

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:

Greater Western Financial Services Co Pty Ltd (ACN 008 013 321)
62 Beulah Road
NORWOOD SA 5067



1. Background

- 1.1 Greater Western Financial Services Co Pty Ltd (ACN 008 013 321) (GWFS) is the holder of Security Dealers Licence No. 10781 (the Licence) under the old Corporations Act (the Act) as defined in section 1410(1) of the Corporations Act 2001 (the amended Act).
- 1.2 ASIC conducted an investigation into the conduct of GWFS and its then director Kim Sing Koo (also known as David Koo) (Koo) in relation to investments known as the "Infomercial/Product Distribution Investment" (Infomercial) and the "Theme Based Music Collaborations Product Distribution Investment" (Music).
- 1.3 As a result of its investigation, ASIC was of the view that:
 - (a) Infomercial was a prescribed interest within the meaning of the Act;
 - (b) there was no approved deed in force in relation to Infomercial;
 - (c) Music was a managed investment scheme within the meaning of the Act;
 - (d) Music was required to be registered under section 601EB but was not so registered;
 - (e) offers of interests in Infomercial and Music were made by GWFS through its authorised representatives;
- 1.4 As a result of its investigation into the Infomercial and Music schemes, ASIC was concerned that GWFS and Koo had contravened the Act and that GWFS had not complied with conditions of the Licence in that:
 - (a) between mid April 1997 and 30 June 1998, GWFS issued invitations to its clients to subscribe for interests in Infomercial without there being in force, in relation to the interest, a deed that was an approved deed, contrary to subsection 1065(1) of the Act;
 - (b) between mid April 1997 and 30 June 1998, GWFS issued invitations to subscribe for interests in Infomercial when no prospectus had been registered in relation to the scheme, contrary to subsection 1018(1) of the Act;
 - (c) between 1 July 1998 and 30 June 1999, GWFS issued invitations to its clients to subscribe for interests in Music when no prospectus had been

registered in relation to the scheme, contrary to subsection 1018(1) of the Act;

- (d) between mid April 1997 and 30 June 1999, GWFS made recommendations to its clients to invest in Infomercial and Music, when it had no reasonable basis for making such recommendations, contrary to section 851 of the Act;
- (e) GWFS failed to disclose commissions which it would receive as a result of its clients investing in Infomercial and Music; contrary to section 849 of the Act;
- (f) GWFS failed to properly train and supervise its authorised representatives;
- (g) GWFS failed ensure that its authorised representatives did not contravene any provisions of the Law.

1.5 ASIC conducted an investigation into the conduct of Waldorf Fiducial Marketing Pty Ltd (ACN 098 367 385) (WFM) in relation to an investment described as the "BFS Franchise Recovery Package".

1.6 As a result of its investigation, ASIC was of the view that:

- (a) the BFS Franchise Recovery Package was a managed investment scheme as defined in section 9 of the Act;
- (b) the scheme was required to be, but was not, registered under section 601EB of the Act;
- (c) WFM contravened subsection 601ED(5) in that it operated an unregistered managed investment scheme;
- (d) WFM contravened subsection 727(1) of the Act by offering interests in the BFS Franchise Recovery Package when no disclosure document had been lodged with ASIC in relation to the scheme.

1.7 As a result of its investigation into WFM, ASIC was concerned that Colin Douglas Turner (Turner) and Roger Charles Gordon (Gordon), who were both directors of WFM at the relevant time, had contravened the Act in that they:

- (a) were parties to the contraventions by WFM referred to in paragraphs 1.6(c) and (d);
- (b) may have contravened subsection 995(2) of the Act in that they were engaged in conduct that was misleading or deceptive or likely to mislead or deceive.

1.8 Gordon was an authorised representative of GWFS at the time it was involved in the Infomercial and Music schemes and was, to some extent, responsible for ensuring compliance by GWFS with its obligations under the Act and the Licence.

- 1.9 Turner and Gordon became directors of GWFS on 8 April 2002 and Koo ceased being a director that same day.
- 1.10 GWFS acknowledges ASIC's views and concerns as stated in paragraphs 1.3 to 1.9 above. GWFS, Turner and Gordon do not concede the facts upon which those views and concerns are based, however GWFS is willing to provide the undertakings set out below to resolve ASIC's concerns.

ASIC's Concerns

- 1.11 As a result of its investigations, ASIC has concerns that:
- (a) GWFS may have failed to perform efficiently honestly and fairly the duties of a holder of a dealers licence;
 - (b) GWFS's internal compliance systems including, but not limited to, supervision and training of staff are inadequate;
 - (c) the educational qualifications and experience of Turner and Gordon are inadequate having regard to the duties they perform in connection with the holding of the Licence by GWFS;
 - (d) as a result of the concerns in paragraph (a), (b) and (c), GWFS may not perform efficiently honestly and fairly the duties of a holder of a dealers licence in the future.

ASIC's Powers

- 1.12 ASIC is required by section 837 of the Act to provide GWFS with the opportunity of a hearing before ASIC decides, what, if any, action should be taken against GWFS as a result of GWFS's conduct. If findings were made against GWFS at such a hearing, ASIC could take the following action:
- (a) revoke the Licence under subsection 826(1) of the Act;
 - (b) suspend the Licence under paragraph 827(1)(c) of the Act;
 - (c) prohibit GWFS, either permanently or for a specified period, from doing specified acts, being acts of a licensee under paragraph 827(1)(d) of the Act;
 - (d) impose further conditions on the Licence under paragraph 786(1)(b) of the Act;
 - (e) vary the conditions of the Licence under subsection 786(7) of the Act.
- 1.13 GWFS has offered and ASIC has accepted the commitments in this Enforceable Undertaking as an alternative to the actions referred to in paragraph 1.12.

2. Undertakings

Pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001 (ASIC Act) GWFS undertakes that:

Licence Suspension

- 2.1 GWFS will not carry on business pursuant to the Licence until:
- (a) an appropriately qualified director is appointed to GWFS; and
 - (b) all GWFS's authorised representatives comply with the training standards set out in ASIC Policy Statement 146: Licensing: Training of financial product advisers.
- 2.2 For the purposes of paragraph 2.1(a), a person is an appropriately qualified director if the person meets the criteria for being a nominated responsible officer as set out in ASIC Policy Statement 164: Licensing, Organisational Capacities, and in particular paragraph [164.85].

Compliance Measures

- 2.3 GWFS will establish and maintain compliance measures that ensure, so far as reasonably practicable, that GWFS complies with the financial services law (as that term is defined in section 761A of the amended Act).

Compliance Officer

- 2.4 With effect from 18 November 2002, GWFS will at all times retain a compliance officer who will have a designated compliance role and will be responsible for ensuring that GWFS complies with its obligations under the Act, the amended Act, the Corporations Regulations (Regulations) the ASIC Act and the conditions of the Licence.
- 2.5 GWFS will ensure that the compliance officer is a person who is a member of the Australian Compliance Professionals Association or the Securities and Derivatives Institute of Australia or, with the approval of ASIC, another appropriate professional association, and:
- (a) a qualified lawyer who has been practising for at least the past 5 years; and/or
 - (b) has not less than 3 years experience in the securities industry in a supervisory or compliance role.
- 2.6 GWFS will inform ASIC in writing of the identity of the compliance officer referred to in paragraph 2.3 above by 20 November 2002 and of any subsequent appointment of a compliance officer within 2 business days of the appointment, during the period of 24 months after the day on which this Undertaking is accepted by ASIC.

- 2.7 GWFS will ensure that the compliance officer reports directly to the Board of GWFS and has appropriate authority from GWFS to discharge the responsibilities and functions described in paragraph 2.2.

Compliance Program

- 2.8 GWFS will, by 18 November 2002, engage an external independent compliance consultant (the Consultant), whose appointment and terms of reference are to be approved by ASIC. The Consultant will review, assess, identify, make recommendations and report in writing to GWFS and ASIC in relation to GWFS's compliance with the Act, the amended Act, the Regulations, the ASIC Act and the conditions attached to the Licence or any future Australian Financial Services Licence (AFSL) which may be issued to GWFS (or any related entity to which GWFS transfers, sells or disposes of its assets and business), considering GWFS's internal controls, compliance systems, procedures, supervision and training of its representatives (Report) as at 31 January 2003, 30 April 2003, 30 September 2003, and 31 March 2004 (Reporting Dates).
- 2.9 Each Report will include, but not be limited to, the identification and the making of recommendations for changes to ensure full compliance with the requirements of the Act, the amended Act, the Regulations, the ASIC Act and the conditions attached to the Licence or to any future AFSL which may be issued to GWFS (or any related entity to which GWFS 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 GWFS;
 - (c) supervision and training of representatives;
 - (d) an assessment of representatives' understanding of their obligations with respect to the Act, the amended Act, the Regulations, the ASIC Act and the Licence conditions;
 - (e) remedial training in the event that a representative is found not to understand his or her obligations;
 - (f) record keeping;
 - (g) internal and external resolution of complaints;
 - (h) the action taken by GWFS to remedy any deficiencies identified in previous Reports; and
 - (i) compliance with this Undertaking.
- 2.10 GWFS 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 GWFS is unable to deliver a copy of the Report to ASIC within 14 days of the relevant Reporting Date, GWFS 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 GWFS by ASIC within 16 days after the Reporting Date.

- 2.11 Within 30 days of GWFS receiving each Report, GWFS will provide ASIC with a report from the GWFS Board:
- (a) detailing the steps taken or to be taken by GWFS 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.

- 2.12 GWFS will pay all fees and costs associated with the engagement of the Consultant referred to in this Undertaking.

Training of Representatives

- 2.13 Within 1 month of the signing of this Undertaking, GWFS will 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 GWFS; and
 - (b) any training undertaken before the representative became a representative of GWFS to the extent that GWFS is able to obtain the information by reasonable enquiry.
- 2.14 For any natural person who provides financial product advice on behalf of GWFS, GWFS will, by 30 June 2003:
- (a) identify the tasks and function that person performs on behalf of GWFS;
 - (b) determine the appropriate knowledge and skills required to competently perform those tasks and functions;
 - (c) implement procedures for appropriate continuing training; and
 - (d) record in writing each of the steps undertaken by GWFS to fulfil the matters identified in subparagraphs 2.11(a) to (c) above.
- 2.15 GWFS will ensure that by 30 June 2003 any natural person who provides financial product advice to retail clients on behalf of GWFS:
- (a) has completed training courses at an appropriate level that are or have been listed on the ASIC Training Register that are relevant to those functions or tasks; or
 - (b) has been individually assessed as competent by an assessor that is or has been listed on the ASIC Training Register.

Notification to ASIC of Suspected Contraventions

- 2.16 Without derogating from any other obligation upon GWFS to report to ASIC, GWFS will notify ASIC in writing within 3 business days of GWFS forming the view that either it or its representative(s) may have contravened a provision of the Act, the amended Act, the Regulations, the ASIC Act or the conditions of the Licence of this Undertaking.

Failure to Comply with this Undertaking

- 2.17 In the event that GWFS fails to comply with any part of this Undertaking, GWFS will immediately:
- (a) cease carrying on a securities business; and
 - (b) write to ASIC asking that ASIC revoke the Licence.


3. Acknowledgments

- 3.1 GWFS acknowledges that it has obtained legal advice in relation to the content and effect of this undertaking.
- 3.2 GWFS acknowledges that ASIC:
- (a) may issue a media release on execution of this Undertaking, referring to its terms and the concerns of ASIC which led to its execution;
 - (b) may from time to time publicly refer to this Undertaking; and
 - (c) will make this Undertaking available for public inspection.
- 3.3 GWFS acknowledges that this Undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this Undertaking.
- 3.4 GWFS acknowledges that ASIC's acceptance of an Enforceable Undertaking does not affect its power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary penalty order.
- 3.5 GWFS acknowledges that this Undertaking has no operative force until accepted by ASIC.

The Common Seal of Greater Western Financial)
 Services Co Pty Ltd (ACN 008 013 321) was duly)
 affixed to this Undertaking on 27 October 2002)
 in the presence of and the sealing is attested by:)




Director



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.

Dated this 30th day of October 2002



A J Orchard
Director, Enforcement
South/West