



913

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:

Anthony Ian Hyndman (Mr Hyndman)

53A Reid Street, Wangaratta Victoria 3352

1. Definitions

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

2012 Audits means the audits of the financial reports of the Companies for the year ended 30 June 2012, including the reviews of the financial reports of the Companies for the six months ended 31 December 2011.

2012 Financial Reports means the financial reports of the Companies 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.

Companies means Hargraves, Webster Dolilta and Win Securities

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

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

Hargraves means Hargraves Secured Investments Limited ACN 089 001 267

Webster Dolilta means Webster Dolilta Finance Limited ACN 004 664 322

Win Securities means Win Securities Limited ACN 007 346 223.

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 Hyndman

- 2.2.1 Mr Hyndman is an auditor registered pursuant to section 1280 of the Corporations Act. Mr Hyndman was registered on 30 June 2008 and issued auditor registration number 326224.
- 2.2.2 Mr Hyndman is a member of the Institute of Public Accountants.
- 2.2.3 For the financial year ended 30 June 2012, Mr Hyndman was the individual auditor responsible for the audit of 5 companies based in regional Victoria that issued debentures to the general public, including Webster Dolilta, Hargraves and Win Securities.
- 2.2.4 Mr Hyndman issued unqualified audit opinions in respect of the 2012 Audits.
- 2.2.5 Section 307A(1) of the Corporations 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 The Companies

- 2.3.1 The principal activity of the Companies 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 According to the respective 2012 Financial Reports:
 - 2.3.2.1 Webster Dolilta had approximately \$110 million of unsecured deposit notes on issue, approximately \$90 million in secured loans advanced and a profit before income tax of \$415,417.
 - 2.3.2.2 Hargraves had approximately \$61 million of unsecured deposit notes on issue, approximately \$47 million in secured loans advanced and a profit before income tax of \$104,733.
 - 2.3.2.3 Win Securities had approximately \$41 million of unsecured deposit notes on issue, approximately \$26 million in secured loans advanced and a profit before income tax of \$133,381.

3. ASIC's Investigations and Concerns

- 3.1 After a referral from the ASIC Unlisted Debenture Taskforce, an investigation was commenced into the conduct of the 2012 Audits by Mr Hyndman.
- 3.2 As a result of the investigation, ASIC has formed the view that Mr Hyndman did not conduct the 2012 Audits in accordance with the Australian Auditing Standards as required by section 307A of the Corporations Act as, in each audit, he failed to:
 - 3.2.1 design and 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*;
 - 3.2.2 adequately test and assess whether management appropriately determined the provision for impairment of loan receivables in accordance with paragraph 63 of Australian Accounting Standard AASB 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');
 - 3.2.3 assess 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;

- 3.2.4 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;
- 3.2.5 display an appropriate level of professional scepticism, especially when auditing the valuation of loan receivables and the provision for impairment of loan receivables, 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');
- 3.2.6 obtain sufficient appropriate audit evidence to reduce the risk of material misstatement of loan receivables to an acceptably low level, as required by paragraph 17 of ASA 200;
- 3.2.7 obtain sufficient appropriate audit evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial report, in accordance with paragraphs 9(a) and 12 of ASA 570 *Going Concern*;
- 3.2.8 obtain sufficient appropriate audit evidence about whether related party relationships and transactions had been appropriately identified, accounted for and disclosed in the financial report, as required by paragraphs 9(b) and 25 of ASA 550 *Related Parties*;
- 3.2.9 obtain relevant and reliable audit evidence for external confirmations in relation to cash and interest bearing deposits, as required by paragraph 5 of ASA 505 *External Confirmations*;
- 3.2.10 obtain sufficient appropriate audit evidence about whether events occurring between the date of the financial report and the date of the auditor's report that required adjustment of or disclosure in the financial report were appropriately reflected in the financial report, in accordance with paragraphs 4(a) and 6 of ASA 560 *Subsequent Events*;
- 3.2.11 obtain sufficient appropriate audit evidence regarding compliance with laws and regulations that had a direct or material effect on the financial report, in accordance with paragraphs 10, 13 & 14 of ASA 250 *Consideration of Laws and Regulations in and Audit of a Financial Report*;
- 3.2.12 obtain written representations from management as required by ASA 580 *Written Representations*;

3.2.13 prepare audit documentation in accordance with paragraph 8 of ASA 230 *Audit Documentation* ('ASA 230') 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 Australian Auditing Standards 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;

3.2.14 record on a number of occasions, in documenting the nature, timing and extent of audit procedures performed, in accordance with paragraph 9 of ASA 230:

- a) the identifying characteristics of the specific items or matters tested;
- b) who performed the audit work and the date such work was completed; and
- c) who reviewed the audit work performed and the date and extent of such review; and

3.2.15 failed to assemble the audit documentation in an audit file and complete the administrative process of assembling the audit file on a timely basis, in accordance with paragraph 14 of ASA 230.

3.3 ASIC is concerned that as a result of these deficiencies in the conduct of the 2012 Audits, Mr Hyndman has failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292(l)(d)(i) of the Corporations Act.

4. Acknowledgement of ASIC's Concerns

4.1 Mr Hyndman acknowledges ASIC's concerns detailed in clause 3 and acknowledges that they are reasonably held.

5. Undertakings

5.1 Under section 93AA of the ASIC Act, Mr Hyndman 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 Hyndman will, within 7 days of acceptance by ASIC of this enforceable undertaking and notification of that acceptance to Mr Hyndman 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 Hyndman 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 and, for the avoidance of any doubt, this includes acting as a review auditor as defined in s324AF(2) of the Corporations Act.
- 5.1.3 Mr Hyndman 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 the client or the new employer, as the case may be, with a copy of this enforceable undertaking.
- 5.1.4 Mr Hyndman undertakes to pay the costs of compliance with this enforceable undertaking.
- 5.1.5 Mr Hyndman 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 Hyndman 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 Hyndman 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 Hyndman 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 Hyndman acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and Mr Hyndman and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Tony Hyndman

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Anthony Ian Hyndman

Dated: *30th September 2013*

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

George Stogdale

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George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: *3 October 2013*

