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## 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:

***Adam Edward Patrick FARNSWORTH***

*of Level 5, 2 Barrack St*

*Sydney NSW 2000*

## 2 Definitions

2.1 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;

**APES 330** means the APES 330 Insolvency Services standard issued by the Accounting Professional & Ethical Standards Board Limited in November 2011 and revised in September 2014;

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

**ARITA Code** means the Code of Professional Practice for Insolvency Practitioners third edition 1 January 2014 (as amended 18 August 2014) and its antecedent versions;

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

**Bruzzano** means each of:

- (a) Mr Frank Bruzzano;
- (b) any person that has a significant influence over the business affairs of the business that trades under the business name "Bruzzano & Associates";
- (c) Frank Bruzzano Pty Ltd (ACN 087 359 797);
- (d) any associate (as that term is defined in the Corporations Act) of Frank Bruzzano Pty Ltd;

**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);

**CPA** means CPA Australia Ltd ACN 008 392 452;

**Continuing Professional Development** means the program for continuing professional development that members of the CPA are required to undertake as prescribed by the Board of the CPA;

**DIRRI** means declaration of relevant relationships as referred to in s60 of the Corporations Act and declaration of indemnities as referred to in s9 of the Corporations Act and section 6 of the ARITA Code; and

**Mr Farnsworth** means Mr Adam Edward Patrick Farnsworth.

- 2.2 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.

### 3 Background

#### 3.1 ASIC's role

- (a) 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.
- (b) Part 9.2 of the Corporations Act charges ASIC with responsibility for registering liquidators and official liquidators and for maintaining a register of liquidators and a register of official liquidators.
- (c) ASIC is empowered to bring disciplinary proceedings pursuant to s1292(2)(d) in the CALDB against a registered liquidator who has failed to carry out or perform adequately and properly:
  - (i) the duties of a liquidator;
  - (ii) or 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 enforceable undertaking, (i) and (ii) above are "the duties and functions of a liquidator".

#### 3.2 Details of Mr Farnsworth

- (a) Mr Farnsworth was registered as a liquidator under the Corporations Act on 17 May 2005 and as an official liquidator on 20 August 2009. His registration numbers are 288527 and 339731 respectively.
- (b) Mr Farnsworth currently practises as a liquidator as a partner in the firm Farnsworth Shepard of level 2, 5 Barrack Street, Sydney, NSW and has done so

since 1 July 2013. Immediately prior to that, he practised as a liquidator at Dean-Wilcocks Shepard Recovery and Strategy.

- (c) Mr Farnsworth is a member of CPA.
- (d) Mr Farnsworth is appointed to other external administrations in addition to those listed in Schedule A and Schedule B

### 3.3 ASIC's Liquidator Compliance Program

- (a) As part of ASIC's Liquidator Compliance Program, ASIC undertook a review:
  - (i) of Mr Farnsworth's conduct; and
  - (ii) of its public database;in respect of the external administrations listed in Schedule A.

## 4 ASIC's views concerning the conduct

- 4.1 As a result of ASIC's review referred to in paragraph 3.3(a), ASIC's view is that Mr Farnsworth failed to adequately and properly discharge duties and functions of a registered liquidator during his conduct of the external administrations listed in Schedule A in that:
  - (a) during the period February 2011 to June 2013, where 46.79% of Mr Farnsworth's total fees billed came from external administrations referred by Bruzzano, a reasonably competent liquidator would have recognised that such a relatively large value of referrals to him personally from one referrer would result in a perception that he had become dependent on that workflow and thus in his conduct of the external administrations of MKC, Whitehaven and Parsset, he may not have been perceived as independent and should not have taken those appointments [s180, s181, Code 6.6, and APES 330 paragraph 4.];
  - (b) in his conduct of the external administrations of MKC, Whitehaven and Parsset, he failed to adequately disclose in his DIRRIs the proportion of external administration fee income received by him personally, rather than as received by his firm, from external administrations referred from Bruzzano [s436DA and Code 6.6];
  - (c) in his conduct of the external administration of ViVo he failed to disclose in his DIRRI his referral relationship with Bruzzano in circumstances where the external administration was referred from another source but where Bruzzano was a creditor and an advisor to the company, its associated companies and its directors [s436DA and Code 6.6];
  - (d) during his conduct of the external administrations of MKC, Whitehaven and Parsset, he did not make reasonable efforts to obtain the books and records of the companies in external administration and he did not undertake investigations into the business, property, affairs and financial circumstances of those companies to

the standard expected of a reasonably competent liquidator[s180, s181, and s438A];

- (e) during his conduct of the FGD external administration, he failed to specifically highlight in his report to creditors to the standard expected of a reasonably competent liquidator that the referral source of the external administration may have received a voidable transaction [s439A];
- (f) during his conduct of the FGD and ViVo external administrations he should not have admitted related party proofs of debt for voting purposes for the value that he did in circumstances where the records of the companies were inadequate and, or, where there was a lack of disclosure by officers of the external administrations [s180, s181 and Code 24.6]; and
- (g) during his conduct of the FGD and Parsset external administrations, did not document his adjudication of proofs of debt for distribution purposes to the standard expected of a reasonably competent liquidator. [s180 and s181].

***Other matter***

4.2 After ASIC communicated to Mr Farnsworth its views of his conduct of the external administrations as referred to in paragraph 4.1, Mr Farnsworth reported to ASIC that when he was receiver and manager of Brighton Le Sands Amateur Fishermen's Association Limited (in liquidation) ACN 000 198 881 ("Brighton") in the period 27 February 2012 to 30 September 2013 he realised the proceeds of certain secured assets, including circulating assets and;

- (a) in distributing the proceeds of the secured assets, and by way of oversight, had not paid superannuation contributions and superannuation guarantee charges and other employee entitlements in the priority required by s433; and
- (b) upon realising the oversight, and obtaining legal advice, he paid those debts in full.

4.3 Acknowledgement of ASIC's views

- (a) Mr Farnsworth acknowledges ASIC's views detailed in paragraph 4.1 above.
- (b) Mr Farnsworth has informed ASIC that he has taken the following measures to address ASIC's concerns:
  - (i) since 18 April 2015, he has not accepted any appointments that require the external administrator to be a registered liquidator;
  - (ii) he has updated his procedures for compliance with the Corporations Act and ARITA Code; and
  - (iii) he has completed the independence course provided by ARITA.

## **5 Undertakings**

5.1 Under s93AA of the ASIC Act, Mr Farnsworth has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to the:

- (a) CALDB for an order under s1292(2) for the cancellation or suspension of Mr Farnsworth's registration as a liquidator; or
- (b) Court under s536;

in respect of his conduct of the external administrations listed in Schedule A, the following undertakings:

### ***Suspension***

5.2 Subject to paragraph 5.3, Mr Farnsworth undertakes not to perform, for the period of six months ("Suspension Period"), commencing 14 days after the Acceptance Date, any duty or function which requires the person performing such duty or function to be registered as a liquidator under the Corporations Act. ASIC acknowledges that Mr Farnsworth has not accepted any appointments that required the appointee to be a registered liquidator under the Corporations Act since 18 April 2015. The undertaking in this paragraph takes that into account.

5.3 The undertaking in paragraph 5.2 does not apply to the performance of duties and functions in respect of the external administration of Moore Australasia Pty Limited (in liquidation) ACN 119 634 749 ("Moore Australasia") of which Mr Farnsworth is liquidator under a creditors' voluntary liquidation.

### ***Replacement***

5.4 Mr Farnsworth undertakes, by 12 February 2016, to file an application in the Supreme Court of New South Wales or the Federal Court of Australia, Sydney Registry:

- (a) to be replaced by Mr Adam Shepard as external administrator of the external administrations he is appointed to except for those referred to in Schedule B and the external administration of Moore Australasia;
- (b) to be replaced by a registered liquidator, or liquidators acceptable to ASIC, as external administrator of those external administrations referred to in Schedule B which, as at 12 February 2016 have not had their final meeting of creditors; and
- (c) to have Mr Shepard, or another registered liquidator acceptable to ASIC, appointed jointly and severally as liquidator with Mr Farnsworth to Moore Australasia.

### ***Referrals from Bruzzano***

5.5 Mr Farnsworth undertakes, for 4 years commencing after the expiry of the Suspension Period, that for any of his appointments as an administrator or joint administrator that result from a referral by Bruzzano, he will:

- (a) instruct the Quality Reviewer appointed under paragraph 5.11 to 5.15 (or another Quality Reviewer appointed in accordance with paragraph 5.11 to 5.15) to review the DIRRI and any amended DIRRI, as the case may be, before its despatch in those external administrations; and
  - (b) not despatch the DIRRIs referred to in paragraph (a) above unless the Quality Reviewer is satisfied that the DIRRIs and amended DIRRIs, as the case may be, are to the standard expected of a reasonably competent liquidator.
- 5.6 Mr Farnsworth undertakes, for 4 years commencing after the expiry of the Suspension Period, that he will notify ASIC in writing as soon as he becomes aware that a registered liquidator with whom he is associated with in a firm has been appointed as external administrator of a company following a referral by Bruzzano.
- 5.7 For the removal of any doubt, any referrals from Bruzzano are not to be included in any of the external administrations the subject of the First or Second Quality Reviews referred to in paragraphs 5.17 and 5.18.

***CPA membership and professional education***

- 5.8 Mr Farnsworth undertakes to use his best endeavours to maintain his membership of CPA for a period of not less than 6 months from the Acceptance Date.
- 5.9 Mr Farnsworth undertakes to complete:
- (a) forty (40) hours of Continuing Professional Development (CPD) within 12 months (or such other period that ASIC may agree to in writing) of the Acceptance Date; and
  - (b) the section 439A reporting course provided by ARITA.
- 5.10 Mr Farnsworth undertakes, as soon as practicable following completion of the CPD referred to in paragraph 5.9, to provide ASIC with documents substantiating his completion of that CPD.

***Appointment of Quality Reviewer***

- 5.11 Mr Farnsworth undertakes, at his own expense, to engage a quality reviewer (Quality Reviewer) at least one month before the end of his Suspension Period or such longer period as approved in writing by ASIC, to conduct two quality reviews (Quality Reviews) and to provide two quality review reports (QR Reports) to ASIC, as set out in this enforceable undertaking.
- 5.12 Prior to engaging the Quality Reviewer, Mr Farnsworth will advise ASIC in writing of:
- (a) the expertise of the proposed Quality Reviewer; and
  - (b) any association between Mr Farnsworth and the Quality Reviewer and the Quality Reviewer's staff (if any) during the 2 year period prior to the Acceptance Date.

5.13 Mr Farnsworth will not engage the Quality Reviewer unless:

- (a) the Quality Reviewer has expertise in the proper performance of the duties and functions of a liquidator;
- (b) the Quality Reviewer has been approved by ASIC, in writing, prior to engagement by Mr Farnsworth;
- (c) the Quality Reviewer and the Quality Reviewer's staff are, at the time of engagement and at all material times under this enforceable undertaking, independent of Mr Farnsworth; and
- (d) the terms of engagement of the Quality Reviewer are approved by ASIC in writing prior to Mr Farnsworth agreeing those terms with the Quality Reviewer.

5.14 Mr Farnsworth undertakes to provide to the Quality Reviewer for each Quality Review required under this enforceable undertaking, copies of all correspondence that has passed between ASIC and Mr Farnsworth regarding ASIC's review of the external administrations listed in Schedule A.

5.15 Mr Farnsworth consents to the Quality Reviewer and ASIC discussing, on a confidential basis, matters arising out of ASIC's review of the external administrations listed in Schedule A and any correspondence between ASIC and Mr Farnsworth which has led to, or is otherwise related to, this enforceable undertaking.

***Terms and Timing of the Quality Reviews***

5.16 Mr Farnsworth undertakes to ensure the terms of engagement of the Quality Reviewer require:

- (a) the First Quality Review to comprise a review of the matters set out in paragraph 5.17 and the Second Quality Review to comprise a review of the matters set out in paragraph 5.18;
- (b) the First Quality Review to include a report in accordance with paragraph 5.19 on the matters set out in paragraph 5.17 and the Second Quality Review to include a report in accordance with paragraph 5.19 on the matters set out in paragraph 5.18;
- (c) the First Quality Review to be finalised and the report in accordance with paragraph 5.19 be provided to ASIC and Mr Farnsworth within six (6) months after the conclusion of the Suspension Period (or such longer period as ASIC approves in writing); and
- (d) the Second Quality Review to be finalised and the report in accordance with paragraph 5.19 be provided to ASIC and Mr Farnsworth not less than 12 months, and not more than 15 months, after the conclusion of the Suspension Period (or such longer period as ASIC approves in writing).

***The Quality Reviews***

5.17 Mr Farnsworth undertakes to ensure the terms of engagement of the Quality Reviewer require the First Quality Review to review whether Mr Farnsworth has carried out and performed adequately and properly his duties and functions as a liquidator in two (2)

external administrations nominated by ASIC, by considering each of the following matters:

- (a) independence and disclosure;
- (b) reporting to creditors;
- (c) investigations;
- (d) file documentation;
- (e) supervision systems and procedures;
- (f) the implementation of systems and procedures;
- (g) compliance culture; and
- (h) the adequacy of compliance and risk management processes in place, including but not limited to:
  - (i) the systems and procedures in place in relation to accepting joint appointments, including a further system to verify and check that the systems and procedures are working;
  - (ii) which communications the relevant appointees are to be involved in;
  - (iii) which decisions are to be made by each appointee;
  - (iv) the documents that each appointee is to authorise;
  - (v) the documents that each appointee is to sign as evidence of review;
  - (vi) the schedule of regular meetings between the joint appointees for review and monitoring of progress of the joint appointment; and
  - (vii) the process for reviewing and improving processes, procedures, checklists, staff training and communication.

5.18 Mr Farnsworth undertakes to ensure the terms of engagement of the Quality Reviewer require the Second Quality Review to review whether Mr Farnsworth has carried out and performed adequately and properly his duties and functions as a liquidator in the two (2) external administrations that were subject to the First Quality Review referred to in 5.17 plus two (2) additional external administrations nominated by ASIC, by considering each of the following matters:

- (a) independence and disclosure;
- (b) reporting to creditors;
- (c) investigations;
- (d) file documentation;
- (e) supervision systems and procedures; and
- (f) compliance culture.



### ***The QR Reports***

- 5.19 Mr Farnsworth undertakes to ensure that the terms of engagement of the Quality Reviewer require the Quality Reviewer to produce a report on each Quality Review that:
- (a) contains findings in respect of the matters in paragraphs 5.17 and 5.18 (as applicable) relevant to that Quality Review;
  - (b) describes any suspected breaches of the Corporations Act or Corporations Regulations identified by the Quality Reviewer in conducting each Quality Review; and
  - (c) makes any recommendations thought by the Quality Reviewer to be necessary to ensure that the insolvency systems and procedures utilised by Mr Farnsworth are sufficient, and sufficiently implemented, for Mr Farnsworth to carry out and perform adequately and properly the duties and functions of a liquidator, including, but not limited to training requirements for Mr Farnsworth, and his staff (if any).

### ***Responses to QR Reports***

- 5.20 Mr Farnsworth undertakes, within one month of receiving each 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 that QR Report and, to the extent any recommendation has not or will not be implemented, the reasons why.

### ***Costs and information to ASIC***

- 5.21 Mr Farnsworth undertakes to pay the costs of his compliance with this enforceable undertaking.
- 5.22 Mr Farnsworth 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 enforceable undertaking.

## **6 Acknowledgements**

- 6.1 Mr Farnsworth acknowledges that ASIC:
- (a) may issue a media release on execution of this enforceable 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 enforceable undertaking and/or to Mr Farnsworth's compliance or non-compliance with this enforceable undertaking;
  - (c) will make this enforceable undertaking available for public inspection, and, in particular, will record the enforceable undertaking on the Register of Enforceable Undertakings maintained by ASIC; and

- (d) may include a reference to the enforceable undertaking in particulars that ASIC may consider appropriate to include in ASIC's Register of Liquidators and Register of Official Liquidators that ASIC maintains pursuant to s1286.

6.2 In relation to the First or Second QR Reports, Mr Farnsworth acknowledges that ASIC:

- (a) may issue a media release referring to the content of the Reports;
- (b) may from time to time publicly refer to the Reports; and
- (c) will make available for public inspection a copy of the Reports, or a statement that refers to the content of the Reports.

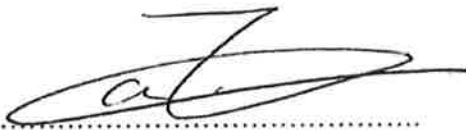
6.3 ASIC acknowledges that in relation to paragraph 6.2, it will delete, remove or not refer to any information that:

- (a) in ASIC's view would be unreasonable to release because the release of the information would or could be expected to unreasonably affect the business, commercial or financial affairs of a company of which Mr Farnsworth is or was appointed to as external administrator;
- (b) Mr Farnsworth has requested it not to release; and
- (c) ASIC is satisfied:
  - (i) would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of Mr Farnsworth's insolvency practice and in ASIC's view would be unreasonable to release because the release of the information would or could be expected to unreasonably affect the business, commercial or financial affairs of Mr Farnsworth otherwise than is contemplated by this enforceable undertaking; or
  - (ii) otherwise should not be disclosed because it would be against the public interest to do so; or
  - (iii) consists of personal information of an individual.

6.4 Further, Mr Farnsworth 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 set out in this enforceable undertaking or arising from future conduct;
- (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.

- 6.5 Mr Farnsworth acknowledges ASIC reasonably holds its views regarding the alleged facts and has offered an enforceable undertaking in the terms of paragraphs 5.1 to 5.22.
- 6.6 Mr Farnsworth acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Farnsworth and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.



**Adam Edward Patrick Farnsworth**

**Dated: 16 December 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: 17 December 2015**

**Annexure A**

**External Administrations**

<b>ACN</b>	<b>Company Name</b>	<b>External Administration Appointment</b>	<b>Date Of Appointment</b>	<b>Date Ceased</b>
<b>003 175 004</b>	Dungowan Manly Pty Ltd	Voluntary Administration Creditors Voluntary Liquidator	18/12/2012 13/05/2013	13/05/2013
<b>091 763 585</b>	MKC Media Corporation Pty Ltd ("MKC")	Voluntary Administration Creditors Voluntary Liquidator	23/01/2013 28/02/2013	28/02/2013
<b>115 054 898</b>	Whitehaven Custodians Pty Ltd ("Whitehaven")	Voluntary Administration Deed Administrator Registered	29/01/2013 19/03/2013 24/06/2013	19/03/2013 24/06/2013
<b>117 223 104</b>	FGD Property Holdings Pty ("FGD")	Voluntary Administration Deed Administrator Registered	17/04/2012 25/09/2012 15/11/2012	25/09/2012 15/11/2012
<b>150 269 677</b>	Parsset Pty Ltd ("Parsset")	Voluntary Administration Deed Administrator Registered	25/03/2013 13/05/2013 12/07/2013	13/05/2013 12/07/2013
<b>087 480 171</b>	Vivo International Corporation Pty Limited ("Vivo")	Voluntary Administration Deed Administrator Creditors Voluntary Liquidator	4/12/2013 7/03/2014 6/08/2014	7/03/2014 6/08/2014

**Annexure B****External administrations associated with Mr Frank Bruzzano**

<b>ACN</b>	<b>Name</b>	<b>Role</b>	<b>Start</b>
<b>091 763 585</b>	<b>MKC Media Corporation Pty Ltd ("MKC")</b>	<b>Creditors Voluntary Liquidation</b>	<b>28/02/2013</b>
<b>087 480 171</b>	<b>Vivo International Corporation Pty Limited ("Vivo")</b>	<b>Creditors Voluntary Liquidation</b>	<b>6/08/2014</b>
<b>118 044 376</b>	<b>Kassem Nominees Pty Limited</b>	<b>Creditors Voluntary Liquidation</b>	<b>4/12/2014</b>