

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:

NEIL RAYMOND TURNER (Mr Turner)
Suite 2, 25-41 Redwood Drive, Dingley Village VIC 3172

DEFINITIONS

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

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

AASB means the Australian Accounting Standards Board.

ASA means the Australian Auditing Standards.

CALDB means the Companies Auditors and Liquidators Disciplinary Board.

commencement date means the date this enforceable undertaking is accepted.

Companies means EAA, Lotus Securities and Sovereign, collectively.

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

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

EAA means Education Access (Australia) Pty Ltd ACN 101 976 596.

Lotus Securities means Lotus Securities Limited ACN 121 418 317.

Sovereign means Sovereign MF Ltd ACN 104 694 555.

BACKGROUND

ASIC's role

1. Under s1 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. ASIC is also responsible for the registration of company auditors under Part 9.2 of the Corporations Act. Registered auditors must satisfy specified education and practical experience standards and otherwise be fit and proper to be registered as an auditor, and in forming an opinion about whether financial statements audited by them comply with the standards of the AASB and present a true and fair view, must comply with the ASA.
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 or perform the duties of an auditor.

Details and role of Mr Turner

4. Mr Turner is an auditor registered pursuant to section 1280 of the Corporations Act. Mr Turner was registered on 8 July 1993 and issued with auditor registration number 56158.
5. Mr Turner is a member of Chartered Accountants Australia and New Zealand.
6. Mr Turner was the individual auditor responsible for the audit of EAA for the financial year ended 30 June 2011, and the audits of Lotus Securities and Sovereign for the financial year ended 30 June 2012 (collectively, the **Audits**).
7. 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 ASA.

The Companies

EAA

8. On 10 November 2011 Mr Turner issued an unmodified audit opinion in respect of his audit of EAA's financial report for the year ended 30 June 2011.
9. On 16 December 2011, Peter Vince (**Mr Vince**) and Kylie Wright (**Ms Wright**) of Vince & Associates were appointed as administrators of EAA, a private training business under the Vocational Education and Training system of the Australian Government.
10. In their report to creditors pursuant to section 439A of the Corporations Act dated 24 January 2012, the administrators reported that the value of debtors recorded in the financial report for the year ended 30 June 2011 appeared grossly overstated, by at least \$3 million.

11. Consequently, the overstatement of debtors resulted in the total asset position of EAA being incorrectly reported as \$7.2 million, rather than about \$4.2 million.
12. On 2 February 2012, Mr Vince and Ms Wright were appointed jointly and severally as deed administrators of EAA.
13. On 23 February 2012, the deed administrators executed a deed of company arrangement.
14. On 1 March 2012, the deed administrators ceased the administration of EAA following the terms of the deed of company arrangement executed on 23 February 2012, being wholly executed.

Sovereign

15. Sovereign is an Australian financial services licensee (AFSL no. 238142) and responsible entity for two registered managed investment schemes, The Sovereign Aged Care Fund ARSN 121 778 863 and The Sovereign Tarneit Land Fund ARSN 114 818 209. The purpose of the schemes is to invest retail clients' money into real property investments.
16. On 21 December 2012 Mr Turner issued an unmodified audit opinion in respect of his audit of Sovereign's financial report for the year ended 30 June 2012.
17. John Lindholm and James Shady of Ferrier Hodgson were appointed as administrators of Sovereign on 19 April 2013, and as liquidators of Sovereign on 24 May 2013.
18. According to the financial report of Sovereign for the year ended 30 June 2012, Sovereign had \$533,500 in total assets and profit before tax of \$187,648.

Lotus Securities

19. Lotus Securities is an Australian financial services licensee (AFSL no. 306812). Its principal activities include providing financial services and acting as responsible entity for registered managed investment schemes.
20. On 1 November 2013 Mr Turner issued an unmodified audit opinion in respect of his audit of Lotus Securities' financial report for the year ended 30 June 2012.
21. According to the financial report of Lotus Securities for the year ended 30 June 2012, Lotus Securities had \$569,892 in total assets and profit before tax of \$51,823.

ASIC'S INVESTIGATION AND VIEWS

22. On 27 August 2014, ASIC commenced a formal investigation into the conduct of Mr Turner after a review of the engagement files for the Audits found the work performed by Mr Turner on those audits to be significantly deficient.
23. As a result of ASIC's investigation, ASIC has formed the view that Mr Turner did not conduct the Audits in accordance with the ASA, as required by section 307A(1) of the Corporations Act, as he failed to:
 - 23.1 obtain an understanding of the Companies and their environment, to be able to identify and assess the risks of material misstatement, whether due to fraud or error, in the financial reports, as required by paragraphs 5 to 6, 11 to 15, 18 to 21 and 25 to 27 of ASA 315 *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment (ASA 315)*. Consequently, Mr Turner failed to design and implement appropriate audit procedures, to respond to the existence of risks of material misstatement, in several audit areas including: trade payables, revenue, expenses, and accrued expenses relating to the Audits, as well as in relation to the hire purchase liability of EAA, and the provision of employee entitlements in relation to Sovereign and EAA, as required by paragraphs 5 to 7 of ASA 330 *The Auditor's Responses to Assessed Risks (ASA 330)*.
 - 23.2 carry out all appropriate and necessary enquiries with management in relation to the risk of fraud, as required by paragraphs 17 and 18 of ASA 240 *The Auditor's Responsibilities Relating to Fraud in an Audit of a Financial Report (ASA 240)*.
 - 23.3 display an appropriate level of professional scepticism, especially when assessing the risk of fraud, and when auditing the valuation of accounts receivable, as required by paragraph 12 of ASA 240, and paragraph 15 of ASA 200 *Overall objectives of the independent auditor and the conduct of an audit in accordance with the Australian Accounting Standards*.
 - 23.4 adequately document the results of audit procedures regarding revenue, expenses, accounts receivable, accrued expenses, and trade payables in relation to the Audits, as well as in relation to the loans receivable of Sovereign; the plant, property and equipment, and hire purchase liability relating to EAA; and the provision of employee entitlements relating to Sovereign and EAA, as required by paragraph 8 of ASA 230 *Audit Documentation*.

- 23.5 design and perform audit procedures for the purposes of obtaining sufficient appropriate audit evidence including, in relation to going concern, cash at bank, subsequent events and materiality, as required by paragraph 6 of ASA 500 *Audit Evidence (ASA 500)*.
- 23.6 evaluate the sufficiency and appropriateness of audit evidence he obtained, as required by paragraph 26 to 28 of ASA 330.
- 23.7 assess whether there were indicators of possible management bias in relation to accounts receivable for the Audits, as required by paragraph 21 of ASA 540 *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures*.
- 23.8 evaluate whether the identified related party relationships and transactions had been appropriately accounted for and disclosed in accordance with the applicable financial reporting framework, as required by paragraph 25(a) of ASA 550 *Related Parties*.
- 23.9 remain alert throughout the audit and obtain sufficient appropriate audit evidence to assess whether there were events or conditions that may have cast significant doubts on the appropriateness of management's assessment of the entity's ability to continue as a going concern, as required by paragraphs 10 to 12 and 14 of ASA 570 *Going Concern*.
- 23.10 adequately perform audit procedures to obtain sufficient appropriate audit evidence that events occurring between the date of the financial report and the date of the auditor's report requiring adjustment of or disclosure in the financial report, namely (in relation to the audit of Lotus Securities) the extinguishment of liabilities and change in net assets had been identified, as required by paragraphs 6 to 8 of ASA 560 *Subsequent Events*.
- 23.11 determine materiality for the financial reports when establishing an overall audit strategy, and failed to revise materiality for the financial reports as the Audits progressed, as required by paragraphs 10 to 12 and 14 of ASA 320 *Materiality in Planning and Performing an Audit*.
- 23.12 design and perform analytical procedures either: (i) when performing risk assessment procedures and related activities, as required by paragraphs 5 and 6 of ASA 315; or (ii) near the end of the Audits, to assist in forming an overall conclusion as to whether the financial reports were consistent with the auditor's understanding of the Companies, as required by paragraph 6 of ASA 520 *Analytical Procedures*.

- 23.13 perform audit procedures and obtain sufficient appropriate audit evidence regarding compliance with laws and regulations that had a direct or material effect on the financial reports, as required by paragraphs 13 and 14 of ASA 250 *Consideration of Laws and Regulations in an Audit of a Financial Report*.
- 23.14 obtain written representations from management regarding the preparation of the relevant financial reports, and as otherwise required by the ASA, in accordance with paragraphs 9 to 13 of ASA 580 *Written Representations*.
- 23.15 evaluate whether the overall presentation of the financial reports, including the related disclosures, was in accordance with the applicable financial reporting framework, as required by paragraph 24 of ASA 330.
- 23.16 accept or continue his audit engagements with the Companies, only after the basis upon which the Audits were to be performed had been agreed, as required by paragraphs 6, 9, 10 and 13 of ASA 210 *Agreeing the Terms of the Audit Engagements*.

ACKNOWLEDGMENT OF ASIC'S VIEWS

- 24. Mr Turner acknowledges ASIC's views detailed in paragraph 23, and acknowledges that they are reasonably held.

UNDERTAKINGS

- 25. Under section 93AA of the ASIC Act, Mr Turner 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(1)(d)(i) of the Corporations Act, the following undertakings:
 - (a) Pursuant to section 1290 of the Corporations Act, Mr Turner will, no later than 7 days after the commencement date, request ASIC to cancel his registration as an auditor by lodging with ASIC a duly completed Form 905, accompanied by the prescribed fee.
 - (b) Following cancellation of his registration as a registered auditor, Mr Turner will not ever:
 - (i) re-apply for registration under the Corporations Act; or
 - (ii) 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.

- (c) Mr Turner undertakes to pay the costs of compliance with this enforceable undertaking.
- (d) Mr Turner will provide all documents and information requested by ASIC from time to time, for the purpose of assessing Mr Turner's compliance with the terms of this enforceable undertaking.

ACKNOWLEDGMENTS

- 26. Mr Turner acknowledges that ASIC:
 - (a) may issue a media release on execution of this enforceable undertaking referring to its terms and to the views 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.
- 27. Mr Turner also 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 views 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.
- 28. Mr Turner 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.
- 29. Mr Turner acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and Mr Turner and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

NOTIFICATION

- 30. The address for providing ASIC with any document or notification required by the enforceable undertaking is:

Senior Manager
Financial Reporting & Audit
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

31. The address for providing Mr Turner with any document or notification required by the enforceable undertaking is:

Neil Raymond Turner
Suite 2, 25-41 Redwood Drive
Dingley Village VIC 3172



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Neil Raymond Turner

Dated: 18.2.15.....

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



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George Stogdale
Delegate of the Australian Securities and Investments Commission

Dated: 20/3/2015.....