record the enforceable undertaking on the Register of Enforceable Undertakings maintained by ASIC.
- 5.2 Each of Mr Thompson and Mr Kwok further acknowledge that:
- 5.2.1 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance, pursue any proceedings under the Act including under section 1292(1) 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
- 5.2.2 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 undertaking or arising from future conduct.
- 5.3 Each of Mr Thompson and Mr Kwok acknowledge 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 prescribed professional disciplinary bodies.
- 5.4 Each of Mr Thompson and Mr Kwok acknowledge that this enforceable undertaking has no operative force until accepted by ASIC, and they and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.



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**MARTIN GEORGE THOMPSON**

Dated <sup>6<sup>th</sup></sup>..... February 2014



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**ALLAN NI KWAN KWOK**

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

  
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**GEORGE STOGDALE**

Delegate of the Australian Securities and Investments Commission

Dated ,.....//..... February 2014