

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:

Goldman Sachs Australia Pty Ltd

ABN 21 006 797 897

AFSL 243346

Level 17, 101 Collins Street, Melbourne Vic 3000

1. DEFINITIONS

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

Acceptance Date means the date this undertaking is accepted by ASIC.

AFSL means Australian financial services licence as that term is defined in section 761A of the Corporations Act.

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

ASIC's Concerns means the matters set out in paragraphs 2.13 to 2.15 of this enforceable undertaking regarding statements made to potential investors.

Block Trade means the underwritten institutional block trade in 308,195,966 existing and fully paid ordinary shares in Healthscope Limited undertaken by GS Australia after close of market on 23 November 2015 and executed and reported by GS Australia to the market operated by ASX Ltd before market open on 24 November 2015.

Business Day means a day that is not a Saturday or Sunday and is not a public holiday or bank holiday in the State of Victoria.

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

Financial Product has the meaning given to that term by Division 3 of Part 7.1 of the Corporations Act.

GS Australia means Goldman Sachs Australia Pty Ltd, ABN 21 006 797 897.

Related Body Corporate has the meaning given to that term by section 50 of the Corporations Act.

Relevant Period means 23 and 24 November 2015.

Relevant Transactions means equity capital markets transactions:

- (a) lead managed by GS Australia's equity capital markets team (who sit on the "private side" of GS Australia's information barrier); and

- (b) involving a bookbuild process conducted by, or an underwriting obligation on, GS Australia.

Representative means a representative of GS Australia within the meaning of section 910A of the Corporations Act.

Sale Shares means the existing and fully paid ordinary shares in Healthscope Limited the subject of the Block Trade.

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.

Details of Conduct

- 2.2 GS Australia holds an AFSL (No 243346) and operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.3 Under its AFSL, GS Australia is authorised to provide financial advice, deal and make a market in certain Financial Products, including securities. GS Australia has authorised certain of its Representatives to provide those services on its behalf.
- 2.4 During the Relevant Period, GS Australia conducted a corporate advisory (including financing) and securities trading business. In the course of this business, GS Australia conducted large share transactions for clients, which routinely involved GS Australia's Equity Capital Markets team (**ECM Team**) and GS Australia's Equity Sales team (**Equity Sales Team**).
- 2.5 The ECM Team formed part of the 'private side' of GS Australia's business, and the Equity Sales Team formed part of the 'public side' of that business, separated by an information barrier.
- 2.6 During the Relevant Period, GS Australia's policy was that, for Relevant Transactions in which GS Australia conducted a 'bookbuild', that is, assembled bids from potential investors to form the final list of buyers, the ECM Team had sole responsibility for determining what information about the status of the book-building process was disclosed to public side personnel or to investors.
- 2.7 On 23 November 2015, GS Australia was appointed to act as sole lead manager and underwriter in relation to the Block Trade. The Sale Shares were to be sold via the Block Trade at a price of AUD2.77 a share (or if not sold to be acquired by GS Australia or a Related Body Corporate on the terms of the agreement for the Block Trade between GS Australia and the vendor of the Sale Shares). The total value of the Block Trade was approximately AUD853 million, based on the price of AUD2.77 a share.
- 2.8 Prior to being appointed to conduct the Block Trade, GS Australia had made inquiries of various investors to ascertain the level of potential demand for the Sale Shares and anticipated being able to place around AUD500 million of the Sale Shares with about five key investors. Although GS Australia was satisfied as to the expected demand, it had not obtained any firm commitment from any investors that they would acquire any of the Sale Shares.
- 2.9 Following GS Australia's appointment to conduct the Block Trade, there was a briefing of members of the Equity Sales Team shortly before 6:57 pm (Sydney time) on 23 November 2015. It seems likely that at the briefing the Equity Sales Team was told by a

member of that team words to the effect there were or it was believed there were five 'corners' for AUD500 million.

- 2.10 From 6:57 pm (Sydney time) on 23 November 2015, GS Australia Representatives commenced contacting potential investors to solicit demand for the Block Trade. On a number of occasions during the Block Trade, certain GS Australia Representatives made statements to potential investors to the effect that GS Australia had five 'cornerstone' investors and / or that AUD500 million of the Sale Shares were 'covered'.
- 2.11 As the Block Trade progressed, the level of expected demand for the Sale Shares, including from some key investors who GS Australia had expected would participate, was not materialising as strongly as had been anticipated. However, some GS Australia Representatives who were unaware that the demand was not materialising as expected, continued to make statements of the kind referred to in the preceding paragraph to potential investors.
- 2.12 The Block Trade was concluded on 24 November 2015 and communications with potential investors to solicit demand for the Block Trade did not occur after the Relevant Period.

ASIC's Concerns

- 2.13 ASIC has investigated the Block Trade and GS Australia's compliance with its statutory obligations and licence conditions in respect of the Block Trade.
- 2.14 As a result of its investigation, ASIC is concerned that in relation to messaging during the Block Trade:
- (a) the statements made by certain Representatives to potential investors to the effect that GS Australia had five 'cornerstone' investors and that AUD500 million of the Sale Shares were 'covered' may have, in the circumstances, conveyed a misperception as to a minimum fixed demand for the Sale Shares;
 - (b) in circumstances where the expected level of demand did not materialise, and rather softened significantly, GS Australia did not take adequate steps to ensure that its Representatives corrected the statements made to potential investors referred to in paragraphs 2.10 and 2.11 above and also did not take adequate steps to ensure that any further statements about demand avoided the same type of potential misperception; and
 - (c) in the circumstances, GS Australia's processes and procedures were inadequate to address the conduct set out at paragraphs 2.7 to 2.11 above.
- 2.15 As a result of the conduct referred to above, ASIC is concerned that GS Australia may not have complied with its obligations under the Corporations Act, including:
- (a) section 912A(1)(a), which requires a financial services licensee to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; and
 - (b) section 912A(1)(f), which requires a financial services licensee to ensure that its Representatives are adequately trained and are competent, to provide those financial services.

Acknowledgment of ASIC's Concerns

- 2.16 GS Australia acknowledges:
- (a) ASIC's Concerns are reasonably held;

- (b) it has offered an enforceable undertaking in the terms of paragraphs 3.1 to 3.6 below; and
- (c) it must comply with all the requirements of this enforceable undertaking in order to address ASIC's Concerns.

Changes made after ASIC's inquiries commenced

- 2.17 GS Australia has co-operated with ASIC in relation to its inquiries, including by providing documents and information voluntarily. GS Australia has engaged with ASIC from an early stage.
- 2.18 GS Australia has taken steps to ensure the conduct the subject of ASIC's Concerns does not reoccur by undertaking a voluntary review of the Block Trade and undertaking disciplinary processes where it concluded they were warranted.
- 2.19 ASIC has been informed by GS Australia that since the Block Trade, GS Australia has implemented the following changes to its controls and processes in relation to Relevant Transactions (**Compliance Program**):
 - (a) a requirement for the Legal or Compliance teams within GS Australia to approve all book-build messages to be provided to potential investors in the course of executing Relevant Transactions;
 - (b) a requirement for a representative of GS Australia's Compliance team to attend any sales calls at the launch of Relevant Transactions to provide oversight of messaging to potential investors;
 - (c) technical training in relation to the accuracy of messaging to potential investors about Relevant Transactions;
 - (d) culture and conduct risk training for senior business supervisors and additional communications to employees; and
 - (e) an internal review of certain Relevant Transactions for compliance with key policies.

3. UNDERTAKINGS

- 3.1 Under section 93AA of the ASIC Act, GS Australia has offered, and ASIC has agreed to accept as an alternative to pursuing any civil or administrative action against GS Australia in respect of ASIC's Concerns or the Block Trade, the undertakings set out below.

Internal Review

- 3.2 To seek to ensure that the conduct the subject of ASIC's concerns will not reoccur, GS Australia undertakes that:
 - (a) it will plan an internal review of policies, procedures, systems, controls, training, guidance and the monitoring and supervision of employees engaged in Relevant Transactions (**Controls**). This will include a review of the implementation of the changes made in the course of and since the Compliance Program (**Internal Review**);
 - (b) the Internal Review will be undertaken by a department or group within the Goldman Sachs group that is:
 - (i) not connected with the matters the subject of review and the Compliance Program, and

- (ii) sufficiently qualified and skilled to conduct the review
- (the **Internal Reviewers**);
- (c) within one month of the Acceptance Date (or as otherwise agreed with ASIC), it will provide to ASIC a document setting out the proposed scope for the Internal Review and the names, qualifications and expertise of the individuals who it is proposed be the Internal Reviewers for approval by ASIC (**Internal Review Proposal**);
 - (d) within four months of ASIC approving the Internal Review Proposal (or as otherwise agreed with ASIC), the Internal Reviewers will conduct the Internal Review and provide a report to ASIC of the Internal Review (**Internal Review Report**) which will include:
 - (i) an assessment of the adequacy and effectiveness of the Controls to prevent, detect and respond to the type of conduct that is the subject of ASIC's Concerns and similar conduct in relation to Relevant Transactions;
 - (ii) identification of any deficiencies in the Controls to prevent, detect and respond to the type of conduct that is the subject of ASIC's Concerns and similar conduct in relation to Relevant Transactions;
 - (iii) recommendations for actions to address any deficiencies that are identified; and
 - (iv) the proposed timetable for the implementation of the recommendations, which is to be no longer than four months from the date the report is provided to ASIC (unless otherwise agreed with ASIC);
 - (e) within four months of the date of the Internal Review Report (or as otherwise agreed with ASIC), provide a written confirmation to ASIC from the Country Head of GS Australia that, as applicable:
 - (i) confirms GS Australia has taken steps to implement the recommendations made in the Internal Review Report for actions to address matters identified as deficiencies during the Internal Review; or
 - (ii) where GS Australia has not implemented any recommendation made in the Internal Review Report, provides reasons why it has not done so and identifies any alternative action it has taken or proposes to take; and
 - (f) 12 months after the date of the written confirmation provided under subparagraph (e), provide an attestation signed by the Country Head of GS Australia that:
 - (i) confirms he or she has taken reasonable steps to satisfy himself or herself that, to the best of his or her knowledge and belief, GS Australia's Controls to prevent, detect and respond to the type of conduct that is the subject of ASIC's Concerns and similar conduct in relation to Relevant Transactions are adequate and appropriate (and if he or she is not so satisfied in any respect, states the relevant qualification to the confirmation); and
 - (ii) provides details of the basis for that satisfaction (or, if he or she is not so satisfied in any respect, states the steps which have been taken, or it is proposed be taken and the timeframe for taking those steps, to address that matter).

Community benefit payment

- 3.3 GS Australia undertakes to make a community benefit payment of AUD500,000 to the entity currently known as A.C.N. 625 525 162 Limited within one month of the Acceptance Date or such later date as ASIC may agree.

Other undertakings

- 3.4 GS Australia undertakes that it will pay the costs of its compliance with this enforceable undertaking.
- 3.5 GS Australia undertakes to provide within a reasonable period of receiving a request from ASIC all documents and information requested by ASIC from time to time for the purpose of assessing GS Australia's compliance with the terms of this enforceable undertaking. For the avoidance of doubt, GS Australia is not required to provide ASIC with any document or information that is the subject of a bona fide claim by GS Australia of legal professional privilege.
- 3.6 GS Australia undertakes to notify ASIC as soon as reasonably practicable and in any event within 10 Business Days of becoming aware of any failure by GS Australia to comply with a term of this enforceable undertaking.

4. ACKNOWLEDGEMENTS

- 4.1 GS Australia 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;
 - (c) will from time to time report publicly about compliance with this undertaking; and
 - (d) will make this enforceable undertaking available for public inspection.
- 4.2 In relation to the documents provided to ASIC under paragraph 3.2, GS Australia acknowledges that ASIC:
- (a) may issue a media release referring to the content of the documents;
 - (b) may, subject to paragraph 4.3, from time to time publicly refer to the content of the written reports; and
 - (c) will, subject to paragraph 4.3, make available for public inspection a summary of the content of the documents, or a statement that refers to the content of those documents.
- 4.3 For the purposes of paragraph 4.2, ASIC acknowledges that it will delete, remove or not refer to any specific information from one or more of the documents provided to ASIC under paragraph 3.2 that:
- (a) consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, this enforceable undertaking;
 - (b) ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of GS Australia or a third party otherwise than in a way that arises from the

execution, implementation and reporting of the outcomes of this enforceable undertaking;

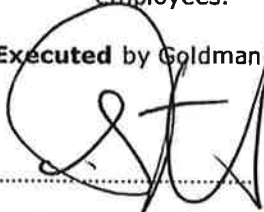
- (c) ASIC is satisfied should not be released because it would be against the public interest to do so; or
- (d) GS Australia has requested not to be released if ASIC is satisfied of either of the matters in paragraphs 4.3(a) and 4.3(b).

4.4 GS Australia further acknowledges that:

- (a) ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue criminal prosecution or its powers to lay charges or seek a pecuniary civil order in relation to any contravention that is:
 - (i) not conduct by GS Australia which is the subject of ASIC's Concerns or the Block Trade; or
 - (ii) 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; and
- (c) this enforceable undertaking has no operative force until accepted by ASIC, and GS Australia and ASIC acknowledge that the date of this enforceable undertaking is the date on which it is accepted by ASIC.

4.5 Nothing in this enforceable undertaking constitutes an admission by GS Australia or its Related Bodies Corporate, or their past or present respective directors, officers, or employees.

Executed by Goldman Sachs Australia Pty Ltd (ABN 21 006 797 897)



Signature of director

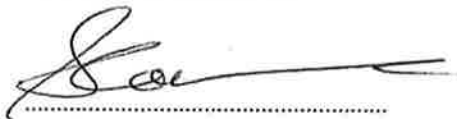


Signature of director

Name: SIMON ROTHERY

Name: Christian Johnston

Accepted by the Australian Securities and Investments Commission under section 93AA of the Australian Securities and Investments Commission Act 2001 (Cth) by its duly authorised delegate:



Name: SHARON CONCISOM

Date: 9 July 2018

