



## ENFORCEABLE UNDERTAKING

### Section 93AA

#### Australian Securities and Investments Commission Act 2001 ("ASIC Act")

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

#### **MORTGAGE AND GENERAL FINANCIAL SERVICES PTY LTD**

("Mortgage and General ")

(ACN 005 845 778)

6/861

Doncaster

Road,

Doncaster East VIC 3109.

#### 1. Background

1.1. The Australian Securities and Investments Commission ("ASIC") has made enquiries in relation to suspected contraventions of Part 7.3, 7.11, 8.3 and 8.7 of the old Corporations Act ("old Corporations Act"), as defined in section 1410 of the Corporations Act 2001 ("Corporations Act"), and Part 2 of the Australian Securities and Investments Commission Act 2001 ("ASIC Act") arising out of:

- a) the distribution of computer software;
- b) the establishment and maintenance of an Internet website;
- c) the provision of training and educational services; and
- d) the advertising, promotion and sale of the computer software, access to the Internet website, training and educational services; and
- e) the issuing of proper authorities to various representatives of Mortgage and General;

by Mortgage and General in the period from 30 October 2001 to 16 April 2002.

1.2. Mortgage and General was conducting a business or businesses which involved, *inter alia*, the promotion, supply and sale of:

(a) a system comprising computer software, historical data and access to a website that is able to or is represented as being able to assist users in the making of decisions in relation to the purchase, sale or holding of securities, options and futures, and in particular, has or is represented to have the following functions or capabilities:

(i) collates and analyses securities, options and futures trading data downloaded from the internet for the purposes of assisting users in the making of decisions in relation to the purchase, sale or holding of securities, options and futures; and

(ii) utilises mathematical formulae for the purposes of assisting users in the making of decisions in relation to the purchase, sale or holding of securities, options and futures;

(paragraph (a) is known as "**the Ignition system**") and

(b) training in both the use of the Ignition system and how the Ignition system should be utilised to assist in the making of decisions in relation to the purchase, sale or holding of securities, options and futures; and

(paragraph (b) is referred to as "**the other services**")

1.3 Mortgage and General holds a restricted dealers licence number 15538 ("**the Licence**") issued by ASIC. The Licence is subject to imposed and prescribed conditions that, *inter alia*, restrict Mortgage and General's ability to provide general securities advice and prevent Mortgage and General from providing advice with respect to options.

1.4 Mortgage and General does not hold a licence from ASIC to carry on a futures advice business or to act as a futures adviser, as required by section 1143 of the old Corporations Act. Mortgage and General is not an exempt futures adviser.

- 1.5 As a result of making the enquiries and having discussions with Mortgage and General, ASIC formed the opinion that Mortgage and General had:
- a) contravened section 787 of the old Corporations Act;
  - b) contravened the prescribed and imposed conditions of the Licence;
  - c) engaged in misleading and deceptive conduct in contravention of sections 995, 999, 1261 and 1262 of the old Corporations Act and sections 12DA, 12DB of the ASIC Act (in the period from 30 October 2001 to 11 March 2002); and
  - d) engaged in misleading and deceptive conduct in contravention of section 1041H of the Corporations Act and sections 12DA, 12DB of the ASIC Act (in the period from 11 March 2002 to 16 April 2002).
- 1.6 ASIC also formed the opinion that the educational qualifications and experience of Mortgage and General's compliance officer, was inadequate having regard to the duties performed in connection with the holding of the Licence.
- 1.7 ASIC wrote to Mortgage and General in April 2002 and, after receiving ASIC's letter, Mortgage and General voluntarily ceased providing the Ignition system and the other services.
- 1.8 Mortgage and General acknowledges that ASIC has the concerns expressed in paragraphs 1.5 and 1.6 but Mortgage and General deny that it has contravened the old Corporations Act, the Corporations Act or the ASIC Act ("**The Law**") or the conditions of the Licence.

## **2. ASIC's powers**

- 2.1. ASIC is required by section 837 of the old Corporations Act to provide Mortgage and General with the opportunity of a hearing before ASIC decides what, if any, action should be taken against Mortgage and General, as a result of Mortgage and General's conduct. If findings were made against Mortgage and General at such a hearing, ASIC could take the following action:

- (a) revoke Mortgage and General's licence under section 826(1) of the old Corporations Act;
- (b) suspend Mortgage and General's licence under section 827(1)(c) of the old Corporations Act;
- (c) prohibit Mortgage and General, either permanently or for a specified period, from doing specified acts, being acts of a licensee under section 827(1)(d) of the old Corporations Act;
- (d) impose further conditions on Mortgage and General's dealers licence under section 786(1)(b) of the old Corporations Act;
- (e) vary conditions of Mortgage and General's dealers licence under section 786(7) of the old Corporations Act.

2.2. Section 1193 of the old Corporations Act gives ASIC the power to make a banning order against an unlicensed person who contravenes a futures law.

2.3. ASIC is required by section 920A of the Corporations Act to provide Mortgage and General with the opportunity of a hearing before ASIC decides what, if any, action should be taken against Mortgage and General, as a result of Mortgage and General's conduct. If findings were made against Mortgage and General at such a hearing, ASIC may prohibit Mortgage and General, either permanently or for a specified period, from providing any financial services, or specified financial services in specified circumstances or capacities under section 920B of the Corporations Act.

2.4. Mortgage and General has offered, and ASIC has agreed to accept, an enforceable undertaking in the terms set out below as an alternative to determining whether or not ASIC should exercise the powers set out in paragraphs 2.1 to 2.3 (above).

### **3. Undertakings**

Mortgage and General gives the following enforceable undertaking to ASIC pursuant to section 93AA of the ASIC Act:

### *The Ignition system*

- 3.1. Mortgage and General undertakes that:
- (a) it will not sell or otherwise supply or provide:
    - (i) the Ignition system or any other computer hardware or software that has or is represented to have the functions or capabilities described in paragraph 1.2(a); or
    - (ii) the other services or any of them,  
  
now, or at any time in the future, to members of the public;
  - (b) it will provide to ASIC a complete list of each person to whom it has sold the Ignition system or the other services up to and including the date of execution of this enforceable undertaking within 14 days of signing this enforceable undertaking ("the clients"); and
  - (c) Mortgage and General will:
    - (i) within 14 days of entering into this undertaking will inform each of the clients in writing in the form of attachment A and will attach to that letter a complete copy of this enforceable undertaking (excluding attachment A); and
    - (ii) within 21 days of entering into this undertaking will provide to ASIC copies of all communications with Clients (excluding this undertaking) referred to in sub-paragraph 3.1(c)(i) .

### *Compliance measures*

- 3.2. Mortgage and General will establish and maintain compliance measures that ensure, as far as reasonably practicable, that Mortgage and General complies with The Law or the conditions the Licence or of any future Australian Financial Services Licence which may be issued to Mortgage and General (or any related entity to which Mortgage and General transfers, sells or disposes of its assets and business).

### *Compliance Program*

- 3.3. Mortgage and General will, by 29 November 2002, engage an external independent compliance consultant (whose appointment and terms of reference are to be approved by ASIC's Assistant Director, Financial Services Enforcement South West. The consultant will review, assess, identify, make recommendations and report in writing to Mortgage and General in relation to Mortgage and General's compliance with the Law and the conditions of the Licence, considering Mortgage and General's internal controls, compliance systems, procedures, supervision and training of its representatives ("**report**") as at 31 January 2003, 30 April 2003, 31 July 2003 and 31 October 2003 ("**reporting dates**").
- 3.4. Each report will include, but not be limited to, the identification and the making of recommendations for changes to the administrative procedures and systems of Mortgage and General to ensure that Mortgage and General is able to fully comply with The Law and the conditions of the Licence or of any future Australian Financial Services Licence which may be issued to Mortgage and General (or any related entity to which Mortgage and General transfers, sells or disposes of its assets and business), in particular relating to:
- a) the structure, status, autonomy, independence and reporting lines of the compliance function;
  - b) induction and training programs for new representatives of Mortgage and General;
  - c) training and supervision of representatives;
  - d) an assessment of representatives' understanding of their obligations with respect to the Corporations Act, the Corporations Act, the Corporations Regulations, the ASIC Act and Mortgage and General's licence conditions;
  - e) remedial training in the event that a representative is found not to understand his or her obligations;
  - f) unauthorised trading;

- g) internal and external resolution of complaints;
- h) the action taken by Mortgage and General to remedy any deficiencies identified in previous reports; and
- i) compliance with this undertaking.

3.5. Mortgage and General will use its reasonable endeavours to enable each report to be delivered to ASIC within 14 days of the relevant reporting date. In the event that Mortgage and General is unable to deliver a copy of the report to ASIC within 14 days of the relevant reporting date, Mortgage and General will provide to ASIC a written explanation for the delay and an estimate of when the report will be provided. Such written explanation must be received from Mortgage and General by ASIC within 16 days after the reporting date.

3.6. Within 30 days of receiving each report, Mortgage and General will provide ASIC with a report from the Mortgage and General Board:

- a) detailing the steps taken or to be taken by Mortgage and General to comply with any recommendations of the consultant; and
- b) providing a full explanation as to why any recommendation of the consultant has not been or will not be followed.

#### *Training of representatives*

3.7. Mortgage and General will, by 31 October 2002, create and then maintain a record of the training (relevant to the provision of financial services) that each of its representatives has undertaken, including:

- a) training undertaken after the representative became a representative of Mortgage and General; and
- b) any training undertaken before the representative became a representative of Mortgage and General to the extent that Mortgage and General is able to obtain the information by reasonable enquiry.

3.8. Mortgage and General will, by 31 October 2002, for any natural person who provides financial product advice on behalf of Mortgage and General:

- a) identify the tasks and function that person performs on behalf of Mortgage and General;
- b) determine the appropriate knowledge and skills required to competently perform those tasks and functions;
- c) implement procedures for continuing training;
- d) record in writing each of the steps undertaken by Mortgage and General to fulfil the matters identified in sub-paragraphs 3.8(a) to 3.8(c) above.



*Notification to ASIC of suspected contraventions*

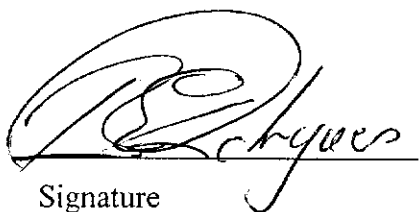
- 3.9. Without derogating from any other obligation upon Mortgage and General to report to ASIC, Mortgage and General will notify ASIC in writing within 3 business days of Mortgage and General forming the view that either it or its representative(s) may have contravened a provision contained in the old Corporations Act, the Corporations Act, the Corporations Regulations or the ASIC Act.

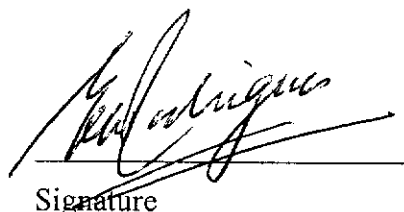
**4. Acknowledgments**

- 4.1. Mortgage and General acknowledges that it has had the opportunity to obtain legal advice in relation to the content and effect of this enforceable undertaking.
- 4.2. Mortgage and General also acknowledges that:
- (a) ASIC may issue a media release on or at any time after the execution of this enforceable undertaking referring to such terms that ASIC determines and which led to the execution of this enforceable undertaking;
  - (b) ASIC will make this enforceable undertaking available for public inspection;
  - (c) ASIC may from time to time publicly refer to this enforceable undertaking;
  - (d) ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order;
  - (e) entering into this enforceable undertaking in no way derogates from the rights and remedies available to any person arising from any conduct described in this enforceable undertaking; and
  - (f) entering into this enforceable undertaking has no operative force until accepted by ASIC.

EXECUTED by MORTGAGE )  
AND GENERAL FINANCIAL )  
SERVICES PTY LTD by two of its )  
directors in accordance with )  
section 127 of the Corporations )

Act:

  
Signature

  
Signature

BRENTON EDMUND RODRIGUES  
Full Name


EDMUND WHITBY RODRIGUES  
Full Name

DIRECTOR  
Position Held

MANAGING DIRECTOR  
Position Held

Australian Securities and Investments Commission

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:

IAN A. JOHNSON  
Signed by:  


## "Attachment A"

Dear [client name],

I am writing to you in reference to the system comprising computer software, historical data and access to a website at [www.traderssuccess.com.au](http://www.traderssuccess.com.au) (together called "**the Ignition system**") and sold to you between 31 October 2001 and 16 April 2002.

ASIC has advised Mortgage and General Financial Services Pty Ltd (Mortgage and General) that by selling the Ignition system to you Mortgage and General may have been contravening the conditions of securities dealers licence number 15538 (issued by the Australian Securities and Investments Commission ("**ASIC**")), parts 7.3, 7.11, 8.3 and 8.7 of the old Corporations Act (as defined in section 1410 of the Corporations Act 2001), and Part 2 of the Australian Securities and Investments Commission Act 2001 ("**ASIC Act**").

Under sections 798 and 1164 of the old Corporations Act 2001, if Mortgage and General was contravening the old Corporations Act then you are entitled to rescind the agreement between Mortgage and General Financial Services Pty Ltd and yourself within a reasonable time of becoming aware of the right to rescind.

Mortgage and General Financial Services Pty Ltd have signed an enforceable undertaking to the Australian Securities and Investments Commission. A copy of that undertaking is attached to this letter.

I trust that this information is useful to you, however should you have any questions in relation to this matter please do not hesitate to contact Mr. Ed Rodrigues on (03) 9848 6444.

Yours sincerely,

signed [name]