



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:

*Anthony Christopher Matthews
46 Fullarton Road
NORWOOD SA 5067*

1. Definitions

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

Acceptance Date means the date of acceptance by ASIC of this enforceable undertaking;

ARITA means the Australian Restructuring Insolvency & Turnaround Association (formerly the Insolvency Practitioners Association of Australia);

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

CAANZ means Chartered Accountants Australia and New Zealand;

CALDB means the Companies Auditors and Liquidators Disciplinary Board;

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

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

EU means enforceable undertaking, which is this document;

External Administration means the administration of Sapphire (SA) Pty Ltd (Subject to Deed of Company Arrangement) ACN 076 858 029 pursuant to Part 5.3A of the Corporations Act in the period 14 March 2014 to 21 May 2014;

Mr Matthews means Anthony Christopher Matthews;

Sapphire means Sapphire (SA) Pty Ltd (Subject to Deed of Company Arrangement) ACN 076 858 029.

1.2. Unless otherwise indicated, all references to sections are references to sections of the Corporations Act and all references to regulations are references to the Corporations Regulations.

2. Background

2.1 ASIC's role

2.1.1 Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers to promote the confident and informed participation of investors and consumers in the financial system.

2.1.2 Part 9.2 of the Corporations Act charges ASIC with responsibility for:

- (a) registering liquidators and official liquidators; and
- (b) maintaining a register of liquidators and a register of official liquidators.

2.1.3 ASIC is empowered to bring disciplinary proceedings pursuant to s 1292(2)(d) in the CALDB against a registered liquidator who has failed to carry out or perform adequately and properly:

- (a) the duties of a liquidator; or
- (b) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator;

or is otherwise not a fit and proper person to remain registered as a liquidator.

In this EU, the duties set out at (a) and (b) above are referred to as '*the duties and functions of a liquidator*'.

2.2 Details of Mr Matthews

2.2.1 Mr Matthews was registered as a liquidator under the Corporations Act on 2 June 1983 (registration number 5716).

2.2.2 Mr Matthews was registered as an official liquidator under the Corporations Act on 16 November 2005 (registration number 295130).

2.2.3 Mr Matthews currently practises under the name '*Anthony Matthews and Associates*'.

2.2.4 Mr Matthews is a member of CAANZ and ARITA.

2.3 ASIC's surveillance and analysis

2.3.1 As part of ASIC's compliance activities, ASIC:

- (a) conducted a review of Mr Matthews' conduct in respect of the External Administration; and
- (b) also inspected its public database in respect of all of Mr Matthews' complete and incomplete external administrations,

(collectively referred to as **the Review**).

2.4 ASIC's views concerning the conduct

2.4.1 As a result of the Review, ASIC's view is that Mr Matthews, in conducting the External Administration, failed to carry out or perform adequately and properly the duties and functions of a liquidator in that he failed to:

- A.:
 - a. identify a claim against Sapphire's holding company and/or Sapphire's ultimate holding company for insolvent trading;
 - b. investigate a deed of settlement compromising debts in the weeks prior to commencement of the External Administration;
 - c. investigate unrelated debts assigned for one cent in the dollar in the days prior to commencement of the External Administration;
 - d. investigate the difference in the value of stock as at 31 January 2014 and the value of stock disclosed in the Report as to Affairs dated 2 April 2014; and
 - e. investigate the attempted assignment of two sale contracts leading up to commencement of the External Administration.
- B. properly document the matters referred to in paragraph A. above;
- C. provide an adequate report to creditors under section 439A; and
- D. report possible director misconduct to ASIC.

2.5 Acknowledgement of ASIC's views

2.5.1 Mr Matthews acknowledges ASIC's views detailed in paragraph 2.4.1 above and admits that, in respect of his conduct regarding the External Administration, he failed to carry out or perform adequately and properly the duties or functions required by an Australian law to be carried out or performed by a registered liquidator.

2.5.2 Mr Matthews has informed ASIC that he has taken the following measures to address ASIC's views:

- (a) commenced proceedings to undertake public examinations of Sapphire's director and two other individuals with knowledge of the affairs of Sapphire, as well as seek production of documents by all of the companies that are related to Sapphire's director;

- (b) updated and/or created conflict of interest checklists, investigation checklists, Declaration of Independence, Relevant Relationships and Indemnities and Remuneration report templates and procedures;
- (c) employed a senior insolvency manager;
- (d) appointed a staff member specifically to report all corporate insolvency pronouncements by ASIC and ARITA at regular weekly meetings of Anthony Matthews and Associates; and
- (e) has engaged an external consultant to provide bi-monthly staff training sessions.

3. Undertakings

- 3.1 Under s93AA of the ASIC Act, Mr Matthews has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to the CALDB for an order under s1292(2) for the cancellation or suspension of Mr Matthews' registration as a liquidator, the undertakings in paragraphs 3.2 to 3.20 below.

Not to act as liquidator

- 3.2 Mr Matthews undertakes that, other than in the circumstances set out in paragraph 3.3, he will not, for two months from the Acceptance Date accept any external administration appointments that require the external administrator to be a registered liquidator.
- 3.3 Mr Matthews may accept appointments as liquidator of companies where, prior to executing this EU, he has provided a consent to act and that consent has been filed with a Court in connection with an application to wind up the company.

Membership and Training

- 3.4 Mr Matthews undertakes to maintain his membership of CAANZ and ARITA, for a period of not less than 12 months from the Acceptance Date.
- 3.5 Mr Matthews undertakes to complete at least 60 hours of continuing professional development (CPD) relating to insolvency practice and practice management within 12 months of the Acceptance Date as follows:
- 3.5.1 Mr Matthews will undertake the independence, remuneration and s439A reporting courses provided by ARITA, together with such further courses as may be necessary to complete a minimum of 20 hours of CPD which is directly relevant to ASIC's views outlined in paragraphs 2.4.1 above; and
 - 3.5.2 the remaining CPD hours are to be completed in accordance with the mandatory CPD requirements arising from Mr Matthews' membership of CAANZ and/or ARITA.

- 3.6 Mr Matthews undertakes, as soon as practicable following completion of each of the CPD units referred to in paragraph 3.5, to provide ASIC with documents substantiating his successful completion of that CPD.

Appointment of Quality Reviewer

- 3.7 Mr Matthews undertakes to engage a quality reviewer (Quality Reviewer), at his own cost, within one month from the Acceptance Date, or such longer period as ASIC approves in writing, to conduct two quality reviews and provide two quality review reports, in accordance with this EU.
- 3.8 Mr Matthews must not engage a Quality Reviewer unless:
- 3.8.1 ASIC approves the Quality Reviewer, in writing, prior to Mr Matthews' engagement;
 - 3.8.2 ASIC approves the Quality Reviewer's terms of engagement, in writing, prior to Mr Matthews agreeing those terms with the Quality Reviewer;
 - 3.8.3 the Quality Reviewer's terms of engagement include a statement to the effect that the Quality Reviewer's work is being carried out for Mr Matthews and ASIC, and acknowledging that ASIC is relying on the Quality Reviewer's work; and
 - 3.8.4 the Quality Reviewer's terms of engagement require the Quality Reviewer to notify ASIC where a conflict of interest arises during the engagement.
- 3.9 Mr Matthews undertakes to provide the Quality Reviewer with copies of all correspondence that has passed between ASIC and Mr Matthews regarding ASIC's compliance activities for the purposes of the quality reviews.
- 3.10 Mr Matthews consents to the Quality Reviewer and ASIC discussing, on a confidential basis, any of the matters which are the subject of this EU and any correspondence between ASIC and Mr Matthews which has led to, or is otherwise related to, this EU.

Timing of Quality Reviews and Reports

- 3.11 Mr Matthews undertakes to ensure the Quality Reviewer's terms of engagement require:
- 3.11.1 a first quality review (**First QR**) reviewing the matters set out in paragraph 3.13 of this EU; and
 - 3.11.2 a report on the First QR (**First QR Report**) reporting on the matters set out in paragraph 3.14 of this EU,
- to be finalised and provided to ASIC and Mr Matthews within three months of the Acceptance Date (or such longer period as ASIC approves in writing).

3.12 Mr Matthews undertakes to ensure the Quality Reviewer's terms of engagement require:

3.12.1 a second quality review (**Second QR**) reviewing the matters set out in paragraph 3.16 of this EU; and

3.12.2 a report on the Second QR (**Second QR Report**) reporting on the matters set out in paragraph 3.17 of this EU,

to be finalised and provided to ASIC and Mr Matthews not less than 10 months, and not more than 13 months, from the Acceptance date (or such longer period as ASIC approves in writing).

First QR

3.13 Mr Matthews undertakes to ensure the Quality Reviewer's terms of engagement require the First QR to review:

3.13.1 Mr Matthews' systems and procedures concerning the administration of externally administered companies;

3.13.2 Mr Matthews' implementation of those insolvency systems and procedures;

3.13.3 whether Mr Matthews has carried out and performed adequately and properly the duties and functions of a liquidator in one external administration nominated by ASIC by considering each of the following matters:

(a) independence and disclosure;

(b) remuneration and disclosure;

(c) reporting to ASIC;

(d) reporting to creditors;

(e) investigations;

(f) asset realisations;

(g) file documentation; and

(h) supervision, systems and procedures.

First QR Report

3.14 Mr Matthews undertakes to ensure the Quality Reviewer's terms of engagement require the Quality Reviewer to produce a report of the First QR (**First QR Report**) which:

3.14.1 contains his/her findings in respect of each of the matters in paragraph 3.13;

3.14.2 describes any suspected breaches of the Corporations Act or Corporations Regulations identified by the Quality Reviewer in conducting the First QR; and

3.14.3 makes any recommendations thought by the Quality Reviewer to be necessary to ensure that Mr Matthews' systems and procedures are sufficient, and sufficiently implemented, for Mr Matthews to carry out and perform adequately and properly the duties and functions of a liquidator, including, but not limited to, training requirements for Mr Matthews and his staff (if any).

Response to First QR Report

3.15 Mr Matthews undertakes, within one month of receiving the First QR Report (or such longer period as ASIC approves in writing), to write to ASIC notifying ASIC of the steps taken, or proposed to be taken, to implement any recommendations in the First QR Report (**the First Response**), and to the extent any recommendation has not or will not be implemented, the reasons why.

Second QR

3.16 Mr Matthews undertakes to ensure the Quality Reviewer's terms of engagement require the Second QR to review:

3.16.1 whether Mr Matthews has carried out and performed adequately and properly the duties and functions of a liquidator in two external administrations nominated by ASIC (being external administrations accepted by Mr Matthews after the two month period referred to in paragraph 3.2 has expired) by considering each of the following matters:

- (a) independence and disclosure;
- (b) remuneration and disclosure;
- (c) reporting to ASIC;
- (d) reporting to creditors;
- (e) investigations;
- (f) asset realisations;
- (g) file documentation; and
- (h) supervision, systems and procedures.

Second QR Report

3.17 Mr Matthews undertakes to ensure the Quality Reviewer's terms of engagement require the Quality Reviewer to produce a report of the Second QR (**Second QR Report**) which:

- 3.17.1 contains findings in respect of the matters in paragraph 3.16 above describes any suspected breaches of the Corporations Act or Corporations Regulations identified by the Quality Reviewer in conducting the Second QR; and
- 3.17.2 makes any recommendations thought by the Quality Reviewer to be necessary to ensure that Mr Matthews' systems and procedures are sufficient, and sufficiently implemented, for Mr Matthews to carry out and perform adequately and properly the duties and functions of a liquidator, including, but not limited to training requirements for Mr Matthews and his staff (if any).

Response to Second QR Report

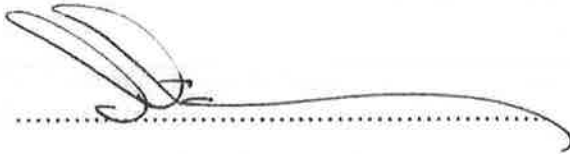
- 3.18 Mr Matthews undertakes, within one month of receiving the Second QR Report (or such longer period as ASIC approves in writing), to write to ASIC notifying ASIC of the steps taken, or proposed to be taken, to implement any recommendations in the Second QR Report (**the Second Response**), and, to the extent any recommendation has not or will not be implemented, the reasons why.
- 3.19 Mr Matthews undertakes to pay his costs of complying with this EU.
- 3.20 Mr Matthews undertakes to provide to ASIC all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this EU.

4. Acknowledgements

- 4.1 Mr Matthews acknowledges that ASIC:
- 4.1.1 may issue a media release on execution of this EU referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2 may from time to time publicly refer to this EU;
 - 4.1.3 will report publicly on whether Mr Matthews' undertakings in this EU have been complied with;
 - 4.1.4 will make this EU available for public inspection and, in particular, will record the enforceable undertaking on the Register of Enforceable Undertakings maintained by ASIC; and
 - 4.1.5 may include a reference to this EU in particular, that ASIC may consider appropriate to include in ASIC's Register of Liquidators and Register of Official Liquidators that ASIC maintains pursuant to s1286.
- 4.2 In relation to the First QR Report and Second QR Report (the Reports), Mr Matthews acknowledges that ASIC:
- 4.2.1 may issue a media release referring to the content of the Reports;

- 4.2.2 may from time to time publicly refer to the Reports; and
- 4.2.3 will make available for public inspection a summary of the Reports, or a statement that refers to the content of the Reports.
- 4.3 ASIC acknowledges that in relation to paragraph 4.2, it will delete, remove or not refer to any information that:
 - 4.3.1 consists of personal information or an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, this EU;
 - 4.3.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of a company of which Mr Matthews is or was appointed to as external administrator;
 - 4.3.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 4.3.4 Mr Matthews has requested not be released and ASIC is satisfied:
 - (a) it would be unreasonable to release because the release would unreasonably affect the business, commercial or financial affairs of Mr Matthews' insolvency practice otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of this EU; or
 - (b) it should not be disclosed because it would be against the public interest to do so.
- 4.4 Further, Mr Matthews acknowledges that:
 - 4.4.1 ASIC accepting this EU 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 EU or arising from future conduct; and
 - 4.4.2 this EU in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this EU or arising from future conduct.
- 4.5 Mr Matthews acknowledges that ASIC reasonably holds the views expressed in paragraph 2.4.1 above.
- 4.6 Mr Matthews acknowledges that he has offered an EU in the terms of paragraphs 3.2 to 3.20 above.
- 4.7 ASIC acknowledges that Mr Matthews co-operated with ASIC in respect of the Review and this EU.

4.8 Mr Matthews acknowledges that this EU has no operative force until ASIC accepts it. Mr Matthews and ASIC acknowledge that the operative date of the EU is the date on which ASIC accepts it.



Anthony Christopher Matthews

Dated: 19 November 2015

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



George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: 30 November 2015