



## ENFORCEABLE UNDERTAKING

### AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

#### Section 93AA Australian Securities & Investment Commission Act 2001

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

**Structured Financial Solutions Pty Ltd ACN 102 714 358**  
("Structured Financial Solutions ")  
503/685 Burke Rd  
Camberwell VIC 3124

#### 1 BACKGROUND

- 1.1 At all material times, Structured Financial Solutions was engaged in the business as a Mortgage Introducer. Structured Financial Solutions has an agreement with a Mortgage Aggregator who had a panel of 50 banks and lenders ("**the Panel**"). Pursuant to that agreement Structured Financial Solutions refers prospective borrowers to the mortgage aggregator, in return for commission payments.
- 1.2 ASIC is responsible for monitoring and promoting consumer protection in relation to financial services, and under section 12GD of the *Australian Securities and Investments Commission Act 2001* ("*Act*"), ASIC may, seek injunctive relief in respect of a contravention of the *Act*. ASIC may also commence proceedings for compensation on behalf of consumers who have suffered loss or damage as a result of a contravention of the *Act* (section 12GM) and seek non-punitive orders such as a community service order or an order requiring publication of an advertisement (section 12GLA ).
- 1.3 Structured Financial Solutions 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 *Act*.
- 1.4 During the period from 1 June 2003 to 10 February 2004 ("**the period**") Structured Financial Solutions:
  - (a) Caused a one page advertisement to be published in two issues of "Wealth Creator Magazine" in October and November 2003.

- (b) Published or caused to be published brochures headed "Structured Financial Solutions" and "Really...We're not just brokers", which was provided to Structured Financial Solutions customers during the period ("**the brochures**").
- 1.5 Structured Financial Solutions did not cause any commercials to be broadcast on television or radio.
- 1.6 The advertising and promotional material used by Structured Financial Solutions contained the following statements ("**the statements**").
- (a) In the "Wealth Creator Magazine:
- "Through independent and impartial advice....."
- (b) In the brochures:
- "Deals with almost every lender in Australia"
  - "Provides independent and impartial advice"
  - "an independent.....organisation"
- 1.7 ASIC has formed the view, and Structured Financial Solutions acknowledges that:
- (a) During the period, Structured Financial Solutions dealt with no more than 50 lenders. Accordingly during that period Structured Financial Solutions did not deal with almost every lender in Australia.
- (b) Structured Financial Solutions received different rates of commission and benefits depending on the lender to whom a borrower was referred via the Mortgage Aggregator. Structured Financial Solutions does not refer borrowers to, nor receive commission or other benefits from lenders who are not on the Panel. Accordingly Structured Financial Solutions does not provide advice that is independent and impartial.
- 1.8 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 12DA and 12DB of the *Act*.
- 1.9 Structured Financial Solutions ceased using all advertising and promotional material that contain the statements or similar statements on 10 February 2004.
- 1.10 Structured Financial Solutions acknowledges ASIC's concerns and has offered this Enforceable Undertaking which ASIC agrees to accept.

## 2. UNDERTAKINGS

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

### Disclosure and Corrective Action

- 2.1 Structured Financial Solutions will not use any of the Statements or any similar statements in any future advertising or promotional material.
- 2.2 Within 30 days of entering into this Enforceable Undertaking, Structured Financial Solutions will send a written notice in the form set out in Annexure 1, to all Structured Financial Solutions customers, who have entered into a finance agreement through Structured Financial Solutions during the period.
- 2.3 Where the address of any of the customers referred to in clause 2.2 above is not known to Structured Financial Solutions, then Structured Financial Solutions will comply with the procedure set out in Annexure 5 and will send a letter in the form of Annexure 1 to this undertaking (if this is required after Structured Financial Solutions follows the procedure in Annexure 5) within 14 days after obtaining such information.
- 2.4 Structured Financial Solutions will provide reasonable assistance to all Structured Financial Solutions 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 that were available in the market generally at the relevant time, including the commissions payable to Structured Financial Solutions under each option.
- 2.5 If Structured Financial Solutions receives a claim ("**compensation claim**") from a customer ("**claimant**") for the loss or damage suffered by the reason of the Statements, Structured Financial Solutions will (subject to clause 2.8) accept and pay the compensation claim, within 28 days of receiving the compensation claim.
- 2.6 Within 30 days of entering into this Enforceable Undertaking, Structured Financial Solutions will appoint an independent person ("**claims reviewer**") to conduct any reviews of compensation claims pursuant to the process outlined in clauses **2.7** to **2.12**. Structured Financial Solutions may appoint alternative claims reviewers from time to time. The claims reviewer (and any alternative claims reviewer) shall be:
  - (a) Appropriately qualified and with not less than 5 years experience of handling disputes and claims under relevant consumer protective legislation,

- (b) A person who is not previously known to or associated with the director of Structured Financial Solutions,
  - (c) A person whose appointment is approved by ASIC after consideration of his or her professional resume.
- 2.7 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 **2.10** and **2.11**.
- 2.8 Structured Financial Solutions 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 or damage to the extent claimed in the compensation claim.
- 2.9 Structured Financial Solutions will refer any claim it disputes to the claims reviewer within 28 days of receiving the compensation claim. If the claims reviewer accepts the compensation claim, Structured Financial Solutions will pay the claim within 7 days of being notified of the acceptance by the claims reviewer.
- 2.10 If a compensation claim is rejected by the claims reviewer on one or more of the grounds contained in clauses **2.8 (a)** to **(c)**, within 7 days of rejecting the claim Structured Financial Solutions 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, which includes notice that the claimant has a right to access an external dispute resolution scheme, Credit Ombudsman Scheme Limited ("COSL").
  - (c) All reasonable assistance to any person involved in the assessment of the matter by the external dispute resolution scheme, COSL, to ensure the referral is considered expeditiously.
- 2.11 If part of a compensation claim is rejected by the claims reviewer on the grounds contained in clause **2.8 (d)**, within 7 days of the rejection Structured Financial Solutions 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 part of the compensation claim,
  - (c) Provide the claimant with a written notice in the form contained in Annexure 3, which includes notice that the claimant has a right to access an external dispute resolution scheme COSL.
  - (d) All reasonable assistance to any person involved in the in the assessment of the matter by the external dispute resolution scheme, COSL, to ensure the referral is considered expeditiously.
- 2.12 Within 6 months of entering this Enforceable Undertaking Structured Financial Solutions will provide reports to ASIC containing the following information concerning the status of claims made in relation to any loss or damage suffered by reason of the Statements.
- (a)The number of compensation claims received;
  - (b)The number of compensation claims paid in full following consideration by Structured Financial Solutions; the number of compensation claims rejected by Structured Financial Solutions in whole or in part, and the grounds for those rejections;
  - (c)The number of compensation claims being considered by the claims reviewer;
  - (d)The number of compensation claims paid in full following determination by the claims reviewer;
  - (e)The number of compensation claims rejected in whole or in part by the claims reviewer and the reasons for this rejection.
- 2.13 Structured Financial Solutions will provide the claims reviewer with a copy of this Enforceable Undertaking and will pay the costs of the claims reviewer in accordance with the terms of engagement of the claims reviewer. Structured Financial Solutions will use its best endeavours to ensure that the claims reviewer is able to determine all compensation claims as expeditiously as possible.
- 2.14 The terms of engagement of the claims reviewer are to be approved by ASIC, and must include provisions:
- (a) That the claims reviewer will use his or her best endeavours to determine each compensation claim referred to him or her within 28 days,
  - (b) That the claims reviewer will quantify the loss or damage (if any) suffered in respect of any claim determined in favour of a customer,
  - (c) That the claims reviewer may adopt such procedure, make such enquiries and conduct such further investigations as he or she considers reasonably appropriate to determine any compensation claim,
  - (d) That the claims reviewer will exercise due skill, care and attention in the determination of all compensation claims,

- (e) That Structured Financial Solutions will indemnify the claims reviewer in respect of any claims made against the claims reviewer arising out of the claims review process,
- (f) That the claims reviewer will notify Structured Financial Solutions of his or her determination as soon as reasonably practicable after determining a compensation claim, and (if applicable) will provide the claimant with written reasons for the rejection of the compensation claim and notice of rejection pursuant to clause **2.10** and **2.11**, within 7 days of his or her determination.
- (g) That Structured Financial Solutions will pay the costs of the claims reviewer.

## **Compliance Program**

- 2.15 Structured Financial Solutions will implement within 2 months of the date of this Enforceable Undertaking 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 Structured Financial Solutions will implement within 2 months of the date of this Enforceable Undertaking and maintain a 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 of days of the implementation of the Compliance Program and the Complaints Handling System, Structured Financial Solutions will appoint a senior staff member who reports to the Board to:
  - (a) Ensure that the Compliance Program and the Complaints Handling Systems have been properly implemented ("**review**").
  - (b) Every 6 months undergo a compliance-training course, to keep updated with current requirements.
  - (c) Conduct reviews of the Compliance Program and the Complaints Handling System, 12 and 24 months after its implementation.
  - (d) Within 30 days after the implementation of the Compliance Program and the Complaints Handling System and the first and second anniversary of the implementation of the Compliance Program and the Complaints Handling System, provide a report to Structured Financial Solutions and ASIC on the results of the further reviews.
- 2.18 Structured Financial Solutions will provide all documents and information requested by ASIC in relation to each of the reviews referred to in clause 2.17 above.

## **Education Program**

- 2.19 Within 60 days of the date of acceptance of this Enforceable Undertaking, Structured Financial Solutions will pay \$2,500 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).
- 2.20 Structured Financial Solutions will not make any public statements about the payment made or to be made pursuant to clause 2.19, without reference to the obligation on Structured Financial Solutions to make that payment pursuant to this Enforceable Undertaking.

## **Notices**

- 2.21 Any notice or other document required to be provided to ASIC pursuant to this enforceable Undertaking, shall be given to writing and addressed to:

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

## **3. ACKNOWLEDGEMENTS**

- 3.1 Structured Financial Solutions 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,
  - (c) Will make this Enforceable Undertaking available for public inspection.
- 3.2 Structured Financial Solutions 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 Structured Financial Solutions 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 Structured Financial Solutions acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.

The Common Seal of **Structured Financial Solutions Pty Ltd ACN 102 714 358**  
was affixed to this Enforceable Undertaking on the  
presence of:

day of ~~July~~ *August* 2004 in the presence of *Michael*

*Paul M.*

Director



*Michael Keith Woods*  
Print Name

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

*Mark P...*

*Deputy* Executive ~~Deputy~~ Director of Enforcement *ms*  
Delegate of the Australian Securities and Investments Commission

Dated this *10<sup>th</sup>* day of *August* 2004. *ms*



## Annexure 1

### NOTICE TO CUSTOMERS OF STRUCTURED FINANCIAL SOLUTIONS

In the period from 1 June 2003 to 10 February 2004, Structured Financial Solutions(ACN 102 714 358) used advertising and promotional material that contained the following statements (“the statements”):

- “Deals with almost every lender in Australia”
- “Provides independent and impartial advice”
- “Through independent and impartial advice.....”
- "An independent.....organisation"

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

- Between 1 June 2003 and 10 February 2004, Structured Financial Solutions dealt with no more than 50 lenders through the agreement with a Mortgage Aggregator. Accordingly during that period Structured Financial Solutions did not deal with almost every lender in Australia.
- Structured Financial Solutions received different rates of commission and benefits depending on the lender to whom a borrower is referred. Structured Financial Solutions does not receive commission or other benefits from lenders who are not on the Panel of lenders of the Mortgage Aggregator. Accordingly Structured Financial Solutions is not independent and impartial and does not provide independent and impartial advice.

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

Structured Financial Solutions has agreed with ASIC to provide reasonable assistance to all Structured Financial Solutions 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 Structured Financial Solutions under each option. If you require further information to determine whether you have a claim or the amount of such claim, you should set out the information that you require and forward your request to:  
(SFS 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 Structured Financial Solutions.

Your compensation claim is for loss or damage that you allege to have suffered as a customer of Structured Financial Solutions, by reason of the following statements ("**the Statements**") made in advertising and promotional material used by Structured Financial Solutions during the period 1 June 2003 to 10 February 2004:

- "Deals with almost every lender in Australia"
- "Provides independent and impartial advice"
- "Through independent and impartial advice....."
- "An independent.....organisation"

Structured Financial Solutions has considered your compensation claim and had it reviewed by an independent claims reviewer. The claims reviewer has formed the view 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.

[ delete which one is not applicable]

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

If you disagree with the assessment of your claim, you may refer the matter to the Credit Ombudsman Service Limited (COSL). COSL is a free and independent complaints handling service which deals with complaints about mortgage brokers including Structured Financial Solutions. The contact details are:

Freecall 1300 78 08 08  
COSL  
Fax 02 9267 3125  
Level 6, 50 Park Street  
Sydney  
NSW, 2000  
[www.creditombudsman.com.au](http://www.creditombudsman.com.au)

Alternatively you may wish to pursue your own legal action. You should seek your own legal advice about that. If you wish to discuss the rejection of your claim you may contact Structured Financial Solutions 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 Structured Financial Solutions.

Your compensation claim is for loss or damage that you allege to have suffered as a customer of Structured Financial Solutions, by reason of the following statements (“**the Statements**”) made in advertising and promotional material used by Structured Financial Solutions during period 1 June 2003 to 10 February 2004.

- “Deals with almost every lender in Australia”
- “Provides independent and impartial advice”
- “Through independent and impartial advice.....”
- "An independent .....organisation"

Structured Financial Solutions has considered your compensation claim and had it reviewed by an independent claims reviewer. Structured Financial Solutions has satisfied the claims reviewer that you did not suffer loss or 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.

If you disagree with the assessment of your claim, you may refer the matter to the Credit Ombudsman Service Limited (COSL). COSL is a free and independent complaints handling service which deals with complaints about mortgage brokers including Structured Financial Solutions. The contact details are:

Freecall 1300 78 08 08  
COSL  
Fax 02 9267 3125  
Level 6, 50 Park Street  
Sydney  
NSW, 2000  
[www.creditombudsman.com.au](http://www.creditombudsman.com.au)

Alternatively you may wish to pursue your own legal action. You should seek your own legal advice about that. If you wish to discuss the rejection of your claim you may contact Structured Financial Solutions on [**contact details**].

#### Annexure 4

The Compliance Program to be implemented and maintained by Structured Financial Solutions 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 the Standard is inconsistent with the other provision in this Annexure, in which case the provisions of this Annexure will prevail.
2. The program must provide the appointment of a Compliance Officer.
3. The program must require the Compliance Officer to review all advertising material to be used by Structured Financial Solutions, 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 2 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 2 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 Structured Financial Solutions 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 making and 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) A Structured Financial Solutions compliance manager to oversee the implementation and ongoing progress of the program.
- (b) The Compliance Manager to provide written audit reports of the program at the following intervals from the date of execution of this Enforceable Undertaking, 4 months, 12 months, 24 months;
- (c) The retention by Structured Financial Solutions for at least 3 years of such audit reports.

## Annexure 5

### Change of address procedure

1. Structured Financial Solutions must send the letter at Annexure 1 by ordinary pre-paid post to the most recent address that Structured Financial Solutions has recorded for each relevant person.
2. In the case of those persons whose letter is returned, Structured Financial Solutions must update the addresses they have for such persons by using the "National Change of Address" database provided by Australia Post. If Australia Post's "National Change of Address" database reveals a different address for those persons, Structured Financial Solutions will send the item by ordinary pre-paid post to that different address.
3. Where Australia Post notifies Structured Financial Solutions that a person has changed address, but has not given their consent to Australia Post to the release of their new details, Structured Financial Solutions will use the "Re-Connect" service provided by Australia Post to seek to obtain that new address. Prior to doing so, Structured Financial Solutions will consult with ASIC and Australia Post on the content of any correspondence to be sent to persons using the "Re-Connect" service. Australia Post's "Re-Connect" service is a service whereby Australia Post writes to relevant persons advising them that Structured Financial Solutions is trying to contact them, and asking for their consent to the release of their new address. When using the "Re-Connect" service, Structured Financial Solutions will request that Australia Post notify the person that the purpose of the proposed communication relates to "possible compensation payable to you arising from an Enforceable Undertaking made to the Australian Securities & Investments Commission". In the event that:
  - 3.1. The person consents to the release of their new address to Structured Financial Solutions, Structured Financial Solutions will send the item by ordinary pre-paid post to that different address.
  - 3.2. The person does not consent to the release of their new address to Structured Financial Solutions, Structured Financial Solutions is not required to send the item to that person.
4. If Australia Post's "Change of Address" database and Australia Post's "Re-Connect" service reveal no different addresses for those persons whose mail-out is returned, Structured Financial Solutions will carry out an internet search of the Telstra White Pages On-Line at the domain name [www.whitepages.com.au](http://www.whitepages.com.au). In the event that:
  - 4.1. An entry which includes an address is found and that entry appears on reasonable grounds to correspond with the person sought –Structured Financial Solutions must send the item by ordinary pre-paid post to that different address.

4.2. No entry which includes an address is found which appears on reasonable grounds to correspond with the person sought – Structured Financial Solutions is not required to send the item by ordinary pre-paid post to that different address.