

## ENFORCEABLE UNDERTAKING

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT

#### SECTION 93AA

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

Suncorp Asset Management Limited (ACN 010676221)  
Level 11, Metway Centre  
36 Wickham Terrace  
Brisbane, Qld 4000

#### 1. BACKGROUND

- 1.1 Suncorp Asset Management Limited (SAML) is the holder of a Security Dealer's Licence (number 159409) (the Licence) under the Corporations Law (the Law).
- 1.2 SAML is a wholly owned subsidiary of Suncorp Life and Superannuation Limited (SLS) which in turn is a wholly owned subsidiary of Suncorp-Metway Ltd. Suncorp Financial Planning Pty Ltd (SFP) is another wholly owned subsidiary of SLS.
- 1.3 SAML holds a restricted Security Dealers Licence and is only able to provide advice in respect of a limited range of products for which it is a trust manager.
- 1.4 ASIC conducted a surveillance of proper authority holders (Representatives) operating under SAML's Licence commencing in March 1999. ASIC has also sought information from SAML using its powers under the Law and the Australian Securities and Investments Commission Act. ASIC also interviewed Representatives of SAML and reviewed client files.
- 1.5 ASIC has also conducted similar surveillance over the operations of SFP Representatives and will enter a separate enforceable undertaking contemporaneously with this undertaking (the SFP undertaking).
- 1.6 SAML cooperated with ASIC during the surveillance.
- 1.7 Following ASIC's surveillance activities, ASIC has concerns with respect to the adequacy of SAML's compliance systems, training and supervision of its Representatives, compliance with documentary requirements and compliance with the Corporations Law and Regulations and its Licence conditions. In particular, ASIC is concerned that:

- (a) certain client files contained insufficient information to show that clients investment objectives and particular needs had been properly considered by Representatives;
  - (b) Representatives stated that clients had sought and were given limited advice on the basis that clients chose not to provide full personal and financial information when in fact that may not have been the case and full advice had been sought;
  - (c) there were instances identified which revealed Representatives failed to disclose fees and commissions to clients;
  - (d) in certain cases, paraplanners made recommendations where there was insufficient information to justify making those recommendations;
  - (e) SAML's procedures were not sufficient to ensure that Representatives and paraplanners were adequately trained and supervised in relation to their duties as required by the provisions of Regulation 7.3 of the Corporations Law and the conditions of its licence.
- 1.8 Whilst SAML does not agree with all aspects of ASIC's concerns as set out below, it acknowledges that ASIC has the concerns set out in paragraph 1.7 above and has agreed to implement a number of compliance measures (including the specific requirements set out below) for the purposes of adopting best practice and ongoing compliance with the Law, Regulations, ASIC Act and its Licence conditions .
- 1.9 As part of its rationalisation of Representatives and further to satisfy the requirements of the Managed Investments Act, SAML has revoked all authorities to its Representatives. As part of this rationalisation SAML has advised ASIC that as of 1 November 1999, the SAML Licence is no longer being used, that there are no Representatives operating as proper authority holders under the SAML licence and that appropriately qualified Representatives will be issued with proper authorities of SFP.
- 1.10 SAML acknowledges that had it continued its business operations, ASIC would have required an independent external audit of SAML's compliance systems over the next 24 months.
- 1.11 Pursuant to section 786 of the Law, ASIC may, at any time subject to a hearing, impose conditions on a security dealer's licence in addition to those prescribed by the Law.
- 1.12 SAML offers and ASIC has agreed to accept the commitments in this enforceable undertaking as an alternative to the exercise of the power referred to in clause 1.11 above.

## 2. UNDERTAKINGS

Pursuant to sub section 93AA of the Australian Securities and Investments Commission Act, SAML undertakes as follows:

- 2.1 If for any reason, SAML decides that it wishes to continue to use the Licence (which is not envisaged as set out in clause 1.9), it will:
- (a) give ASIC fourteen days prior written notice of its intention to do so; and
  - (b) consent to a Compliance Program in the same terms to the Compliance Program to be undertaken by SPF pursuant to the SFP undertaking.
- 2.2 That by 15 February 2000, SAML will engage an external independent compliance consultant (the Compliance Consultant) approved by ASIC.
- 2.3 It will instruct the Compliance Consultant to select and review a sample of 200 SAML files where limited advice was provided between 1 June 1998 and 1 June 1999 (including certain files to be agreed between ASIC and SAML), to determine whether there is reasonable evidence to conclude that both
- (a) the client required the provision of comprehensive financial advice rather than the limited advice given; and
  - (b) the fact that comprehensive financial advice was not being given was not communicated to the client.

Where the Compliance Consultant finds reasonable evidence to conclude on any files that both conditions (a) and (b) are satisfied it is to recommend what action (if any) needs to be taken to remedy any breach of the Law, Regulations and Licence conditions in respect thereto.

- 2.4 It will notify ASIC of any Complaint made by clients who have been given investment advice by representatives of SAML on the product known as Suncorp-Metway Easy Super.
- (a) "Complaint" means a formal complaint recorded in the central complaints register.
  - (b) Notifications to ASIC are to be made 3 monthly for the periods up to 30 June 2001 as follows:-

First Period	to 31 March 2000
Second Period	to 30 June 2000
Third Period	to 30 September 2000
Fourth Period	to 31 December 2000
Fifth Period	to 31 March 2001
Final Period	to 30 June 2001.

- 2.5 By 15 March 2000, the Compliance Consultant will provide a written report to SAML and ASIC (the SAML Report) in which the Compliance Consultant will make recommendations regarding the action required to remedy any breach of the Law, Regulations, or its Licence conditions.
- 2.6 That SAML will within 30 days of receipt of the SAML Report provide ASIC with a report from the Board (or a subcommittee of the Board with appropriate delegation) detailing the steps taken or to be taken by SAML to implement the recommendations of the Compliance Consultant and will provide a full explanation where any of the recommendations are not followed.

### **Fees and Costs**

- 2.7 That it will pay all fees and costs associated with the engagement of the Compliance Consultant referred to in this undertaking.

### **3. ACKNOWLEDGEMENTS**

- 3.1 SAML acknowledges that it has obtained legal advice in relation to the content and effect of this undertaking.
- 3.2 SAML acknowledges that ASIC:
- (a) may issue a media release from the date this undertaking is executed by ASIC referring to the terms of this undertaking and the concerns of ASIC as expressed in this undertaking which led to its execution;
  - (b) may from time to time publicly refer to this undertaking;
  - (c) will make this undertaking available for public inspection.
- 3.3 SAML acknowledges that this undertaking in no way derogates from the rights and remedies available to ASIC (subject to subparagraph 1.12), or to any person or entity arising from any conduct described in this undertaking. Further, SAML acknowledges that nothing in this undertaking prevents ASIC from enforcing any right or remedy to which it is entitled whatsoever arising from the receipt of the SAML Report referred to herein, or from the receipt of any information in relation to the conduct of the business of SAML not known to it, or its officers, employees or agents as at the date of this undertaking including a hearing which may result in the imposition of licence conditions.

The Common Seal of Suncorp )  
 Asset Management Limited )  
 (ACN 010 676221) )  
 was duly affixed to )  
 this undertaking on 24 December )  
 1999 in the presence of )  
 )  
 )  
 and the sealing is attested by: )



*[Handwritten signature]*

Director

*[Handwritten signature]*

Director/Secretary

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS  
 COMMISSION PURSUANT TO SECTION 93AA OF THE AUSTRALIAN  
 SECURITIES AND INVESTMENTS COMMISSION ACT BY ITS DULY  
 AUTHORISED DELEGATE

Date: 24 December 1999

*[Handwritten signature: Barrie Adams]*

Barrie Adams  
 Regional Commissioner, Queensland