

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93AA *Australian Securities & Investments Commission Act 2001*

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

Fintrack Financial Services (Aust) Pty Ltd ACN 085 114 263
332A South Road
MORRABBIN VIC 3189



And

Fintrack Pty Ltd ACN 006 164 709
332A South Road
MORRABBIN VIC 3189

(Collectively referred to in this Undertaking as "Fintrack")

1 BACKGROUND

- 1.1 At all material times, Fintrack Pty Ltd was engaged in the business of providing the services of a Mortgage Originator (also known as "Mortgage Finance Intermediary" or "Mortgage Introducer"). At all times material, Fintrack Financial Services (Aust) Pty Ltd was the holding company for Fintrack Pty Ltd and entered into all contracts with all staff.
- 1.2 ASIC is responsible for monitoring and promoting consumer protection in relation to financial services, and under section 12GD of the *ASIC Act*, ASIC may, among other things, seek injunctions preventing a person from engaging in certain conduct, require that person to do any act or thing and/or place corrective advertisements. Under sections 12GM of the *ASIC Act*, ASIC may commence proceedings for or on behalf of consumers who have suffered damage by reason of a contravention of the Act. Under sections 12GLA of the *ASIC Act*, ASIC may seek non-punitive orders such as a community service order or an order requiring publication of an advertisement, in relation to conduct in contravention of the Act.
- 1.3 Fintrack is a member of the Mortgage Industry Association of Australia and offers a financial service in relation to a financial product in the course of trade or commerce as defined by sections 12BAB and 12BAA(7) of the *ASIC Act*.
- 1.4 During the period from 11 March 2002 to 2 June 2003 ("**the period**") Fintrack:
 - (a) Caused two commercials to be broadcast on television in Sydney and Melbourne comprising, a 30 second commercial and another 15 second cut down version of the commercial ("**the television commercials**").

- (b) Caused a series of commercials to be broadcast on radio stations in Sydney and Melbourne ("**the radio commercials**").
- (c) Published or caused to be published a brochure headed "Fintrack Hassle Free Home Loans", which was provided to Fintrack customers during the period ("**the brochure**").
- (d) Caused statements promoting the Fintrack business to be posted on their website at www.fintrack.com.au during period ("**the website**").

1.5 The advertising and promotional material used by Fintrack contained the following statements ("**the Statements**"):

- (a) In the television commercials:
 - "We compare home loans from all banks and lenders".
 - "We are impartial."
- (b) In the radio commercials:
 - Fintrack compares "over 40 lenders".
- (c) In the brochure:
 - Fintrack has " over 1000 loans on offer from over 40 lenders".
 - "Fintrack prides itself on having no affiliations with any products or lenders making us independent and impartial".
- (d) On the website:
 - Fintrack is "independent and impartial".
 - Fintrack offers "all loans" from "over 40 of Australia's leading and most respected lending institutions".
 - Fintrack "are paid virtually the same commission, guaranteeing impartiality and independence".
 - "Our people are salaried not commission based".

1.6 ASIC has formed the view, and Fintrack acknowledge that:

- (a) Between 11 March 2002 and 17 April 2003 Fintrack compared the products of no more than 30 lenders. Accordingly during that period:
 - Fintrack did not compare home loans from all banks and lenders.
 - Fintrack did not compare over 40 lenders.
 - Fintrack did not have over 1000 loans on offer from over 40 lenders.
 - Fintrack did not offer all loans from over 40 lenders.
- (b) Fintrack receives different rates of commission and benefits depending on the lender to whom a borrower is referred. The commissions paid by some lenders are significantly greater than those paid by others. Fintrack does not receive commission or other benefits from some lenders. Accordingly:
 - Fintrack is not independent and impartial.

- Fintrack's impartiality and independence is not guaranteed by the fact that it receives virtually the same commission from all lenders.
- (c) Fintrack receives commissions from lenders. Fintrack employs mobile lenders (also known as "Accredited Mortgage Consultants"), and their remuneration includes salaries, bonuses and commissions. Accordingly the statement that Fintrack's "people are not commission based" is incorrect
- 1.7 In the light of the matters identified in clause 1.6, ASIC has concerns that the Statements are false or misleading, misleading or deceptive, and likely to mislead or deceive in contravention of sections 12DB and 12DA of the *ASIC Act 2001*.
- 1.8 Fintrack has now ceased all commercials and promotion that contain the Statements or similar statements.
- 1.9 Fintrack acknowledges ASIC's concerns and has offered (and ASIC has agreed to accept) this Enforceable Undertaking as an alternative to the relief outlined in 1.2.

2 UNDERTAKINGS

Pursuant to section 93AA of the *Australian Securities and Investments Commission Act 2001* ("the *ASIC Act*"), Fintrack provide the undertakings set out below.

Disclosure and Corrective Action

- 2.1 Fintrack will not use the Statements or any similar statements in any future advertising or promotional material.
- 2.2 Within 30 days of entering into this Enforceable Undertaking, Fintrack will send a written notice in the form set out in Annexure 1 to this Enforceable Undertaking, to all Fintrack customers, who have entered into a finance agreement through Fintrack during the period.
- 2.3 Fintrack will provide reasonable assistance to all Fintrack customers who claim or inquire about a potential claim for loss or damage by reason of the Statements. Reasonable assistance will include the provision of information about alternative or comparative financing options, including the commissions payable to Fintrack under each option.
- 2.4 If Fintrack receives a claim ("**compensation claim**") from a customer ("**claimant**") for loss and damage suffered by reason of the Statements, Fintrack will (subject to clause 2.6) accept and pay the compensation claim, within 28 days of receiving the compensation claim.

- 2.5 Within 30 days of entering into this Enforceable Undertaking, Fintrack will appoint an independent person ("**claims reviewer**") to conduct the review of compensation claims pursuant to the process outlined in clauses 2.6 to 2.10. Fintrack may appoint alternative claims reviewers from time to time. The claims reviewer shall be:
- (a) Legally qualified and with not less than 5 years experience of handling disputes and claims under relevant consumer protection legislation.
 - (b) A person who is not previously known to or associated with anyone known to the directors of Fintrack.
 - (c) A person whose appointment is approved by ASIC.
- 2.6 The terms of engagement of the claims reviewer are to be approved by ASIC, and must include provision for the claims reviewer to provide written reasons for the rejection of claims referred to in clauses 2.8 and 2.9.
- 2.7 Fintrack will not be obliged to pay a compensation claim if it is able to establish in respect of that claim to the satisfaction of the claims reviewer, any one or more of the following matters:
- (a) The Statements were not made to the claimant.
 - (b) The claimant did not rely upon the Statements.
 - (c) The claimant did not suffer any loss or damage by reason of the Statements.
 - (d) The claimant did not suffer loss and damage to the extent claimed in the compensation claim.
- 2.8 Fintrack will refer any claim it disputes under 2.7 to the claims reviewer within 28 days of receiving the compensation claim. If the claims reviewer accepts the compensation claim, Fintrack will pay the claim within 7 days of being notified of the acceptance by the claims reviewer.
- 2.9 If a compensation claim is rejected on one or more of the grounds contained in clauses 2.7(a) to (c), within 7 days of rejecting the claim, Fintrack will provide the claimant with:
- (a) Written reasons by the claims reviewer as to why the compensation claim was rejected.
 - (b) A written notice in the form contained in Annexure 2.
- 2.10 If part of a compensation claim is rejected on the grounds contained in clause 2.7(d), within 7 days of the rejection, Fintrack will:

- (a) Pay the claimant so much of the compensation claim as has not been rejected.
- (b) Provide the claimant with the claims reviewer's written reasons for rejection of the compensation claim.
- (c) Provide the claimant with a written notice in the form contained in Annexure 3.

2.11 Fintrack will provide the claims reviewer with a copy of this Enforceable Undertaking and will pay the costs of the claims reviewer.

Compliance program

- 2.12 Fintrack will forthwith conduct an internal review of its advertising and promotional program to determine whether any of its current or proposed advertising and promotional material contain statements that are false and misleading, or that are or are likely to be misleading and deceptive.
- 2.13 Within 35 days of the completion of the review, Fintrack will provide a report to ASIC signed by a senior officer or officers of Fintrack who has or have personal knowledge of the matters referred to in clause 2.12 that sets out the results of the internal review ("**internal report**").
- 2.14 If the internal report discloses any problems or errors, Fintrack will use its best endeavours to correct those problems or errors as soon as reasonably possible and to promptly report to ASIC as to the steps taken to correct the problems or errors.
- 2.15 Fintrack will implement within 2 months and maintain for a period of 3 years a Compliance Program ("**Compliance Program**") in accordance with the Australian Standard for Compliance Programs AS-3806. The Compliance Program will have the features set out in Annexure 4 to this Enforceable Undertaking.
- 2.16 Fintrack will implement and maintain a visible and accessible Complaints Handling System, which complies within Australian Standard AS 4269 when read together with Appendix A to Australian Standard AS 3806 and standards and requirements made or approved by ASIC ("**Complaints Handling System**").
- 2.17 Within 21 days of the implementation of the Compliance Program and the Complaints Handling System, Fintrack will engage the services of an independent consultant to be approved by ASIC ("**the consultant**") to:

- (a) Ensure that the Compliance Program and the Complaints Handling System have been properly implemented ("review").
- (b) Conduct further reviews of the Compliance Program and the Complaints Handling System, 12 and 24 months after its implementation.
- (c) Within 21 days of completion of each review, provide a report to Fintrack and ASIC on the results of the review.

2.18 Fintrack will take immediate steps to remedy any deficiencies in the implementation and maintenance of the Compliance Program and the Complaints Handling System identified by the consultant and shall notify ASIC in writing of steps taken to address such remediation.

2.19 Fintrack will provide all documents and information requested by ASIC in relation to action taken by Fintrack to address deficiencies identified by the consultant.

Education program

2.20 Within 30 days of the date of this Enforceable Undertaking, Fintrack will pay \$15,000 to ASIC, to be used by ASIC for consumer education or similar programs in relation to the finance and mortgage broking industry (the nature, form and content of which are to be wholly determined by ASIC).

2.21 Fintrack will not make any public statements about the payment made or to be made pursuant to clause 2.20, without reference to the obligation on Fintrack to make that payment pursuant to this Enforceable Undertaking.

Notices

2.22 Any notice or other document required to be provided to ASIC pursuant to this Enforceable Undertaking, shall be given in writing and addressed to:

The Director
Compliance & Campaigns
Consumer Protection Directorate
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001

3 ACKNOWLEDGEMENTS

3.1 Fintrack acknowledge that ASIC:

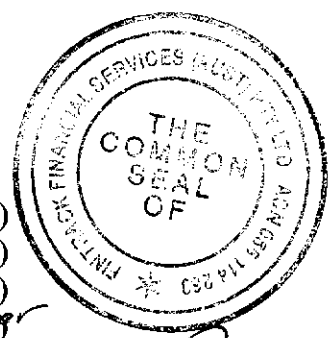
- (a) May issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) May from time to time publicly refer to this Enforceable Undertaking; and
- (c) Will make this Enforceable Undertaking available for public inspection.

3.2 Fintrack acknowledges that 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.

3.3 Fintrack acknowledges that 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.

3.4 Fintrack acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.

The Common Seal of **Fintrack Financial Services (Aust) Pty Ltd ACN 085 114 263** was affixed to this Enforceable Undertaking on the ~~1st~~ ^{1st} day of ~~August~~ ^{September} 2003 in the presence of:



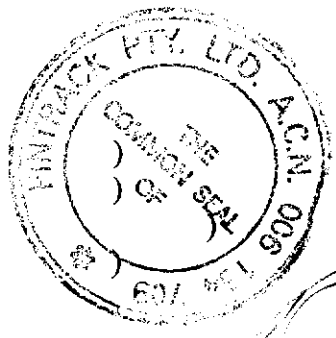
Richard G. Houston
.....

Director/Secretary
Richard Houston
.....
Print Name

Alexandre Molinaro
.....

Director/Secretary
Alexandre Molinaro
.....
Print Name

The Common Seal of **Fintrack Pty Ltd ACN 085 114263** was affixed to this Enforceable Undertaking on the ~~1st~~ ^{1st} day of ~~August~~ ^{September} 2003 in the presence of:



G.E. Molinaro
.....

Director/Secretary

G.E. Molinaro
.....

Director/Secretary

.....Graeme Molinaro
Print Name

.....Alexandra Molinaro
Print Name

Accepted by the **Australian Securities and Investments Commission** pursuant to the
ASIC Act section 93AA by its duly authorised delegate:

.....Mark [Signature]

Director of Enforcement South/West
Delegate of the Australian Securities and Investments Commission

Dated this 2nd day of September 2003 shall be accountable to the Directors for all
compliance issues MS

Annexure 1

NOTICE TO CUSTOMERS OF FINTRACK

In the period from 11 March 2002 to 2 June 2003, Fintrack Financial Services (Aust) Pty Ltd (ACN 085 114 263) and Fintrack Pty Ltd ACN 006 164 709 (jointly called "Fintrack"), used advertising and promotional material that contained the following statements ("the Statements"):

- "We compare home loans from all banks and lenders".
- Fintrack compares "over 40 lenders"
- Fintrack has "over 1000 loans on offer from over 40 lenders".
- Fintrack offers "all loans" from "over 40 of Australia's leading and most respected lending institutions".
- "We are impartial."
- Fintrack is "independent and impartial".
- "Fintrack prides itself on having no affiliations with any products or lenders making us independent and impartial".
- Fintrack "are paid virtually the same commission, guaranteeing impartiality and independence".
- "Our people are salaried not commission based".

The Australian Securities and Investments Commission has brought to our attention the fact that these statements are incorrect for the following reasons:

- Fintrack compared the products of no more than 30 lenders (which include the major Australian banks).
- Fintrack receives commissions from lenders.
- Fintrack employs mobile lenders (also known as "Accredited Mortgage Consultants"), and their remuneration includes salaries, bonuses and commissions.
- Fintrack receives different rates of commission and benefits depending on the lender to whom a borrower is referred.
- Fintrack does not receive commission or other benefits from some lenders.

If you have suffered loss or damage by reason of any of the Statements, you may be entitled to receive compensation from Fintrack and should forward all details of and copies of documents supporting your claim to Fintrack at the address below. Fintrack will consider and, if appropriate, pay a claim for loss and damage suffered by reason of the Statements.

Fintrack is required to provide reasonable assistance to all Fintrack customers who claim or inquire about any potential claim for loss or damage. Reasonable assistance includes the provision of information about alternative or comparative financing options, including

the commissions payable to Fintrack under each option. If you require further information to determine whether you have a claim or the amount of such claim, you should state the information that you require and forward your request to:

[Fintrack's address]

Annexure 2
NOTICE OF REJECTION OF COMPENSATION CLAIM

You have made a claim for compensation in response to a notice provided to you by Fintrack Financial Services (Aust) Pty Ltd and Fintrack Pty Ltd ("**Fintrack**").

Your compensation claim is for loss and damage that you allege to have suffered as a customer of Fintrack, by reason of the following statements ("**the Statements**") made in advertising and promotional material used by Fintrack during the period 11 March 2002 to 2 June 2003:

- "We compare home loans from all banks and lenders".
- "We are impartial."
- "Our people are salaried not commission based".
- Fintrack compares "over 40 lenders".
- Fintrack has " over 1000 loans on offer from over 40 lenders".
- "Fintrack prides itself on having no affiliations with any products or lenders making us independent and impartial".
- Fintrack is "independent and impartial".
- Fintrack offers "all loans" from "over 40 of Australia's leading and most respected lending institutions".
- Fintrack "are paid virtually the same commission, guaranteeing impartiality and independence."

Fintrack has considered your compensation claim and had it reviewed by an independent claims reviewer. Fintrack has satisfied the claims reviewer that:

- The Statements were not made to you.
- You did not rely upon the Statements.
- You did not suffer any loss or damage by reason of the Statements.

Accordingly your compensation claim has been rejected and the reasons for the rejection are attached.

The rejection of your compensation claim does not prevent you from taking legal action to pursue your claim if you are not satisfied with the reasons attached. You should seek your own legal advice in those circumstances. If you wish to discuss the rejection you may contact Fintrack on [**contact details**].

Annexure 3
NOTICE OF REJECTION OF PART OF COMPENSATION CLAIM

You have made a claim for compensation in response to a notice provided to you by Fintrack Financial Services (Aust) Pty Ltd and Fintrack Pty Ltd ("**Fintrack**").

Your compensation claim is for loss and damage that you allege to have suffered as a customer of Fintrack, by reason of the following statements ("**the Statements**") made in advertising and promotional material used by Fintrack during the period 11 March 2002 to 2 June 2003:

- "We compare home loans from all banks and lenders".
- "We are impartial."
- "Our people are salaried not commission based".
- Fintrack compares "over 40 lenders".
- Fintrack has " over 1000 loans on offer from over 40 lenders".
- "Fintrack prides itself on having no affiliations with any products or lenders making us independent and impartial".
- Fintrack is "independent and impartial".
- Fintrack offers "all loans" from "over 40 of Australia's leading and most respected lending institutions".
- Fintrack "are paid virtually the same commission, guaranteeing impartiality and independence."

Fintrack has considered your compensation claim and had it reviewed by an independent claims reviewer. Fintrack has satisfied the claims reviewer that you did not suffer loss and damage to the extent claimed in the compensation claim.

Accordingly part of your compensation claim has been rejected and the reasons for the rejection are attached.

A cheque is attached for that part of your compensation claim that has been accepted.

The rejection of part of your compensation claim does not prevent you from taking legal action to pursue that part of your claim that was not accepted, if you are not satisfied with the reasons attached. You should seek your own legal advice in those circumstances. If you wish to discuss the rejection of part of your claim you may contact Fintrack on [**contact details**].

Annexure 4

The Compliance Program to be implemented and maintained by Fintrack according to this Enforceable Undertaking ('the program') must have the following features:

1. The program must comply with the Australian Standard on Compliance Programs, AS 3806, except where that Standard is inconsistent with the other provision in this Schedule, in which case the provisions of this Schedule will prevail.
2. The program must provide for the appointment of a Compliance Officer.
3. The program must require the Compliance Officer to review all advertising material to be used by Fintrack, in any medium and including promotional material for in-store display. The review must be carried out prior to the use, publication, broadcast or display of the advertising material to ensure that the use of the advertising material will not contravene Part 2, Division 1 of the *Australian Securities & Investments Commission Act 2001* ('the ASIC Act').
4. The program must require the Compliance Officer to maintain for at least 3 years a documentary record of the review of all such advertising material. The record must include:
 - (a) a written identification of the advertising material that was reviewed;
 - (b) a copy of the advertising material;
 - (c) a written confirmation that the advertising material was reviewed and approved for use, publication, broadcast or display, stating when and by whom the review was conducted and the approval was given;
 - (d) a written record of any ways in which the use of the advertising material was considered by the Compliance Officer to give rise to possible contraventions of Part 2, Division 1 of the *ASIC Act*, and the steps taken to avoid such possible contraventions; and
 - (e) a written record of when the advertising material was used, published, broadcast or displayed.
5. The program must provide for:
 - (a) the conducting of annual training sessions in relation to sections 12DA and 12DB of the *ASIC Act* for all employees of Fintrack who are involved from time to time in the design, preparation, distribution or use of advertising material;
 - (b) the making and retention for at least 3 years of written records of the person who conducted, and who attended, each such training session; and
 - (c) the retention for at least 3 years of copies of all material that was used or distributed at each such training session.
6. The program must provide for:

(a) an independent consultant approved by ASIC, with experience in trade practices law to audit the implementation of the program at the following intervals from the date of the execution of this Enforceable Undertaking, 4 months, 12 months and 24 months;

(b) the independent consultant approved by ASIC to provide written reports to the Fintrack Board and ASIC in relation to the above audits; and

(c) the retention by Fintrack for at least 3 years of such audit reports.