



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93A

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

Aurora Funds Management Ltd
ACN 092 626 885
Level 4, 1 Alfred Street
Sydney NSW 2000

(AFML)

1. Definitions

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

ADIT means Aurora Dividend Income Trust (ARSN 151 947 732), an unlisted registered scheme of which AFML is the responsible entity

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

ASX means ASX Limited and the listed market known as ASX, as the case may be.

ASX Listing Rules means the listing rules of the ASX as at the date of this undertaking.

ASIC Class Order 07/422 means ASIC Class Order [CO 07/422] On-market buy-backs by ASX-limited schemes effective as at 13 December 2007.

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

listed has the meaning given by section 9 of the Corporations Act.

Listed Funds means the following registered schemes (each a **Listed Fund**) of which AFML is the responsible entity and which are listed on the ASX:

- a. Aurora Sandringham Dividend Income Trust (ARSN 108 249 154, ASX:AOD);
- b. Aurora Property Buy-Write Income Trust (ARSN 125 153 648, ASX:AUP);
- c. Aurora Absolute Return Fund (ARSN 110 303 430, ASX:ABW); and
- d. Aurora Global Income Trust (ARSN 127 692 406, ASX: AIB).

Person includes either or both natural persons and/or corporate entities.

registered scheme has the meaning given by section 9 of the Corporations Act.

responsible entity has the meaning given by section 9 of the Corporations Act.

related party has the meaning given by section 228 of the Corporations Act.

Related Party Units means units in a listed registered scheme of which AFML, or a related party, is the responsible entity.

relevant interest has the meaning given by sections 608 and 609 of the Corporations Act.

substantial holding has the meaning given by section 9 of the Corporations Act.

Treasury Unit is a unit in any of the Listed Funds purchased by AFML, in its capacity as the responsible entity for the relevant Listed Fund, on ASX and not immediately cancelled.

voting power has the meaning given by section 610(1) of the Corporations Act.

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 exercise its powers so as to improve the performance of the financial system and to promote the confident and informed participation of investors and consumers in the financial system.

2.2 Relevant Law and regulatory provisions

- 2.2.1 The purposes of Chapter 6 of the Corporations Act include ensuring that the acquisition of control over the voting shares or interests in a listed company or registered scheme takes place in an efficient, competitive and informed market.
- 2.2.2 The Corporations Act contains inter alia the following provisions:
- (a) Sections 671B(1)(a) and (b) require a person to give information specified in Section 671B(3) to a listed company or to the responsible entity for a listed registered managed investment scheme, and to the relevant market operator if that person begins or ceases to have a substantial holding in the company or scheme or where the person already has a substantial holding in the company or scheme and there is a movement of at least 1% in their holding.
 - (b) Section 606 prohibits a person from acquiring a relevant interest in issued voting shares in a listed company if that results in that person's, or someone else's, voting power in the company increasing from 20% or below to more than 20% or from a starting point that is above 20% and below 90%, subject to the exceptions

in Section 611. Section 604 extends the operation of Chapter 6 including Section 606 to listed registered schemes.

- (c) Chapter 2J regulates transactions affecting share capital where the purpose is to protect the interests of shareholders and creditors. Division 2 of that Chapter regulates share buy-backs by companies including on-market buy-backs which are defined in s.257(B)(6) of the Act as purchases "*resulting from an offer made by a listed corporation on a prescribed financial market in the ordinary course of trading on that market*".
 - (d) Part 5C.6A as notionally inserted by ASIC Class Order 07/422 provides for a process by which listed registered schemes may conduct on-market buy-backs. Section 601KH(4) of Part 5C.6A , under the heading "Procedural requirements for buy-backs", provides that *immediately after registration of the transfer to the responsible entity of the interests bought-back, the interests are [to be] cancelled*.
 - (e) Section 601KF(2) of Part 5C.6A provides that Part 5C.6A does not apply to a listed scheme that has more than one class of interest.
 - (f) Section 601FC(1)(m) provides that the responsible entity of a registered scheme must comply with any duty conferred on it by the scheme's constitution.
- 2.2.3 Listing Rule 7.36 of the ASX Listing Rules provides that an entity not subject to the buy-back provisions of the Corporations Act may buy-back its securities on market only if it consults ASX Limited prior to any buy-back and complies with any requirements that it may set.
- 2.2.4 The constitutions of each of the Listed Funds have at all material times provided that AFML is required to comply with the requirements of the Corporations Act and the ASX Listing Rules.

2.3 Details of Conduct

- 2.3.1 AFML is an Australian Financial Services Licensee registered with licence 222110. AFML is a funds manager specialising in the management of funds that invest in Australian and global listed securities. AFML is the responsible entity of the Listed Funds and of ADIT.
- 2.3.2 Pursuant to the constitutions of each of the Listed Funds, a unit in a Listed Fund can be:
- (a) bought and sold on the ASX; or
 - (b) purchased from, or redeemed with, AFML as the responsible entity.
- 2.3.3 On the following dates, the Listed Funds each issued a single partly paid preference unit, such that each Listed Fund from this date no longer had on issue a single class of interest:
- (a) AOD on 30 July 2008;
 - (b) ABW on 10 December 2008;
 - (c) AUP on 20 February 2009; and
 - (d) AIB on 20 February 2009.
- 2.3.4 In the period January 2007 to date AFML as the responsible entity of each of the Listed Funds has bought and sold units in each of the Listed Funds as an on-market purchase on the ASX. The units so purchased have not been promptly cancelled but have been held for varying periods as part of the scheme property of the relevant Listed Fund. As a consequence of these on-market purchases, each of the Listed Funds has held a stock of Listed Fund units:
- (a) in the case of AOD, since January 2007;
 - (b) in the case of ABW, since December 2008;
 - (c) in the case of AUP, since January 2009; and
 - (d) in the case of AIB, since August 2009.
- 2.3.5 Each unit purchased by AFML and retained by the respective Listed Fund (as referred to in 2.3.4 above) is and was a Treasury Unit,
- 2.3.6 AFML acknowledges that each of the Treasury Units has an associated voting power and states that any voting power associated with a Treasury Unit has not been exercised and has not been taken into account in:

- (a) the valuation of each the Listed Fund's net asset value as reported periodically to the ASX or for the purposes of calculating any fees; or
 - (b) expenses that AFML or any related party was paid out of the scheme property of each Listed Fund.
- 2.3.7 The Listed Funds have each held a substantial holding in their own units:
- (a) in the case of AOD, intermittently since December 2007;
 - (b) in the case of ABW, intermittently since October 2009;
 - (c) in the case of AUP, intermittently since January 2010; and
 - (d) in the case of AIB, intermittently since February 2011.
- 2.3.8 AFML as responsible entity for ADIT bought and sold units in AOD on the ASX. The AOD units so purchased were held as scheme property of ADIT.
- 2.3.9 ADIT first held a substantial holding in AOD units in February 2011.
- 2.3.10 On no occasion prior to August 2013 did AFML as responsible entity for the Listed Funds consult with ASX in relation to the purchases of the units of Listed Funds on ASX.

2.4 ASIC's views concerning the conduct

- 2.4.1 The concerns referred to in section 2.3 were identified following a program of surveillance of Australian fund managers by ASIC. Accordingly, ASIC is concerned that AFML, as responsible entity for the Listed Funds and ADIT:
- (a) Has not complied with the obligations imposed on it under section 671B(1)(a) and (b) of the Corporations Act in that it failed to give substantial holding notifications to ASX on multiple occasions from December 2007; although, since September 2013, AFML has issued daily notices on the ASX Company Announcement Platform detailing the number of Treasury Units held in respect of each of the Listed Funds.

- (b) Has breached section 606 of the Act by acquiring voting power in AIB greater than the voting power allowable by section 606 in May/June 2013;
- (c) Has, by failing to consult with ASX prior to its on-market buy-backs of Listed Fund units, on multiple occasions between January 2007 and August 2013, breached each of the Listed Funds' constitutions which have at all relevant times required that on-market trading be in compliance with the ASX Listing Rules, and consequently has breached section 601FC(1)(k) & (m) of the Corporations Act.

2.5 Acknowledgement of the ASIC views

2.5.1 AFML acknowledges:

- (i) ASIC's views concerning the conduct set out in paragraph 2.4 above;
- (ii) that AFML must comply with the terms of this enforceable undertaking in order to address the ASIC Concerns; and
- (iii) that the steps set out in this enforceable undertaking address the ASIC Concerns.

2.5.2 ASIC acknowledges that AFML has worked constructively with ASIC in order to resolve the ASIC Concerns since they were first raised by ASIC in February 2013.

3. Undertakings

3.1 Under section 93A of the ASIC Act AFML has offered and ASIC has agreed to accept, as an alternative to commencing legal proceedings, or proceedings under section 657C(2) of the Corporations Act, the following undertakings:

(a) AFML undertakes, as the responsible entity for each of the Listed Funds and ADIT, that it will immediately (and by no later than 11 November 2014) cancel or redeem:

- i. all Treasury Units held by each Listed Fund; and
- ii. all Related Party Units held by ADIT.

(b) AFML undertakes that it will within seven days of the cancellation or redemption referred to in paragraph 3.1(a) provide ASIC with all documents or information as may be necessary to confirm that such cancellation or redemption has occurred, such documents or information to be provided to Tim Walker, Senior Manager, Investment Manager and Superannuation.

- (c) AFML undertakes, as responsible entity for each of the Listed Funds, that for as long as any of the Listed Funds is listed on the ASX, AFML will ensure that the Listed Funds have no more than one class of interests on issue, so that ASIC Class Order 07/422 applies to the Listed Fund.
- (d) AFML undertakes that it will not acquire, or dispose of, units in listed funds for which it is the Responsible Entity on the ASX otherwise than acquisitions or purchases that are permitted pursuant to ASIC Class Order 07/422.
- (e) AFML undertakes, as responsible entity for the Listed Funds and ADIT, that it will pay the costs of its compliance with this enforceable undertaking.
- (f) AFML undertakes that it will provide all documents and information requested by ASIC from time to time for the purpose of monitoring and assessing AFML's compliance with the terms of this enforceable undertaking including, without limitation, the terms of paragraphs 3.1(c) and (d).

4. Acknowledgements

4.1 AFML acknowledges that ASIC:

- (a) may issue a media release on execution of this enforceable undertaking referring to its terms and to the ASIC Concerns which led to its execution;
- (b) may from time to time publicly refer to this enforceable undertaking and to AFML's compliance or non-compliance with this enforceable undertaking including referring to any documents and/or information to be provided to ASIC pursuant to paragraph 3.1(b) to (f) above; and
- (c) will make this enforceable undertaking available for public inspection.

4.2 Further, AFML acknowledges that:

- (a) ASIC's acceptance of this enforceable undertaking does not affect ASIC's powers in any way in relation to any contravention not directly the subject of the ASIC Concerns in this enforceable undertaking or arising from future conduct;
- (b) 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.

- 4.3 AFML, having acknowledged that the views expressed by ASIC in relation to the alleged facts are reasonably held, has offered an enforceable undertaking in the terms of paragraphs 3.1 (a) to (f) above.
- 4.4 AFML acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and AFML and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Executed as an undertaking.

EXECUTED by **Aurora Funds Management Limited** in accordance with section 127(1) of the *Corporations Act 2001*:

Signed by
Aurora Funds Management Limited
by a director and secretary/director:



Signature of director



Signature of secretary

Steuart Roe
Name of director (please print)

Betty Poon
Name of secretary (please print)

DATE: 28 October 2014

Accepted by the Australian Securities and Investments Commission under s93A of the ASIC Act by its duly authorised delegate:



NAME CHRISTOPHER SAVUNDRA

Delegate of Australian Securities and Investments Commission

DATE 13 NOVEMBER 2014