

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Avalon Pacific Capital Pty Ltd
ACN 138 130 328
Level 32 1 Market Street Sydney NSW 2000
(Avalon Pacific)

1. Definitions

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

ACI means Anchor Capital Investments Ltd ARBN 600 518 009 which is registered in Samoa and was granted official NSX quotation on 9 December 2014, with 62,500,000 CDI's issued at USD\$0.01.

AGT means Alliance Global Capital Pte Ltd ARBN 607 343 724 which is registered in Samoa and was granted official NSX quotation on 4 October 2016, with 6,000,000 CDI's issued at USD\$0.10.

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

Avalon Pacific means Avalon Pacific Capital Pty Ltd ACN 138 130 328.

CDI means CHESS Depository Interest.

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

ECL means Emerging Capital Limited ARBN 603 393 782 which is registered in Samoa and was granted official NSX quotation on 6 March 2015, with 6,000,000 CDI's issued at USD\$0.20. .

ESL means Energy Solutions International Ltd ARBN 604 543 777 which is registered in Samoa and was granted official NSX quotation on 14 August 2015, with 2,000,000 CDI's issued at USD\$0.30.

JCL means Juhe Capital Holdings ARBN 612 600 423 which is registered in the British Virgin Islands and was granted official NSX quotation on 17 August 2016, with 160,000,000 CDI's issued at AUD\$1.50.

Market Participant means a participant in the Market admitted under the Operating Rules as defined under NSX Market Integrity Rule 1.4.3.

NSX means the National Stock Exchange of Australia ACN 000 902 063.

NSX Market Integrity Rules means the ASIC Market Integrity Rules (NSXA Market) 2010.

2. Background

ASIC's role

- 2.1 Under section 1 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.

Avalon Pacific

- 2.2 Avalon Pacific holds Australian Financial Service licence 338943 and was admitted as a participant of the NSX in 2011 under its former name Dayton Way Financial Pty Ltd. Avalon Pacific was the highest ranked Market Participant of the NSX by turnover in value for 2017¹.

NSX Market Integrity Rule 6.6.1

- 2.3 NSX Market Integrity Rule 6.6.1 states:

'A Market Participant must not make a Bid or Offer for, or deal in, Securities:

...

(b) on account of any other person where:

...

(iii) taking into account the circumstances of the Order, a Market Participant ought reasonably suspect that the person has placed the Order with the intention of creating, a false or misleading appearance of active trading in any Securities or with respect to the Market for, or the price of, any Securities.'

- 2.4 NSX Market Integrity Rule 6.6.2 provides matters a Market Participant must have regard to in considering the circumstances of the order.

Other Relevant Persons

- 2.5 Order Placer A means the person who provided Avalon Pacific with the order instructions to buy and sell that resulted in Avalon Pacific executing crossings in ACI, AGT, ECL and ESL. Order Placer A was a non-Australian resident who appears to be involved in the management of ACI, AGT, ECL and ESL.
- 2.6 Order Placer B means the person who provided Avalon Pacific with the order instructions to buy and sell that resulted in Avalon Pacific executing

¹ As at 23 June 2017

crossings in JCL. Order Placer B was a non-Australian resident who appears to be involved in the management of JCL.

3. Details of Conduct

ACI

- 3.1 Between its listing date of 9 December 2014 and 6 January 2015, no trades occurred in ACI.
- 3.2 Between 7 January 2015 and 25 February 2015 inclusive, Avalon Pacific executed the only trades in ACI, being five small value crossings reported at consecutively higher prices as follows:

Trade Date	Price	Volume
7/01/15	\$0.45	2,000
8/01/15	\$1.00	2,000
20/01/15	\$1.50	2,000
5/02/15	\$2.00	2,000
25/02/15	\$2.50	1,000

- 3.3 The fifth crossing in the series at \$2.50 was approximately 20,733% above ACI's listing price of USD\$0.01².
- 3.4 Following the third crossing at \$1.50, the NSX issued a letter to ACI seeking an explanation for the substantial increase in its CDI price. ACI responded to the NSX stating amongst other things that it was: *'not aware of any price information concerning it that has not been announced'*
- 3.5 Order Giver A, who acted on behalf of Avalon Pacific's clients, provided Avalon Pacific with each of the buy and sell order instructions that resulted in the five crossings in ACI. Avalon Pacific had no communication with the clients.

AGT

- 3.6 Between its listing date of 4 October 2016 and 12 October 2016, no trades occurred in AGT.
- 3.7 Between 13 October 2016 and 29 March 2017 inclusive, Avalon Pacific executed the only trades in AGT, being five small value crossings reported at consecutively higher prices as follows:

Trade Date	Price	Volume
13/10/16	\$0.25	2,000
3/11/16	\$0.55	2,000
29/11/16	\$0.75	2,500
20/03/17	\$1.00	925

² Equivalent to approximately AUD\$0.012 at the time of listing.

29/03/17	\$1.50	476
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- 3.8 The fifth crossing in the series at \$1.50 was approximately 1,053% above AGT's listing price of USD\$0.10³.
- 3.9 Following the second crossing at \$0.55, the NSX issued a letter to AGT seeking an explanation for the substantial increase in its CDI price. AGT responded to the NSX stating amongst other things that it was: *'not aware of any price information concerning it that has not been announced'*
- 3.10 Order Giver A who acted on behalf of Avalon Pacific's clients provided each of the buy and sell order instructions that resulted in the three crossings in AGT. Avalon Pacific had no communication with the clients.

ECL

- 3.11 Between its listing date on 6 March 2015 and 9 March 2015 no trades occurred in ECL.
- 3.12 Between 10 March 2015 and 7 April 2015 inclusive, Avalon Pacific executed the only trades in ECL, being three small value crossings reported at consecutively higher prices as follows:

Trade Date	Price	Volume
10/03/15	\$0.50	2,000
13/03/15	\$0.60	2,000
7/04/15	\$1.40	1,000

- 3.13 The third crossing in the series at \$1.40 was approximately 438% above ECL's listing price of USD\$0.20⁴.
- 3.14 Order Giver A who acted on behalf of Avalon Pacific's clients provided each of the buy and sell order instructions that resulted in the three crossings in ECL. Avalon Pacific had no communication with the clients.

ESL

- 3.15 Between its listing date of 14 August 2014 and 30 August 2015 no trades occurred in ESL.
- 3.16 Between 31 August 2015 and 6 November 2015 inclusive, Avalon Pacific executed the only trades in ESL, being six small value crossings reported at consecutively higher prices, as follows:

Trade Date	Price	Volume
31/08/15	\$0.50	2,000

³ Equivalent to approximately AUD\$0.13 at the time of listing

⁴ Equivalent to approximately AUD\$0.26 at the time of listing

8/09/15	\$1.00	2,000
10/09/15	\$2.00	500
30/09/15	\$2.50	2,000
3/11/15	\$2.75	1,000
6/11/15	\$3.00	1,000

- 3.17 The sixth crossing in the series at \$3.00 was approximately 650% above ESL's listing price of USD\$0.30⁵.
- 3.18 Following the third crossing at \$2.00, the NSX issued a letter to ESL seeking an explanation for the substantial increase in its CDI price. ESL responded to the NSX stating amongst other things that it was: *'unaware of any price information concerning it which has not been announced'*
- 3.19 Order Giver A who acted on behalf of Avalon Pacific's clients provided each of the buy and sell order instructions that resulted in the six crossings in ESL. Avalon Pacific had no communication with the clients.

JCL

- 3.20 On 7 December 2016, the NSXA issued JCL with a price query in relation to four crossings executed by Avalon Pacific on 6 December 2016, which resulted in JCL closing at \$1.95, up \$0.10 from its previous closing price of \$1.85 on 2 December 2016. JCL responded by citing its impending CDI placement.
- 3.21 On 9 December 2016, JCL announced to the market that it would be placing 24,000,000 new CDIs at \$2.00 per CDI. On 5 January 2017 JCL announced that the placement would be extended to 25 January 2017.
- 3.22 On 7 February 2017, JCL announced that the placement would be extended to 7 March 2017.
- 3.23 Between 9 February and 20 February 2017 inclusive, Avalon Pacific reported a series of trades, always prior to market opening, always under condition code 'O'⁶, at progressively higher prices with the last trade for the smallest value reported between \$2.02 and \$2.07. The trades were as follows:

Date	1st Trade	2 nd Trade	3 rd Trade	4 th Trade	Last Trade
9/02/17	17,000 @ \$1.73	15,000 @ \$1.73			2,000 @ \$2.02
10/02/17	14,000 @ \$1.75	16,000 @ \$1.75			2,000 @ \$2.03
13/02/17	16,000 @ \$1.74	10,000 @ \$1.74			4,000 @ \$2.04
14/02/17	9,000 @ \$1.73				2,000 @ \$2.05
15/02/17	5,000 @ \$1.72	10,000 @ \$1.72	12,000 @ \$1.72	20,000 @ \$1.73	1,000 @ \$2.07
16/02/17	15,000 @ \$1.72	9,000 @ \$1.72	6,000 @ \$1.72		3,000 @ \$2.06
17/02/17	20,000 @ \$1.73	6,000 @ \$1.73	3,000 @ \$1.73		2,000 @ \$2.07

⁵ Equivalent to approximately AUD\$0.40 at the time of listing

⁶ The NSX permits Market Participants to report crossings prior to 9:45 each morning using condition code 'O' when the parties to the crossing are overseas residents. Crossings reported with condition code 'O' on the NSX update the last traded price and high low.

20/02/17	10,000 @ \$1.72	10,000 @ \$1.72			10,000 @ \$2.06
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3.24 Between 9 February 2017 and 20 February 2017 inclusive, at least 100,000 CDIs were available for purchase on the NSX at \$1.72 and often with more volume at \$1.72 and some smaller volume at \$1.71. The trades referred to above did not buy these CDIs even though they were for offer at cheaper prices.

3.25 Order Giver B who acted on behalf of Avalon Pacific's clients provided each of the buy and sell order instructions that resulted in the crossings in JCL referred to in paragraph 3.23 above.

ASIC's views concerning the conduct - ACI, AGT, ECL and ESL

3.26 ASIC is concerned that:

- (a) Avalon Pacific did not have regard to the following circumstances of the orders from Order Giver A in respect of ACI, AGT, ECL and ESL as required by NSX Market Rule 6.6.2:
 - (i) The execution of the crossings materially increased the price of the CDIs in these companies;
 - (ii) The order instructions were provided by a single person (Order Giver A) acting on behalf of both the buyer and seller who appeared to be involved in the management of these companies and may have an interest in creating a false or misleading appearance with respect to the price of the CDIs of these companies;
 - (iii) The orders were accompanied by unusual settlement instructions as some of the client's had provided instructions on their account opening documentation to have the proceeds from the sale of the CDIs to be remitted directly to some of the NSX listed company's accounts that were the subject of the crossings in this Enforceable Undertaking;
 - (iv) The crossings appear to be part of a series intended to increase the price of each security as each crossings was executed at a price above the previous crossing;
 - (v) The increase in price does not appear to be matched by company announcements that would explain the price increase and Avalon Pacific made no attempts to determine if there was a legitimate commercial reason for the orders.
- (b) Avalon Pacific breached NSX Market Integrity Rule 6.6.1 as it dealt in securities on behalf of clients where, having regard the circumstances of the orders referred to in 3.26(a) above, it ought reasonably to have suspected that Order Giver A had placed the orders with the intention of creating a false and misleading

appearance with respect to the price of the CDIs of ACI, AGT, ECL and ESL.

ASIC's views concerning the conduct – JCL

3.27 ASIC is concerned that:

- (a) Avalon Pacific did not have regard to the following circumstances of the orders from Order Giver B in respect of JCL as required by NSX Market Rule 6.6.2:
 - (i) The execution of the orders materially increased the opening price of the CDIs in JCL to be between \$2.02 and \$2.07 in the period 9 to 20 February 2017;
 - (ii) The order instructions were provided by a single person (Order Giver B) acting on behalf of both the buyer and seller who appeared to be involved in the management of JCL and may have an interest in creating a false and misleading appearance with respect to the price of the CDIs of JCL, particularly as JCL had announced a proposed placement at \$2.00 per CDI prior to the trading and which had been delayed a number of times;
 - (iii) The crossings appear to be part of a series of orders whereby the last trade of the series on each day caused the opening price of CDIs of JCL to be above the proposed placement price;
 - (iv) Avalon Pacific made no attempts to determine if there was a legitimate commercial reason for the orders, particularly as some of the crossings involved client's buying at prices higher than what was offered on the market.
- (b) Avalon Pacific breached NSX Market Integrity Rule 6.6.1 as it dealt in securities on behalf of clients where, having regard the circumstances of the orders referred to in 3.27(a) above, it ought reasonably to have suspected that Order Giver B had placed the orders with the intention of creating a false and misleading appearance with respect to the price of the CDIs of JCL.

Acknowledgement of ASIC's views

3.28 Avalon Pacific acknowledge that the concerns expressed by ASIC in paragraph 3.26 to 3.27 above are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 4.1.1 to 4.1.4 below.

4. Undertakings

4.1 Under s93AA of the ASIC Act, Avalon Pacific have offered, and ASIC has agreed to accept as an alternative to pursuing administrative or civil proceedings against Avalon Pacific for a breach of the NSX Market Integrity Rules in relation to the matters described in ASIC's concerns, the following undertakings:

- 4.1.1 Avalon Pacific undertakes to cancel its status as an NSX Market Participant within 30 days of the acceptance of this enforceable undertaking;
- 4.1.2 Avalon Pacific undertakes not to reapply for NSX Market Participant status;
- 4.1.3 Avalon Pacific undertakes not to deal in financial products of NSX listed companies via any other Market Participant either on its own behalf or on behalf of its clients;
- 4.1.4 Avalon Pacific undertakes that within 30 days of this undertaking it will amend the authorisations of its representatives to prevent them dealing in financial products of NSX listed companies via any other Market Participant either on its own behalf or on behalf of its clients.
- 4.2 Avalon Pacific undertakes that it will pay the costs of its compliance with this enforceable undertaking.
- 4.3 Avalon Pacific will provide all documents and information requested by ASIC from time to time for the purpose of assessing the Avalon Pacific's compliance with the terms of this enforceable undertaking.

5. Acknowledgements

- 5.1 Avalon Pacific acknowledges that ASIC:
 - 5.1.1 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;
 - 5.1.2 may provide this undertaking to NSX and Market Participants;
 - 5.1.3 may from time to time publicly refer to this undertaking;
 - 5.1.4 will from time to time publicly report about compliance with this undertaking; and

5.1.5 will make this undertaking available for public inspection.

5.2 Further Avalon Pacific acknowledges that:

5.2.1 ASIC's acceptance of this 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 the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;

5.2.2 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 undertaking or arising from future conduct.

5.3 Avalon Pacific acknowledges that this undertaking has no operative force until accepted by ASIC, and Avalon Pacific and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

THE COMMON SEAL of Avalon Pacific Capital Pty Ltd was affixed in accordance with the *Corporations Act 2001* in the presence of:



[Handwritten Signature]
..... Director

[Handwritten Signature]
..... Director/Company Secretary

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

[Handwritten Signature]
.....
SHARON CONLISON

24/7/2017

Delegate of Australian Securities and Investments Commission