

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:

ELI EKMAN (Mr Ekman)
c/- Deutsch Miller, level 9, 53 Martin Place, Sydney, NSW, 2000

1 DEFINITIONS

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

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

APP Securities means APP Securities Pty Ltd (ACN 112 871 842).

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

ASX means the financial market known as the ASX, being Australia's largest share market, operated by ASX Limited.

ASX Listing Rules means the ASX Listing Rules and associated ASX Listing Rules Guidance Notes which govern, among other matters, the admission of entities to the official list of the ASX, and which are enforceable against listed entities and their associates under sections 793C and 1101B of the Corporations Act.

Australian financial services licence has the meaning given by section 761A of the Corporations Act.

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

Financial services business has the meaning given to it by section 761A of the Corporations Act.

Financial services law has the meaning given to it by section 761A of the Corporations Act.

Jack-In Group means Jack-In Group Limited (ARBN 160 966 585), formerly known as Oilfield Workforce Group Limited.

Premiere Eastern Energy means Premiere Eastern Energy Ltd (ACN 169 923 095) (in liquidation).

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.

ASX Listing Rules

- 2.2 ASX Listing Rule 1.1 sets out the requirements for the admission of entities to the official list of the ASX and the ASX Listing Rules Guidance Notes contains guidance for this rule.
- 2.3 Under ASX Listing Rule 1.1, entities seeking admission to the official list of the ASX must have a minimum number of shareholders with a minimum value holding in order to qualify (known as the '**minimum spread requirement**').
- 2.4 From 22 September 2014 to 18 December 2016, ASX Listing Rule 1.1 condition 7 required that
- a) there be 400 security holders, 350 security holders if 25% of securities are held by non-related parties, or 300 security holders if 50% of securities are held by non-related parties; and
 - b) each security holder held securities with a value of at least \$2,000.

Condition 7 states that "This condition is not met if spread is obtained by artificial means".

- 2.5 From 19 December 2016, ASX Listing Rule 1.1 imposed a minimum requirement that there be 300 holders of the main class of securities with a value of at least \$2,000.
- 2.6 From 1 September 2014 to 30 November 2017, Guidance Note 1 Applying for Admission – ASX Listings stated (until 19 December 2016 at paragraph 3.6 and from 19 December 2017 at paragraph 3.8):

"Minimum spread – ASX will not accept security holdings obtained by artificial means as counting towards minimum spread. ASX regards the following as 'artificial' for these purposes: ... splitting a beneficial holding of securities across multiple trustees, nominees or family members. Unless satisfactory evidence is provided to the contrary, ASX will assume that any more than two holdings registered at the same address fall within this category and treat them as a single holding for the purposes of determining whether spread has been achieved."

Details of Conduct

- 2.7 Mr Ekman has been engaged as a contractor by APP Securities for 3 years as an

authorised representative. Mr Ekman has held similar roles since 2005.

Premiere Eastern Energy share offer

- 2.8 On 4 June 2014, Premiere Eastern Energy applied to be admitted to the official list of the ASX.
- 2.9 On 8 September 2014 Premiere Eastern Energy lodged a prospectus for an offer of up to 50,000,000 shares at \$0.20 each to raise up to \$10,000,000 (the **Premiere Eastern Energy Share Offer**). On 27 November 2014, Premiere Eastern Energy lodged a replacement prospectus and on 24 December 2014, Premiere Eastern Energy lodged a supplementary prospectus.
- 2.10 On 4 February 2015, lawyers acting for Premiere Eastern Energy sent an email to the ASX enclosing the final application register for Premiere Eastern Energy shares and stating as follows:
- “.. the minimum spread requirement has been met with a total of 432 applications which includes 304 Australian applications.”*
- 2.11 On 6 February 2015, lawyers acting for Premiere Eastern Energy sent an email to the ASX enclosing the final application register for shares in Premiere Eastern Energy, and stating *“We believe we have now met all ASX's requirements for listing”*.
- 2.12 The Premiere Eastern Energy Share Offer raised a total of \$3,506,900 and 17,534,500 shares were issued. On 8 February 2015, Premiere Eastern Energy was admitted to the official list of the ASX, and from 12 February 2015, its shares (ASX code: PEZ) were quoted on the ASX.

The Jack-In Group share offer

- 2.13 Jack-In Group (ASX code: JIP) was formerly known as Oilfield Workforce Group Limited (ASX code: OFW). The shares of Jack-In Group (then known by the former ASX code: OFW) were continuously quoted on the ASX from January 2013 until they were suspended from quotation on 28 June 2016.
- 2.14 On 18 November 2016, Jack-In Group lodged a prospectus for an offer of shares at an issue price of \$0.20 to raise up to A\$20,000,000, for the purpose of meeting the requirements for re-admission to the ASX list (**Jack-In Group Share Offer**).
- 2.15 On 20 December 2016, lawyers acting for Jack-In Group sent the ASX an email enclosing an updated list of applications for the Jack-In Group share offer and which stated *“We are told there is a total of 378 shareholders with \$2000 worth of shares (ie. 10,000 or more), of which 302 are Australian resident.”*
- 2.16 On 30 December 2016, Jack-In Group was reinstated to the official list of the ASX. The company subsequently changed its name from Oilfield Workforce Group Limited to Jack-In Group.

ASIC's views concerning the conduct

2.17 ASIC has investigated the Premiere Eastern Energy Share Offer and the Jack-In Group Share Offer to ensure compliance with the minimum spread requirements.

2.18 As a result of its investigations, ASIC is concerned that:

- a) in January and February 2015:
 - i) Mr Ekman arranged for 13 persons and companies (**PEZ Investors**) to subscribe to the offer to buy the shares of Premiere Eastern Energy, none of whom were genuine buyers of those securities;
 - ii) in the course of Mr Ekman arranging for the PEZ Investors to subscribe to the offer to buy the shares of Premiere Eastern Energy, Mr Ekman gave false addresses for the PEZ Investors; and
 - iii) Mr Ekman was aware that the false information supplied about the PEZ Investors would be given to Premiere Eastern Energy and its corporate advisers and that it would ultimately be given to the ASX, so that Premiere Eastern Energy would meet the minimum spread requirements in the ASX Listing Rules so as to qualify for admission to the ASX official list.

- b) in November and December 2016:
 - i) Mr Ekman arranged for 13 persons and companies to subscribe (**JIG Investors**) to subscribe to the offer to buy the shares of Jack-In Group, none of whom were genuine buyers of those securities; and
 - ii) Mr Ekman was aware that the information he supplied about the JIG Investors would be given to Jack-In Group and its corporate advisers, and that it would ultimately be given to the ASX, so that Jack-In Group would meet the minimum spread requirements in the ASX Listing Rules so as to qualify for readmission to the ASX official list.

2.19 ASIC's view is that, because of the matters in paragraph 2.18 above, Mr Ekman may:

- a) have contravened a financial services law;
- b) have had a defective and/or inadequate understanding of the ASX Listing Rules as they related to the minimum spread requirement; and
- c) have engaged in conduct relating to a financial product that was misleading or deceptive or was likely to mislead or deceive, contrary to section 1041H of the Corporations Act.

Acknowledgement of ASIC's views

2.20 Mr Ekman:

- a) acknowledges that the views expressed by ASIC in relation to the alleged facts described in paragraphs 2.7 to 2.19 above are reasonably held; and
- b) has offered an enforceable undertaking on the terms set out in paragraph 3.2 below.

3. UNDERTAKINGS

3.1 Under section 93AA of the ASIC Act, Mr Ekman has offered, and ASIC has agreed to accept as an alternative to pursuing any civil or administrative action against Mr Ekman, the undertakings as set out in paragraph 3.2 below.

3.2 Mr Ekman undertakes that from the Acceptance Date he will:

- a) not provide any financial services in any capacity for a period of 5 years;
- b) resign within 5 working days from any role where he is providing financial services;
- c) never engage in any conduct that may be designed to assist a company to meet the minimum spread requirements;
- d) enrol in the full Company Director's Course offered through the Australian Institute of Company Directors, to be completed within 12 months of the Acceptance Date, and provide ASIC with documents substantiating his completion of the Company Director's Course as soon as reasonably practicable following its completion;
- e) maintain and hold at least graduate level membership with the Australian Institute of Company Directors for at least 5 years after the completion of the Company Directors Course;
- f) enrol in at least one relevant and suitable professional ethics course and one relevant and suitable ASX compliance course, offered by a reputable provider (such as FINSIA, the Governance Institute, or The Ethics Centre) within 12 months (**Course Commitment**);
- g) obtain the approval of ASIC for the chosen Course Commitment, and provide to ASIC documents substantiating enrolment and completion of the Course Commitment as soon as reasonably practicable following its completion;
- h) make a community benefit payment of \$10,000 to Ecstra Foundation Limited, ACN 625 525 162 and not seek a tax deduction in relation to the community benefit payment;
- i) pay all costs of compliance with this enforceable undertaking and not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on his costs of compliance with this enforceable undertaking to any third party;

- j) provide ASIC with a statutory declaration, every 6 months on the anniversary of the acceptance date of this enforceable undertaking, for a period of 5 years, outlining the details of any employment or work in which he has been engaged and confirming that he has not provided any financial services in any capacity in the previous 6 months;
- k) provide all documents and information requested by ASIC from time to time, for the purpose of assessing Mr Ekman's compliance with the terms of this enforceable undertaking, within 5 business days after receiving a written request from ASIC (or such longer period as may be agreed in writing by ASIC); and
- l) inform ASIC within 5 business days if his contact details as set out in clause 5.2 change.

4. FURTHER ACKNOWLEDGEMENTS

4.1 Mr Ekman further 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 referred to at paragraphs 2.17, 2.18 and 2.19 which lead to its execution;
- b) may from time to time publicly refer to this enforceable undertaking;
- c) will from time to time publicly report about compliance with this enforceable undertaking; and
- d) will make this enforceable undertaking available for public inspection.

4.2 Further Mr Ekman acknowledges that:

- a) ASIC's acceptance of this undertaking does not affect ASIC's power to:
 - i) investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges; or
 - ii) seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns referred to at paragraphs 2.17 and 2.18 in this enforceable undertaking or arising from future conduct;
- b) 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.

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

5. PROVISION OF DOCUMENTS AND NOTICE


5.1 The address for providing ASIC with any notice or document which this enforceable undertaking requires to be provided to ASIC is:

Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000
Attention Market Supervision: Intermediary Supervisor, Market Conduct Team

5.2 The address for providing Mr Ekman with any notice or document relating to this enforceable undertaking is:

Mr Ekman's residential address, known to ASIC

This enforceable undertaking is made by:

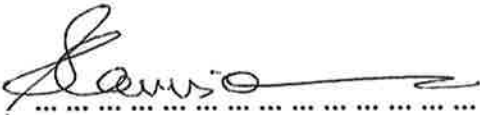


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Eli Ekman

Date: 15/10/2018

Accepted by the Australian Securities and Investments Commission under s 93AA of the ASIC Act by its duly authorized delegate:



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Name: Sharon Concison.

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC:

22/10/2018

