



A00068544



ASIC

Australian Securities & Investments Commission

ENFORCEABLE UNDERTAKING

Australian Securities & Investments Commission Act ("*ASIC Act*")

SECTION 93AA

The commitments in this Undertaking are offered to the Australian Securities & Investments Commission ("ASIC") by:

Leon Mitchell of 5 Glengarry Way, Reynella SA 5161, and

Winston Hill (Aust) Pty Ltd ACN 070 226 774 ("Winston Hill")

BACKGROUND

- 1 ASIC has investigated fundraising activities by Enviro Systems Renewable Resources Pty Ltd ACN 007 982 523 ("Enviro"), Blue Gum Forestry Management Pty Ltd ACN 078 294 372 ("Blue Gum") and others in relation to an afforestation scheme seeking investors in a blue gum plantation. The directors of Enviro are Stephen Patrick McNamara and John Franklin Chambers, and the shareholders are the directors and their wives.
- 2 Since about May 1997 Enviro has been raising money by way of sale of interests in the afforestation scheme to investors. Each investor acquired an interest in one or more woodlots in a blue gum plantation near Edenhope, Victoria.
- 3 The sale of interests was described in the documentation as the sale of a franchise. Each woodlot was sold for \$7,200, of which \$2,700 was payable as a deposit to Enviro and the balance of \$4,500 was described as a loan from Blue Gum, repayable only from the harvest in 5 - 12 years time and not otherwise repayable. Investors were advised that for a cash outlay of \$2,700, they could claim a tax deduction of \$7,200 in connection with the scheme.
- 4 Enviro appointed Blue Gum to manage the plantation.
- 5 Enviro has appointed agents to market and sell interests in the scheme.
- 6 Enviro has appointed Winston Hill to train agents to market interests in the scheme. Enviro paid Winston Hill commissions on these agents' sales and Winston Hill paid the agents a share of those commissions. Leon Mitchell is the sole director of Winston Hill and he and his wife are the shareholders.

- 7 Enviro provided Winston Hill with a copy of a legal opinion dated May 1997 which noted franchises are exempt from the fundraising provisions of the Corporations Law. If there was strict adherence with Regulation 1.02, the scheme documentation proposed an arrangement in the nature of a franchise.
- 8 Enviro disclosed in the Disclosure Document in relation to sale of interests in the scheme that Winston Hill, Jolor Investments Pty Ltd and Adelaide Direct Marketing Advice Service are persons paid an amount in connection with the introduction or recruitment of investors (described as 'franchisees') in the scheme. The amount and nature of these payments was not disclosed.
- 9 John Lance Carson is the sole director and shareholder of Jolor Investments Pty Ltd ACN 075 392 497. Christopher Woolgrove is the proprietor of Adelaide Direct Marketing Advice Service and a signatory to its bank account.
- 10 Enviro's banking and accounting records disclose that Maritime Funding Pty Ltd ACN 076 814 214 ("Maritime Funding") is also being paid substantial commissions by Enviro. John Lance Carson is the sole director and shareholder of Maritime Funding. In the past, Maritime Funding has itself engaged and trained selling agents in like circumstances.
- 11 Leon Mitchell and Winston Hill have distributed promotional material, including training manuals, brochures, agreements and other documents in connection with the scheme, and have recruited and trained agents to sell interests in the scheme.
- 12 ASIC is of the view that:
 - 12.1.1 the scheme does not come within the relevant definition of a franchise;
 - 12.1.2 the interests in the scheme are securities within the meaning of section 92 of the Corporations Law;
 - 12.1.3 the offering of interests in the scheme was regulated by the Corporations Law;
 - 12.1.4 in offering interests in the scheme the promoters, including Enviro and its directors, breached Division 5 of Part 7.12 of the Corporations Law;
 - 12.1.5 further, and alternatively, in offering interests in the scheme the promoters are in breach of Part 5C of the Corporations Law;
 - 12.1.6 when offering the interests, the promoters were carrying on a business of dealing in securities while not holding a dealers licence and therefore contravened section 780 of the Corporations Law;

12.1.7 Leon Mitchell has marketed, promoted and trained agents to sell interests in the scheme, and through Winston Hill has been paid commissions on their sales on his own behalf and received commission on the agents' behalf; and therefore, in the opinion of ASIC:

12.1.7.1 the securities were marketed and promoted and/or sold by him in contravention of section 806 of the Corporations Law; and

12.1.7.2 he failed to instruct the agents to disclose to clients commissions paid to himself and/or Winston Hill and to the agents or the extent of them as required by section 849 of the Corporations Law.

13 Leon Mitchell and Winston Hill acknowledge ASIC's concerns set out above and in particular

13.1 the truth of the statements of fact contained in paragraphs 1 to 11 hereof; and

13.2 that they did not instruct agents to disclose commissions or the extent of them in relation to the transactions described in paragraphs 1 to 11 hereof.

UNDERTAKINGS

14 Leon Mitchell undertakes that, from the date of this undertaking, he will not:

14.1 do any act or engage in any conduct as a representative of a dealer (as defined by the Corporations Law from time to time);

14.2 hold out that he is a representative of a dealer; or

14.3 hold out that he holds a proper authority from a dealer;

unless he holds a proper authority from a dealer.

15 Leon Mitchell undertakes that, from the date of this undertaking, he will not

15.1 do any act or engage in any conduct as a representative of an investment adviser (as defined by the Corporations Law from time to time);

15.2 hold out that he is a representative of an investment adviser; or

15.3 hold out that he holds a proper authority from an investment adviser;

unless he holds a proper authority from an investment advisor.

16 Leon Mitchell undertakes that, from the date of this undertaking, he will not be employed either directly or indirectly, or act as an agent either directly or indirectly, by or for any of the following:

- . Enviro Systems Renewable Resources Pty Ltd
- . Blue Gum Forestry Management Pty Ltd
- . Maritime Funding Pty Ltd
- . Jolor Investments Pty Ltd
- . Adelaide Direct Marketing Advice Service
- . Stephen Patrick McNamara
- . John Franklin Chambers
- . John Lance Carson
- . Christopher Paul Woolgrove
- . John Joseph McNamara

or any of their employees or agents for the purposes of recommending, advising, informing or marketing any product or service that is:

- . a security as defined by the Corporations Law;
- . an insurance contract;
- . a superannuation contract;
- . in the nature of an investment contract as defined in section 9 of the Corporations Law; or
- . in the nature of, or characterised as, a loan of money.

17 Leon Mitchell undertakes that, during a period of one year from the date of this undertaking, he will

17.1.1 advise any employer or prospective employer who is a licensed securities dealer or investment adviser of the terms of this undertaking; and

17.1.2 advise the Regional Commissioner of ASIC in the state in which he normally resides in writing within 7 days of commencing employment with a licensed securities dealer or investment adviser detailing the nature of his employment, his duties and who is his supervisor.

18 Leon Mitchell undertakes that, from the date of this undertaking, in the event that he commences employment with any of the persons listed in paragraph 16 or any of their employees or agents in a capacity other than that prohibited by paragraph 16 he will advise the Regional Commissioner of ASIC in the state in which he normally resides in writing within 7 days of commencing such employment detailing the nature of his employment, his duties and who is his supervisor.

19 Leon Mitchell undertakes that, from the date of this undertaking, he will not refer any investor or potential investor to any other person who sells or markets or promotes or make recommendations of any interests in any scheme or undertaking promoted or sponsored or connected with any of the persons referred to in paragraph 16.

20 Leon Mitchell undertakes that, during a period of one year from the date of this undertaking, he will advise the Regional Commissioner of ASIC in the state in

which he normally resides in writing within 7 days of commencing selling or recommending any product that is of its nature an investment details of such commencement and enclosing a copy of all materials pertinent to the investment.

- 21 Winston Hill undertakes that, from the date of this undertaking, it will not accept an appointment or enter into a contract either directly or indirectly, or act as an agent either directly or indirectly, by or for any of the entities set out in paragraph 16, or any of their employees or agents for the purposes of recommending, advising, informing or marketing any product or service that conforms with the description set out in paragraph 16.
- 22 Winston Hill undertakes that, during a period of one year from the date of this undertaking, it will
 - 22.1.1 advise any principal or person to which it provides services who is a licensed securities dealer or investment adviser of the terms of this undertaking; and
 - 22.1.2 advise the Regional Commissioner of ASIC in the state in which it has its registered office in writing within 7 days of commencing to provide any services to a licensed securities dealer or investment adviser detailing the nature of the services, and to when they are to be provided.
- 23 Winston Hill undertakes that, from the date of this undertaking, in the event that it provides any services to any of the persons listed in paragraph 16 or any of their employees or agents in a capacity other than that prohibited by paragraph 16 it will advise the Regional Commissioner of ASIC in the state in which it has its registered office in writing within 7 days of commencing to provide the services, giving details of the services, and to whom they are to be provided.
- 24 Winston Hill undertakes that, from the date of this undertaking, it will not refer any investor or potential investor to any other person who sells or markets or promotes or make recommendations of any interests in any scheme or undertaking promoted or sponsored or connected with any of the persons referred to in paragraph 16.
- 25 Winston Hill undertakes that, from the date of this undertaking, it will advise the Regional Commissioner of ASIC in the state in which it has its registered office in writing within 7 days of commencing selling or recommending any product that is of its nature an investment details of such commencement and enclosing a copy of all materials pertinent to the investment.

ACKNOWLEDGEMENTS

- 26 Leon Mitchell and Winston Hill acknowledge that ASIC:
 - 26.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 26.2 may from time to time publicly refer to this undertaking; and
 - 26.3 will make this undertaking available for public inspection.

27 Leon Mitchell and Winston Hill acknowledge that this undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this undertaking.

Signed by Leon Mitchell)
in the presence of:)



Signature


Witness' signature

DAVID RIGGALL
Name of witness (printed)

KNOX + HARGRAVE
ADELAIDE
Address

This ^{19th} ~~March~~ ^{APRIL} day of ~~March~~ 2000

Signed by Leon Mitchell on behalf of)
Winston Hill Pty Ltd ACN 070 226 774)
in the presence of:)



Signature Sole Director/Secretary


Witness' signature

DAVID RIGGALL
Name of witness (printed)

KNOX + HARGRAVE
ADELAIDE
Address

This ^{19th} ~~March~~ ^{APRIL} day of ~~March~~ 2000

ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION PURSUANT TO ASIC ACT S93AA BY ITS DULY AUTHORISED
DELEGATE:

K. J. Axford.

Karen Axford

Regional Commissioner
SA Regional Office

This ^{20th} day of ^{April} ~~March~~ 2000.