



ENFORCEABLE UNDERTAKING

Australian Securities & Investments Commission Act 2001

Section 93AA

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

AMP Financial Planning Pty Limited (ACN 051 208 327) (AMPFP)

Level 24

AMP Sydney Cove Building

33 Alfred Street

SYDNEY NSW 2000

A. BACKGROUND

1. Introduction

- 1.1 ASIC is, pursuant to section 1 of the Australian Securities and Investments Commission Act 2001 ("ASIC Act"), charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 1.2 On 1 January 2004, AMPFP was granted an Australian Financial Services licence pursuant to Division 4 of Part 7.6 of the Corporations Act 2001 ("**Corporations Act**") to provide financial product advice pursuant to section 766B of the Corporations Act and to deal in financial products pursuant to section 766C of the Corporations Act, which remains current.
- 1.3 All of the issued share capital of AMPFP is owned by AMP Life Limited. All of the issued share capital of AMP Life Limited is owned by AMP Limited. All of the issued share capital of AMP Superannuation Limited is owned by AMP Life Limited. AMPFP, AMP Life Limited, AMP Superannuation Limited and AMP Limited are related parties pursuant to section 9 of the Corporations Act. AMP

Superannuation Limited and AMP Life Limited issue financial products distributed by AMPFP. AMP Superannuation Limited issues a superannuation product known as AMP Flexible Lifetime - Super.

- 1.4 Since about January 2004, AMPFP has operated a business ("**the Business**"), which includes the provision of financial services ("**the Financial Services**") within the meaning of Division 4 of Part 7.1 of Chapter 7 of the Corporations Act.
- 1.5 The Business is and was a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 1.6 Since about 1 January 2004, AMPFP has entered into authorised representative agreements ("**AR Agreements**") with approximately 1,700 persons and/or entities ("**AMPFP Planners**"). As at the date of this undertaking, it has approximately 1,300 AMPFP Planners.
- 1.7 The AMPFP Planners are and, at the times referred to in this undertaking, were:
 - 1.7.1 appointed as the authorised representatives of AMPFP, within the meaning of Division 5 of Part 7.6 of the Corporations Act;
 - 1.7.2 authorised to provide some or all of the Financial Services on behalf of AMPFP; and
 - 1.7.3 entitled to be paid remuneration by AMPFP in accordance with the terms set out in the AR Agreement and as set out in a document entitled AMP Agent's Remuneration Terms and Benefits, which was issued from time to time.
- 1.8 Under the terms of the AR Agreement, the AMPFP Planners are, and at the times referred to in the undertaking, were required ("**the Compliance Requirement**") to comply with, among other things:
 - 1.8.1 the terms set out in a document issued by AMPFP entitled "Professional

Standards Manual” which was and is updated from time to time;

- 1.8.2 the terms set out in written memoranda called 'Messages to Planners' or 'MTPs' issued by AMPFP to the AMPFP Planners from time to time;
 - 1.8.3 other directions given by AMPFP to the AMPFP Planners from time to time; and
 - 1.8.4 the Corporations Act and other statutory requirements.
- 1.9 AMPFP maintains a list known as the “AMPFP Approved Products and Services List” (the “**APSL**”), which identifies all financial products and services that have been researched and approved by AMPFP for use by AMPFP Planners in the provision of financial product advice and services. AMPFP Planners are only permitted by AMPFP to recommend or advise on products on the APSL, unless they obtain specific approval from AMPFP to advise on a product that is not on the APSL. In October 2005, the APSL contained the following superannuation and pension products:
- 1.9.1 Six AMP Superannuation products (Flexible Lifetime - Super, AMP SignatureSuper, AMP CustomSuper, AMP Eligible Rollover Fund, AMP Retirement Savings Account and SuperLeader);
 - 1.9.2 Two AMP Pension products (Flexible Lifetime – Term Pension and Flexible Lifetime – Allocated Pension); and
 - 1.9.3 Six non-AMP retail Superannuation products (ASGARD Business Super, PortfolioCare, Wealthview eWrap, BT Lifetime Super, CFS Firstchoice and ING Integra);
 - 1.9.4 Two non-AMP Pension products (PortfolioCare and Wealthview); and

- 1.9.5 Twelve industry superannuation products (ASSET, Australian Retirement Fund, Caresuper, CBUS, HESTA, HOSTPlus, REST, Statewide Super, SunSuper, Superannuation Trust of Australia, VicSuper and BusQ).
- 1.10 AMPFP added the twelve industry superannuation products to the APSL in November 2004 and from that time those products were on 'hold' status. AMPFP defined 'hold' status as follows: *"the adviser cannot recommend the client make a new lump sum contribution or increase a regular contribution. If the client wants a recommendation about a new contribution lump sum or savings plan, the adviser has to recommend an open product on the current APSL. In the case of industry super products, the client can remain in their existing fund and contribute additional funds to it but a planner cannot recommend a client establish a new industry fund account."*
- 1.11 The APSL is and was maintained by AMPFP Research (a business unit of AMPFP) which undertakes research and due diligence on existing products and services on the APSL. AMPFP Research makes recommendations to the AMPFP Product Review Committee. That committee approves recommendations of AMPFP Research with respect to additions, deletions and the overall review of the APSL.

2. ASIC's Surveillance and Analysis

- 2.1 From 1 October 2005 to 12 April 2006, ASIC conducted a surveillance of AMPFP under section 912E of the Corporations Act. On 12 April 2006, ASIC commenced an investigation under section 13 of the ASIC Act in relation to suspected contraventions of the ASIC Act and the Corporations Act.
- 2.2 During its surveillance, ASIC initially interviewed 20 AMPFP Planners, selected at random from a list provided by AMPFP. Following each interview, ASIC reviewed a number of client files where financial product advice had been given since 1 January 2005 and retained 200 files primarily relating to superannuation switching advice (10 files selected from each AMPFP Planner) for further review. ASIC then reviewed a further 100 files primarily relating to superannuation switching advice where financial product advice had been given since 1 January

2005 by 10 AMPFP Planners, designated "Platinum Planners" (10 files selected from each Platinum Planner). The Platinum Planners were chosen at random by ASIC from a list provided by AMPFP. Platinum Planners are designated as "Platinum" by AMPFP based on a number of criteria, including higher business and advisory skills coupled with higher revenue and compliance ratings.

2.3 ASIC also reviewed other material, including the amp.com.au website, AMPFP's Professional Standards Manual and template Statement of Advice ("SoA"), the Financial Services Guide ("FSG") authorised by AMPFP for use by AMPFP Planners and other AMP FSG's, the AMP Agent's Remuneration Terms and Benefits and relevant AMP Product Disclosure Statements ("PDS's").

2.4 As a result of its surveillance, ASIC identified issues of concern and formed views about superannuation switching advice provided by AMPFP Planners to their clients:

2.4.1 In ASIC's review of files relating to superannuation switching advice, ASIC formed the view that disclosure of a reasonable basis for advice was inadequate in approximately 45% of files reviewed.

2.4.2 ASIC also formed the view that SoAs provided to clients by AMPFP Planners were inadequate. In particular, where clients were advised to switch from one superannuation product to another, the SoAs did not identify or adequately disclose:

- (a) all components of the management expense ratio (MER), expressed in dollar amounts inclusive of the GST (where it applied) and any Performance Based Fees payable to the fund manager; and
- (b) the significant consequences of replacing the existing product with the recommended product, including the different value of ongoing costs between the existing product and the recommended AMP

product, worded and presented in a clear, concise and effective manner.

Particulars

The MER applicable to the relevant AMP Products comprised:

- (a) administration fees payable to the trustee, AMP Superannuation Pty Limited, a portion of which was paid to AMP Life Limited for administration purposes;
- (b) an investment management fee payable to the underlying investment fund manager; and
- (c) the trailing commission payable to the AMPFP Planner.

2.4.3 Between January 2005 and October 2005, ninety-three (93) percent of all new investment or superannuation business resulting from the advice of AMPFP Planners was invested in AMP platforms or products. This is not atypical of dealer groups.

2.5 ASIC formed the view that some of the practices and procedures implemented by AMPFP and its instructions to AMPFP Planners relating to the giving of advice on superannuation may have lead to the results referred to in paragraph 2.4. AMPFP provided AMPFP Planners with a template SoA and guidelines that reflected these practices and procedures.

2.5.1 AMPFP instructed its AMPFP Planners that they could not make any recommendations about a client's existing financial product if it was not on the APSL, unless a one-off product approval was given by AMPFP.

2.5.2 When the industry superannuation products were added to the APSL they were placed on 'hold' status, which meant AMPFP Planners could advise

clients who held such products but were limited in the advice they could give those clients.

2.5.3 AMPFP held the view (and instructed AMPFP Planners accordingly) that if a client held an existing superannuation product that was not on the APSL, the AMPFP Planner was none the less permitted to make recommendations to the client about other financial products on the APSL without giving advice to the client about the existing product, if this was agreed with the client.

2.5.4 The majority of AMPFP Planners are remunerated principally by commission, although planners were and are able to provide advice on a fee for service basis.

2.5.5 The net revenue AMPFP Planners would receive was determined, in part, by their place on the "Dealer Cut Grid". Compliance with the Professional Standards Manual also had an impact on the net revenue received by the AMPFP Planner, but not by as much as the AMPFP Planner's income stream.

2.6. ASIC does not suggest that commission-based remuneration is inappropriate or that all advice to switch from existing products to products issued by a related party of AMPFP was inappropriate. However, because of the presence of a number of potential conflicts of interest and the tendency for switches towards the AMP Flexible Lifetime - Super product, in ASIC's view, AMPFP's must have robust arrangements for managing conflicts of interest and its supervision of its representatives to ensure that advice given by AMPFP Planners is appropriate.

2.7 AMPFP conducts regular internal compliance audits and, at the time of ASIC's review, required AMPFP Planners to achieve a 70% or better compliance score. Based on the internal compliance audits conducted by AMPFP at that time, the average compliance score for AMPFP Planners was 82%. During the surveillance ASIC reviewed all of the audits conducted between 1 January 2005 and 24 October 2005 of those AMPFP Planners whose audits achieved a compliance

score of more than 70%. ASIC identified compliance matters which, in ASIC's view, raised serious issues. ASIC formed the view that the internal compliance guidelines at that time were not sufficiently robust to identify some failures to meet appropriate standards of advice.

- 2.8 ASIC also formed the view that statements on the amp.com.au website and in the FSG suggested that AMPFP Planners could consider a broader range of products than their policies permitted them to consider, including, in particular, a statement on the website that AMPFP Planners could advise in relation to Australia's eleven largest industry superannuation funds, when they were not permitted to give advice to clients to purchase those superannuation products.
- 2.9 In mid-April 2006, ASIC advised AMPFP of the preliminary results of its surveillance and from late April to mid May 2006, provided particulars of its concerns. During that period and since that time, AMPFP have undertaken a number of steps, either in response to those issues or arising out of their own assessment of their business and compliance practices, details of which are referred to in paragraph 6.1 of this undertaking.

3. ASIC's Concerns

- 3.1 Section 945A of the Corporations Act prohibits the giving of personal advice unless there is a reasonable basis for such advice. In order for there to be a reasonable basis for the giving of advice:
- (a) the person providing the advice must determine the relevant personal circumstances of the client;
 - (b) the person providing the advice must make reasonable enquiries in relation to those personal circumstances;
 - (c) having regard to the information obtained from the client, in relation to those personal circumstances, the person providing the advice must give

such consideration to, and conduct such investigation of, the subject matter of the advice as is reasonable in all the circumstances; and

- (d) the advice must be appropriate to the client, having regard to that consideration and investigation.

3.2 ASIC considers that when an adviser is recommending the replacement of one product with another (whether expressly or impliedly), the obligation under section 945A(1) to determine, inquire and consider the personal circumstances of the client and to give advice which is appropriate to that client, requires, in part, that an adviser determine, inquire and consider the client's existing product. In ASIC's view, if an AMPFP Planner gives only limited consideration to the client's existing product, then, ordinarily, that AMPFP Planner, has not complied with section 945A(1) and is precluded from giving advice.

3.3 Further, ASIC considers that statements regarding any limitation about the inquiries made in respect of the existing product, or prior disclosures about limitations of any advice, do not alleviate the need to comply with section 945A(1).

3.4 In ASIC's view, if the AMPFP Planner cannot give the matter the necessary consideration to ensure the advice is appropriate, then no advice should be given at all.

3.5 Further, in relation to the operation of section 947D of the Corporations Act, it is ASIC's view that if a client is given advice to cease contributing to an existing fund, and to start contributing to a new fund on the APSL, the client is being advised to dispose of or reduce his or her interest in the existing fund, and the additional requirements provided for in that section apply.

3.6 It appears to ASIC that AMPFP Planners may have contravened section 945A(1) of the Corporations Act, which requires the AMPFP Planner to have a reasonable basis for the advice given, and section 946A(1) of the Corporations Act, which requires the AMPFP Planner to give the client a SoA containing the information

set out in sections 947C and 947D of the Corporations Act. Section 947C requires a SoA to include certain information about the advice given, including information about the basis on which the advice was given, details about the providing entity and information about remuneration and other interests *"that might reasonably be expected to be or have been capable of influencing"* the advice. Section 947D requires additional information to be provided in a SoA when the advice recommends the replacement of one product with another, including information about charges a client may incur and *"any other significant consequences for the client taking the recommended action"*.

- 3.7 ASIC is also concerned that AMPFP may have contravened sections 945A(3) and 912A(1)(ca) of the Corporations Act in that it may not have taken reasonable steps to ensure that its authorised representatives comply with the obligations provided for in sections 945A(1), 946A(1), 947C and 947D of the Corporations Act.
- 3.8 ASIC is concerned that, since AMPFP Planners were limited to providing advice on products which were on the APSL, the statements on its website and in the FSG referred to in paragraph 2.8 may have been misleading and AMPFP may have contravened sections 12DA(1) and 12 DB(1)(e) of the ASIC Act.
- 3.9 ASIC is also concerned that AMPFP may have contravened section 912A(1)(aa) of the Corporations Act, in that it may not have adequate arrangements in place for the management of conflicts of interest.

4. AMPFP response

- 4.1 AMPFP states that at the time of the ASIC surveillance, it had, in good faith, taken a different view to ASIC on the requirements of section 945A(1) where an adviser was recommending the replacement of one product with another.
- 4.2 Based on the view taken by AMPFP of the requirements under section 945A(1), where a client's existing product was not on the APSL, AMPFP states that it instructed the AMPFP Planners to inform the client that:

- 4.2.1 the AMPFP Planner could not give any advice about the client's existing product because it was not on the APSL unless AMPFP gave approval to advise on that product;
 - 4.2.2 the AMPFP Planner could give advice to the client about any product on the APSL; and
 - 4.2.3 if the client understands and agrees that advice would be limited to the products on the APSL, the AMPFP Planner was permitted to give advice to the client about those products on the APSL but was not permitted to give any advice to the client about the client's existing product.
- 4.3 AMPFP also states that it instructed the AMPFP Planners that even if the client agreed that advice would be limited to the products on the APSL, then the AMPFP Planners:
- 4.3.1 should give consideration to, and provide information on, the costs of exit from the existing product, the costs of entry to the product on the APSL, the loss of benefits and any other significant consequences as required by section 947D of the Corporations Act; and
 - 4.3.2 must have a reasonable basis for any advice given.
- 4.4 AMPFP also states that it took the view, in good faith, that section 947D(2)(b) of the Corporations Act did not require the reproduction of the MER beyond that set out in the product disclosure statement that was given to the client with the SoA and instructed AMPFP Planners accordingly in the form of guidelines and a template SoA.

5. **Acknowledgement of Concerns**

- 5.1 While AMPFP does not agree with all aspects of ASIC's concerns, it acknowledges those concerns and states that it has already commenced remedial

action to address a number of the concerns. In addition, AMPFP has offered, and ASIC has agreed to accept, enforceable undertakings in the terms of paragraphs 7 to 10 below.

- 5.2 AMPFP acknowledges that, notwithstanding the instructions referred to in paragraph 4.3, a significant number of AMPFP Planners reviewed by ASIC had not complied with those instructions.
- 5.3 ASIC acknowledges that AMPFP co-operated with ASIC during its surveillance.
- 5.4 ASIC further acknowledges that AMPFP promptly reported to ASIC details of a potential breach in respect of disclosure of Planner Service Fees; an extra fee paid in addition to the standard ongoing commission agreed to be paid by the AMP client to AMPFP Planners if additional services are to be provided to the AMP client (referred to as a "dial-up" commission), which it has agreed to remediate using methodology agreed with ASIC. Taking into account AMPFP's response and ASIC's "Breach Reporting by AFS licensees. An ASIC Guide" reissued May 2006, ASIC has agreed to issue a notice under section 912C of the Corporations Act to deal with this issue as an alternative to any other potential actions.
- 5.5 ASIC has agreed to accept enforceable undertakings in the terms of paragraphs 7 to 10 below as an alternative to commencing proceedings in relation to the contraventions alleged in paragraph 3.
- 5.6 AMPFP acknowledges that should ASIC form the view that AMPFP has failed to comply with this undertaking, ASIC may take additional action including (without limitation) seeking court orders under Section 93AA of the ASIC Act requiring the AMPFP to comply with the terms of this undertaking.

6. Action taken by AMPFP

6.1 AMPFP states that the following action has already been taken, or is currently being undertaken, by AMPFP in relation to a number of the issues identified in this undertaking:

6.1.1 At the beginning of 2005 and before ASIC commenced its surveillance, AMPFP undertook a major revision of its internal compliance audit processes for AMPFP Planners (the “**Revised Compliance Audit Program**”). The transition to the Revised Compliance Audit Program commenced in March 2006. AMPFP will move to the full implementation of the Revised Compliance Audit Program in 2007. Details of the Revised Compliance Audit Program are set out in **Annexure A**.

6.1.2 AMPFP has deleted from the “AMP Financial Planning” pages of the amp.com.au website the reference to the industry funds that were on the APSL.

6.1.3 AMPFP has revised the FSG authorised for AMPFP Planners and on 30 June 2006 provided a copy to ASIC. That revised FSG will be made available to AMPFP Planners by 31 August 2006. The revisions made to that FSG are part of a broader and on-going process being undertaken by AMPFP to improve its disclosure documents generally and to make the disclosure documents clearer, concise and more effective.

6.1.4 AMPFP has revised the SoA template authorised for use by AMPFP Planners.

6.1.5 In November 2004 and before ASIC commenced its surveillance, AMPFP began a revision of its remuneration arrangements. On 11 July 2005 AMPFP introduced changes to the remuneration model to be phased

in from 1 January 2006 over a 3-year period. In AMPFP's view the changes to the remuneration model:

- (i) reduce the impact of sales volumes;
- (ii) reward quality advice;
- (iii) reward practice development and professional development standards; and
- (iv) encourage education & industry qualifications and investment & product knowledge.

B. UNDERTAKINGS

Under Section 93AA of the ASIC Act, AMP Financial Planning has offered, and ASIC has agreed to accept, the following undertakings:

7. Amendment of AMPFP Procedures and Disclosures

7.1 AMPFP will on or before 30 September 2006 revise the relevant sections of the AMPFP Professional Standards Manual to include clear guidance to AMPFP Planners on the following:

7.1.1 AMPFP Planners' obligations to clients when recommending the replacement of one product with another. "Replacement" in this paragraph and in succeeding paragraphs includes a recommendation, whether explicit or implicit, to cease or reduce contributions to an existing product and start contributing to another product.

7.1.2 That AMPFP Planners (when recommending the replacement of one product with another) must:

- (a) advise on the existing product and the new recommended product, including in the SoA a concise statement of the reasons why the

advice was appropriate, including the significant consequences for the client if the advice is acted on;

- (b) have proper regard to those consequences when considering the advice to be provided to the client; and
- (c) provide the disclosures required by Division 3 of Part 7.7 of the Corporations Act, in particular:
 - (i) all fees, commissions and management costs relevant to the advice, expressed in dollar amounts (where required by the Regulations) inclusive of any GST payable; and
 - (ii) information, as at the date of the advice, about any significant consequences when acting on the advice including, where relevant, a comparison of ongoing costs between the existing product and the recommended AMP product, worded and presented in a clear, concise and effective manner.

7.1.3 Where the client has an existing superannuation product that is not on the APSL, the AMPFP Planner cannot provide advice to recommend replacement of that superannuation product with another superannuation product that is on the APSL, unless and until the AMPFP Planner complies with the product approval and SoA vetting process implemented by AMPFP, as has been agreed with ASIC, set out in **Annexure B**, or as is subsequently agreed with ASIC.

7.1.4 If the existing superannuation is not on the APSL and AMPFP does not provide product approval and/or the AMPFP Planner does not submit the SoA to AMPFP for pre-vetting, where pre-vetting is applicable in accordance with the vetting process referred to in paragraph 7.1.3 above, then, the AMPFP Planner must inform the client that no product

replacement advice can be given on either the existing superannuation product or the new superannuation product.

7.1.5 Paragraphs 7.1.3 and 7.1.4 above are to be read subject to ASIC Policy Statement 175 and the ASIC guide entitled "Super switching advice: Questions and answers" dated June 2005, or any subsequent ASIC policy release dealing with the subject matter of those paragraphs.

7.2 AMPFP will on or before 31 December 2006 revise the template SoA to adequately reflect the revised guidance referred to in paragraph 7.1 and consumer test the revised SoA.

8. **Rectification Action**

8.1 AMPFP must on or before 31 October 2006 use its best endeavours to identify all clients who had existing superannuation products and who, at any time from 1 November 2004 to the date of this undertaking, received and acted on advice from an AMPFP Planner to either reduce or cease contributions to that product or exit that product and commence contributions to a new superannuation product.

8.2 For the purpose of paragraph 8.1 of this undertaking:

- (a) the existing superannuation products referred to in paragraph 8.1 are limited to an industry superannuation product; and
- (b) there is no need to write to a client who has consolidated their various superannuation products to start a retirement income stream product.

8.3 Subject to paragraph 8.4, AMPFP will on or before 21 November 2006 send a letter to all clients identified under paragraph 8.1 in a form to be agreed by ASIC or, if not agreed on or before 31 October 2006, then, in the form determined by ASIC, inviting those clients to have the advice they received in the circumstances identified under paragraph 8.1 reviewed by AMPFP.

- 8.4 If AMPFP does not hold a current address for a client, then AMPFP will seek to locate that client through the on-line White Pages search service or through the Australia Post address search service (as long as privacy and other laws permit those searches). If the client is located through either of those services and the client's identity is verified, then AMPFP must send a letter to that client as soon as practically possible.
- 8.5 If the client requests their advice to be reviewed AMPFP will, within 14 days of the request being received by AMPFP, refer the advice and the relevant client's files to a specifically designated team (the "**AMPFP Review Team**") for consideration of whether there was a reasonable basis for the advice provided.
- 8.6 If the client requests their advice to be reviewed more than 120 days after receiving the letter referred to in paragraph 8.3, AMPFP will not be required to refer the advice and the relevant client's files to the AMPFP Review Team for consideration. However, that client is still able to avail themselves of AMPFP's standard complaints resolution procedures.
- 8.7 The AMPFP Review Team must, within 45 days of receipt of the request from that client, decide whether or not there was a reasonable basis for the advice and inform that client in writing of the decision and give reasons for that decision.
- 8.8 If the AMPFP Review Team considers there was no reasonable basis for the advice given to the client, AMPFP must provide suitable redress by making the following offers to the client, offering at no cost to the client to arrange for the following to occur; namely to:
- 8.8.1 re-credit to the current superannuation product as permitted by law, an amount equal to:
- (a) any entry fees paid by the client when purchasing the current superannuation product;

- (b) the AMPFP Planner's fee and any commission associated with the advice given but only to the extent the fee and any commission is not re-credited under sub-paragraph (a) above; and
- 8.8.2 pay to the client an amount equal to any exit fees incurred by the client when leaving the original fund(s) the client held before implementing the AMPFP Planner's advice (the "**first fund(s)**"); and
- 8.8.3 transfer the client's current superannuation product balance (increased by any re-credits made under paragraph 8.8.1 above), back to the first fund(s) or, if not possible, to another superannuation product of the client's choice; and
- 8.8.4 ensure that the client's life insurance arrangements (if any) are not adversely affected when compared to their insurance in their first fund(s) if they could have stayed in their first fund(s) and continue that insurance.
- 8.9 If the AMPFP Review Team considers there was a reasonable basis for the advice given to the client but the client does not agree with the decision or if the client rejects the offer under paragraph 8.8, AMPFP must seek to resolve the matter, to the reasonable satisfaction of the client, under AMPFP's standard complaint resolution procedures, including the option for the client to apply to the Financial Industry Complaints Service for a review of the decision.
- 8.10 If the client accepts the offer under paragraph 8.8, then the client must accept the whole of that offer. It is not possible for the client to accept part only of that offer.
- 8.13 If a client accepts an offer made pursuant to paragraph 8.8, AMPFP will, within 21 days of being notified of the acceptance of the offer, send to the client all necessary forms that the client must complete and sign to give effect to the offer.
- 8.14 AMPFP must on or before 31 December 2006 use its best endeavours to identify all clients who had an existing retail superannuation fund and who at any time

from 1 July 2005 to the date of this undertaking, received and acted on advice from an AMPFP Planner to either reduce or cease contributions to that superannuation fund or exit that fund and commence contributions to a superannuation fund recommended by the AMPFP Planner, then the following provisions apply:

8.14.1 For the purposes of paragraph 8.14 the 'existing retail superannuation funds' do not include the products referred to in paragraph 8.2, the AMP retirement savings account or the AMP eligible rollover fund; and

8.14.2 AMPFP will on or before 28 February 2007 send a communication in a form to be agreed with ASIC or, if not agreed on or before 31 October 2006, in a form determined by ASIC, inviting those clients to have the advice they have received reviewed by AMPFP. If AMPFP does not hold a current address for a client, then the provisions of paragraph 8.4 shall apply.

8.14.2 The provisions of paragraphs 8.5 to 8.12 will apply.

9. **Training**

9.1 AMPFP must ensure that all relevant AMPFP employees, officers and authorised representatives are trained in the revised operations, practices and procedures referred to in paragraphs 6 and 7 of this undertaking. Training is to be commenced as soon as possible, no later than 28 February 2007, and is to be completed no later than 31 December 2007.

9.2 AMPFP is to continue to ensure that all AMPFP Planners who provide personal advice to retail clients:

9.2.1 complete training courses at an appropriate level that are or have been listed on the ASIC training register and are relevant to their functions and tasks;

9.2.2 are individually assessed as competent as part of the training program;
and

9.2.3 are provided with the remedial training in the event that they are found
not to understand his or her obligations.

9.3 AMPFP must continue to maintain a record of the assessments and training
undertaken.

10. Compliance Review by Independent Expert

10.1 Within 45 days of the date of this undertaking AMPFP must appoint a person
("the **Compliance Expert**").

10.2 The Compliance Expert and the terms of engagement must be approved by ASIC
before the Compliance Expert is engaged. The terms of engagement may only be
varied with the agreement of ASIC.

10.3 All remuneration and costs associated with the Compliance Expert shall be borne
by an AMP Group company.

10.4 The terms of engagement must ensure the Compliance Expert conducts a review
of:

10.4.1 The implementation and effectiveness of the actions and revised programs
formulated or implemented by AMPFP as referred to in paragraph 6.1
(the "**Revised Processes**"); and

10.4.2 the effectiveness of the implementation of the undertakings referred to in
paragraphs 7 to 9 inclusive),

and provides a written report to AMPFP and ASIC within six months after the
date of the undertaking ("the **Initial Report**").

10.5 The terms of engagement must ensure that the Initial Report includes:

10.5.1 An assessment of whether:

- (a) AMPFP is taking reasonable steps to ensure that the AMPFP Planners:
 - (i) comply with the requirements of Division 3 of Part 7.7 of the Corporations Act and in particular the requirements in section 945A to have reasonable basis for advice and the requirement in section 947D to provide additional information when recommending replacement of one product with another;
 - (ii) comply with the procedures for approvals and pre vetting of SoAs set out in paragraphs 7.1.3 and 7.1.4;
 - (iii) use the new FSG and SoA templates once introduced;
- (b) AMPFP's internal compliance audit team (Dealer Group Services) is correctly applying the requirements of sections 945A and 947D of the Corporations Act in conducting audits of AMPFP Planner files.

10.5.2 An assessment of whether AMPFP has in place adequate arrangements for the management of conflicts of interest that may arise in or in connection with the provision by the AMPFP planners of advice to clients in relation to superannuation products.

10.5.3 An assessment of AMPFP's compliance with the obligations set out in paragraph 8 of this undertaking.

10.6 If the Compliance Expert identifies deficiencies in respect of the review referred to in paragraphs 10.4 and 10.5, the terms of engagement must ensure the

Compliance Expert sets out in the Initial Report details of the deficiencies and recommendations on how to rectify the deficiencies.

- 10.7 AMPFP must consider the recommendations made by the Compliance Expert to rectify those deficiencies and then provide to ASIC a plan ("the **Remedial Action Plan**") setting out the action it proposes to take to rectify those deficiencies and specifying the time in which this action will be taken. AMPFP must provide this plan to ASIC within one month of the date that the Initial Report was received by ASIC.
- 10.8 AMPFP must implement the Remedial Action Plan within the time specified. If ASIC requests any reasonable modifications to the Remedial Action Plan, AMPFP must implement the Remedial Action Plan as modified.
- 10.9 Within six months of the Initial Report, AMPFP must engage a Compliance Expert to review the matters referred to in paragraphs 10.4 and 10.5 and the implementation and effectiveness of the Remedial Action Plan ("the **Second Report**"). The Compliance Expert may be the same expert as the expert retained to complete the Initial Report.
- 10.10 If the Compliance Expert identifies deficiencies in respect of the review referred to in paragraphs 10.4 and 10.5 and/or in respect of the implementation and effectiveness of the Remedial Action Plan, the terms of engagement must ensure the Compliance Expert sets out in the Second Report details of the deficiencies and recommendations on how to rectify the deficiencies.
- 10.11 If the Second Report identifies deficiencies, AMPFP must consider the recommendations made by the Compliance Expert to remedy those deficiencies and then provide to ASIC a plan ("the **Second Remedial Action Plan**") setting out the action it proposes to take to rectify those deficiencies and specifying the time in which this action will be taken. AMPFP must provide this plan to ASIC within one month of the date that the Second Report was received by ASIC.

- 10.12 AMPFP must implement the Second Remedial Action Plan within the time specified. If ASIC requests any reasonable modifications to the Second Remedial Action Plan, AMPFP must implement the Second Remedial Action Plan as modified.
- 10.13 Within one year of the Second Report, AMPFP must engage a Compliance Expert to review the matters referred to in paragraphs 10.4 and 10.5 and the implementation and effectiveness of the Second Remedial Action Plan ("the **Final Report**"). The Compliance Expert may be the same expert as the expert retained to complete the Initial and Second Reports.
- 10.14 If the Compliance Expert identifies deficiencies in respect of the review referred to in paragraphs 10.4 and 10.5 and/or in respect of the implementation and effectiveness of the Second Remedial Action Plan, the terms of engagement must ensure the Compliance Expert sets out in the Final Report details of the deficiencies and recommendations on how to rectify the deficiencies.
- 10.15 AMPFP must consider the recommendations made by the Compliance Expert to rectify those deficiencies and then provide to ASIC a plan ("the **Third Remedial Action Plan**") setting out the action it proposes to take to rectify those deficiencies and specifying the time in which this action will be taken. AMPFP must provide this plan to ASIC within one month of the date that the Final Report was received by ASIC.
- 10.16 AMPFP must implement the Third Remedial Action Plan within the time specified. If ASIC requests any reasonable modifications to the Remedial Action Plan, AMPFP must implement the Remedial Action Plan as modified. AMPFP will provide to ASIC a written report detailing the implementation of the Plan within 14 days of the final step in the Plan being completed.
- 10.17 AMPFP will ensure that the terms of engagement of the relevant Compliance Expert(s) will include a requirement that any reports required to be prepared by the Compliance Experts under the Enforceable Undertaking (the "Expert Reports") will:

10.17.1 set out the steps that the Compliance Expert has taken to fulfil his or her task, including but not limited to:

- (a) the personnel that have assisted the Compliance Expert and in what way;
- (b) the personnel that have been interviewed; and
- (c) the documents that have been reviewed;

10.17.2 set out any limitations or qualifications to the Expert Report;

10.17.3 list those documents or extracts of documents most relevant (in the view of the External Expert) in producing the Expert Report;

10.17.4 otherwise comply (to the extent applicable) with those paragraphs of the Federal Court of Australia Practice Direction entitled “Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia”, that fall under the sub-heading “The form of the expert evidence”;

10.17.5 set out any amendments that were made, by AMPFP, to the Compliance Program and the Compliance Documentation during the course of the External Expert’s review of the Compliance Program and Compliance Documentation, and the reasons for those amendments.

10.18 AMPFP must provide reasonable access and assistance and take all reasonable steps to allow the Compliance Expert to be able to fulfil the terms of their appointment.

10.19 The address for providing ASIC with any document, including but not limited to any plan or report, which this undertaking requires to be provided to ASIC is:

Director Compliance
Australian Securities & Investments Commission

C. ACKNOWLEDGMENTS

11.1 AMPFP acknowledges that ASIC:

11.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;

11.1.2 may from time to time publicly refer to this undertaking; and

11.1.3 will make this undertaking available for public inspection.

11.2 Further, AMPFP acknowledges that:

11.2.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue other remedies in relation to any contravention arising from future conduct; and

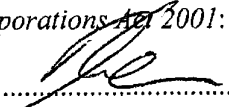
11.2.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.


11.3 ASIC acknowledges that nothing in this undertaking constitutes an admission by AMPFP.

11.4 AMPFP acknowledges that this undertaking has no operative force until accepted by ASIC.

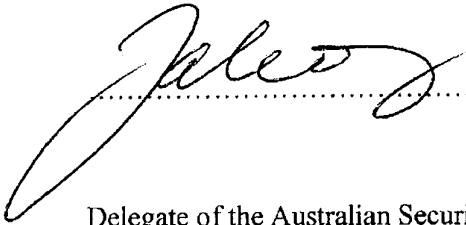
11.5 ASIC and AMPFP acknowledge that this undertaking ends on the later of delivery the Final Report under paragraph 10.13 or completion of the requirements under paragraph 10.16.

SIGNED by)
 AMP FINANCIAL PLANNING PTY.)
 LIMITED)
 in accordance with section 127 of the)
 Corporations Act 2001:)


 Director


 Director / Secretary

*Accepted by the Australian Securities & Investments Commission under the ASIC Act
 section 93AA by its duly authorised delegate:*



Delegate of the Australian Securities & Investments Commission

Dated 27th July 2008.

ANNEXURE A**Revised Compliance Audit Program**

- (a) The main features of the Revised Compliance Audit Program are:
- (i) supervising and monitoring AMPFP Planners more effectively & efficiently by introducing automated reporting enhancements that will result in better quality and consistency of audits;
 - (ii) redefining the compliance checklist or scoresheet for AMPFP Planners by introducing more objective measures, relative weightings and a demerit point based scoring system that focuses more on the matters referred to under paragraph (b) below;
 - (iii) having greater focus on the reporting of compliance breaches by AMPFP Planners; and
 - (iv) having that a more effective remediation process to deal with any AMPFP Planner non-compliance.
- (b) The compliance checklist or scoresheet for AMPFP Planners will, among other things, focus on the following:
- (i) having reasonable basis for advice as required by section 945A of the Corporations Act;
 - (ii) complying with the disclosure requirements in section 947D of the Corporations Act;
 - (iii) meeting regulatory requirements and the requirements of AMPFP;
 - (iv) using the revised FSG and SoA templates referred to in paragraphs 6.1.3 and 6.1.4; and

- (v) complying with the new procedures for one off product approvals and pre vetting of SoAs as outlined in Annexure B.

ANNEXURE B**Amended instructions - replacement product advice****SUPERANNUATION PRODUCT IS NOT ON THE APSL**

This section and these instructions only apply if the superannuation product to be replaced is not on the APSL.

APPROVAL PROCESS

Where a client's existing superannuation product is not on AMPFP's APSL, an AMPFP Planner can only provide product replacement advice to the client where the planner has obtained approval from AMPFP to advise on the client's existing superannuation product.

VETTING STATUS & PROCESS

When recommending the replacement of one superannuation product with another ('replacement product advice'), the vetting status of AMPFP Planners and the vetting process are as follows:

- (a) From 30 September 2006, all AMPFP Planners will be designated by AMPFP initially as having pre vet status. As a result, all AMPFP Planners must have any SoA containing the replacement product advice vetted by AMPFP before they give the SoA to the client.
- (b) AMPFP will move an AMPFP Planner to post vet status for replacement product advice after they have presented a reasonable number of SoAs for pre vetting and those SoAs have been approved by AMPFP without any significant amendments to the 'reasonable basis for advice' and/or the section 947D disclosures.
- (c) AMPFP Planners with post vet status, who have obtained approval to advise on the client's existing superannuation product, can then give a client a SoA containing replacement product advice without having that SoA pre vetted by AMPFP:

COMPLIANCE AUDITS

- (a) All AMPFP Planners, whether having pre vet or post vet status, will continue to be subject to regular supervision and monitoring including compliance audits by AMPFP as currently applies.
- (b) If a subsequent compliance audit of an AMPFP Planner with post vet status reveals a lack of understanding about the need for a 'reasonable basis for advice' and/or the section 947D disclosures, then, that AMPFP Planner will be placed back on pre vet status for replacement product advice. AMPFP will exercise a 'zero tolerance' approach.