



## ENFORCEABLE UNDERTAKING

*Australian Securities & Investment Commission Act 2001*

### Section 93AA

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

Mr Jonathan Grant Robinson  
c/- KPMG  
Level 8  
235 St Georges Terrace  
Perth WA 6000

#### 1. BACKGROUND

##### ASIC's role

- 1.1 ASIC is, pursuant to section 1 of the *Australian Securities and Investments Commission Act 2001* ("ASIC Act"), 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.
- 1.2 ASIC is also responsible for the registration of company auditors. Registered auditors must satisfy specified educational and practical experience standards, and in forming an opinion about whether financial statements audited by them comply with Australian Accounting Standards and present a true and fair view, must comply with Australian Auditing Standards and Professional Conduct Standards.
- 1.3 ASIC is empowered to bring disciplinary proceedings in the Companies Auditors and Liquidators Disciplinary Board ("CALDB") against auditors who have failed to properly carry out the duties of an auditor.

### **Role of Mr Robinson**

- 1.4 Jonathan Grant Robinson ("Mr Robinson") is a registered company auditor (Registration No 14128), having first obtained registration on 23 September 1988.
- 1.5 Mr Robinson is a partner of KPMG, working out of the Perth office which is located at Level 8, 235 St Georges Terrace, Perth, Western Australia.
- 1.6 The Perth Office of KPMG provided auditing and other services to the Westpoint group for a number of financial years.
- 1.7 One of the companies in the Westpoint group was Westpoint Management Limited ("Westpoint Management"). Westpoint Management acted as the Responsible Entity for three managed investment schemes ("MIS") as follows:
  - (a) Paragon Commercial Syndicate;
  - (b) Warnbro Fair Syndicate; and
  - (c) Westpoint Income Fund(together the "Schemes").

### **Details of Conduct**

- 1.8 Mr Robinson was engaged by Westpoint Management pursuant to section 601HG(1) of the Corporations Act (the "Act") to audit compliance with the compliance plans of each of the Schemes for the financial year ended 30 June 2004.
- 1.9 The requirements of an auditor of an MIS Compliance Plan at that time were set out in Chapter 5C.4 of the Act, ASIC Policy Statement 132 and Auditing Guidance Standard 1052 (the "Requirements").
- 1.10 The work on the audit of the compliance plans of the Schemes was undertaken by Mr Robinson, together with a KPMG manager and a more junior staff member under his supervision. He reviewed the Audit Working Papers ("AWPs").

1.11 Mr Robinson issued unqualified audit opinions in respect of the compliance plans for each of the Schemes for the financial year ended 30 June 2004, to the effect that Westpoint Management, as the Responsible Entity for the Schemes, had complied in all material respects with the compliance plans for each of them in that audit year.

## 2. ASIC'S CONCERNS

2.1 The Westpoint group collapsed in December 2005 and in the course of its investigations into the Westpoint group, ASIC came to consider the appropriateness of Mr Robinson having issued unqualified audit opinions in respect of the compliance of Westpoint Management with the compliance plans for the Schemes.

2.2 ASIC, in its investigations, identified a number of concerns with the compliance plan audit process.

2.3 ASIC's primary concerns in respect of the audits of the compliance plans were that Mr Robinson should have identified that there were material breaches of Westpoint Management's compliance with the compliance plans, and on that basis included an "except for" opinion in the audit report. The most significant of the breaches contended by ASIC to be material were:

- (a) late payment of distributions to members;
- (b) late lodgement of financial statements and auditors' reports; and
- (c) failure of the Compliance Officer to produce requested and necessary information to the Compliance Committee to enable issues of compliance to be properly considered.

2.4 Further, ASIC was concerned that there were a number of respects in which Mr Robinson failed to obtain sufficient appropriate audit evidence of matters and failed to properly document his audit work.

2.5 ASIC considers that it is extremely important and in the public interest that Responsible Entities are assiduous in ensuring strict compliance with compliance plans

for MISs given that funds are raised from the public on the basis that the requirements of the compliance plan will be met.

### 3 ACKNOWLEDGMENT OF CONCERNS

- 3.1 While he disagrees with ASIC's concerns, Mr Robinson acknowledges these concerns and has offered, and ASIC has agreed to accept, the commitments in this enforceable undertaking ("undertaking").

### 4 UNDERTAKINGS

Under Section 93AA of the ASIC Act, Mr Robinson has offered, and ASIC has agreed to accept, the following undertakings:

- 4.1 Mr Robinson undertakes that for a period of nine months from the date of acceptance of this undertaking ("period of non-practice as a registered auditor"), he will not perform any duty or function which requires registration as an auditor under the Act.
- 4.2 Mr Robinson undertakes to participate in an additional ten hours Continuing Professional Education (CPE) on audit related matters during the period of non-practice as a registered auditor in addition to the mandatory CPE requirements imposed upon him as a consequence of him being a member of the Institute of Chartered Accountants in Australia.
- 4.3 Mr Robinson agrees that after the conclusion of the period of non-practice as a registered auditor referred to in paragraph 4.1, in respect of the next three audits which require registration as an auditor under the Act, the audit work and conclusions will be submitted for review by the KPMG Partner in Charge, Department of Professional Practice - Audit (from time to time) who is to provide to ASIC a statement whether, in that person's opinion, the three audits in question have been conducted in all material respects in accordance with established Australian Auditing Standards and in accordance with KPMG's Audit Manual effective as at the date of any such audit.

4.4 Mr Robinson undertakes to pay within 14 days of the date of acceptance of this undertaking, the reasonable investigation and legal costs of ASIC's investigation of the concerns referred to in section 2 above as agreed or, in the absence of agreement, as assessed by an independent costs consultant.

4.5 Mr Robinson undertakes to provide ASIC with any documents or information requested by ASIC in respect of the undertakings referred to in paragraphs 4.1 to 4.4 inclusive within 7 days of receiving the request.

## 5 ACKNOWLEDGMENTS

### Acknowledgments by Mr Robinson

5.1 Mr Robinson acknowledges that ASIC:

- (a) 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;
- (b) may from time to time publicly refer to this undertaking;
- (c) will make this undertaking available for public inspection.

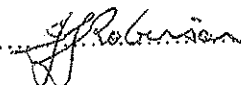
5.2 Mr Robinson further acknowledges that this undertaking:

- (a) in no way derogates from the rights and remedies available to ASIC or any other person or entity relating to or arising from any matter referred to in this undertaking;
- (b) 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 or all of the matters referred to in this undertaking or any contravention arising from future conduct; and
- (c) has no operative force until accepted by ASIC.

5.3 Any written notification to ASIC pursuant to this undertaking is to be provided to the Senior Executive Leader, Accountants and Auditors Team, ASIC.

Signed this 13<sup>th</sup> day of August 2009

by JONATHAN GRANT ROBINSON

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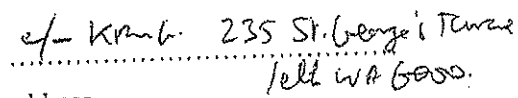
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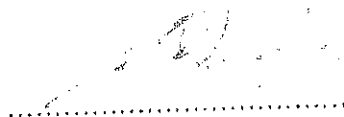
witness

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name (print)

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address

ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION  
PURSUANT TO SECTION S93AA OF THE AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION ACT 2001 (CTH) BY ITS DULY AUTHORISED  
DELEGATE:

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Anthony Michael D'Aloisio

Chairman and Delegate of the Australian Securities & Investments Commission

Dated this 11 day of July 2009