



## ENFORCEABLE UNDERTAKING

The commitments in this enforceable undertaking are offered to the

Australian Securities and Investments Commission (ASIC)

by

Australia and New Zealand Banking Group Limited ACN 005 357 522

and


ANZ Nominees Limited ACN 005 357 568

(Companies)

### Definitions

1. The following definitions are used:

- a. "ANZ" means Australia and New Zealand Banking Group Limited ACN 005 357 522;
- b. "ANZ Custodian Services" means the business unit of ANZ that provides custodial services, settlements and trade processing, asset services, equity finance, securities lending and investment accounting services;
- c. "ANZ Nominees" means ANZ Nominees Limited ACN 005 357 568;
- d. "ANZ Remediation Plan" means the draft ANZ Remediation Plan as amended in accordance with paragraph 43;
- e. "ANZ Securities Lending Review" means the document titled ANZ Securities Lending Review dated 22 August 2008 regarding the review of ANZ's involvement in securities lending and equity financing;
- f. "APRA" means the Australian Prudential Regulatory Authority;
- g. "ASIC" means the Australian Securities and Investments Commission;
- h. "ASIC Act" means the *Australian Securities and Investments Commission Act 2001* (Cth);
- i. "ASIC's Concerns" means the concerns referred to in paragraphs 10 to 19;

- j. "Assess" means evaluate the ability or quality of the thing or person;
  - k. "Assessment" is the process of evaluating the ability or quality of the thing or person;
  - l. "ASTC" means the ASX Settlement and Transfer Corporation Pty Ltd;
  - m. "ASX" means the Australian Securities Exchange Ltd;
  - n. "books" has the meaning in section 5(1) of the ASIC Act;
  - o. "Claim Form" means a form allowing a person to provide information to the Companies and claim compensation from the Companies;
  - p. "Client" means a client of ANZ Custodian Services;
  - q. "Commencement Date" means 1 April 2009;
  - r. "Compensation Report" means a report as referred to in paragraph 66;
  - s. "Corporations Act" means the *Corporations Act 2001* (Cth);
  - t. "date of this enforceable undertaking" means the date on which it is accepted by ASIC;
  - u. "document" has the meaning in section 25 of the *Acts Interpretation Act 1901* (Cth);
  - v. "draft ANZ Remediation Plan" means the report referred to in paragraph 41;
  - w. "Expert Report" means any expert report required to be prepared pursuant to this enforceable undertaking;
  - x. "Final Expert Report" means the report referred to in paragraph 55.3;
  - y. "Final Response" means the plan referred to in paragraph 56 or as modified in accordance with paragraph 57;
  - z. "First Expert Report" means the report referred to in paragraph 45.3;
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- aa. "First Response" means the plan referred to in paragraph 46 or as modified in accordance with paragraph 47;
- bb. "Further Compensation Report" means a report as referred to in paragraph 67;
- cc. "Independent Expert" means an expert required to be appointed pursuant to this enforceable undertaking as referred to in paragraph 34;
- dd. "limited relief instrument" means the ASIC Declaration applying to ANZ and each of its wholly owned subsidiaries dated 3 October 2000;
- ee. "Remediation Assessment" means the report referred to in paragraph 42.2;
- ff. "Response" means the First Response, Second Response or Final Response;
- gg. "Second Expert Report" means the report referred to in paragraph 49.3;
- hh. "Second Response" means the plan referred to in paragraph 50 or as modified in accordance with paragraph 51.

#### **Background**

- 2. Under section 1 of the ASIC Act, ASIC is 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.
- 3. Pursuant to section 13 of the ASIC Act, ASIC has been investigating the management of the affairs of ANZ, ANZ Nominees and the ANZ Custodian Services business operated by those entities in the period from 1 January 2007 to the date of this enforceable undertaking. ASIC's investigation arose out of, among other things, information that emerged in the context of its investigations into the collapse of Opes Prime Stockbroking Limited.

#### **ANZ and ANZ Nominees**

- 4. ANZ is the ultimate holding company of ANZ Nominees. ANZ Nominees has no employees. All staff are employed by ANZ.

5. ANZ holds Australian Financial Services Licence (AFSL) number 234527 and is licensed to provide advice in relation to, deal in, make a market for and provide, a custodial or depository service for a broad range of financial products. ANZ Nominees is an authorised representative of ANZ under the AFSL. ANZ Nominees' authorisation is restricted to dealing in financial products and providing a custodial or depository service. ANZ Nominees holds legal and / or beneficial title to assets, such as securities, acquired by, or deposited with, ANZ in the course of its business.

#### ANZ Custodian Services

6. ANZ and ANZ Nominees are involved in the operation of a business unit within 'Transaction Banking' (formerly known as 'Working Capital' which is within a broader business unit known as 'Institutional') of ANZ, known as 'ANZ Custodian Services'.
7. ANZ Custodian Services provides the following services:
  - 7.1 Custodial Services – the holding of assets as bare trustee on behalf of ANZ's clients and entities within the ANZ group;
  - 7.2 Settlements and Trade Processing – the facilitation of trade instructions and settlements for domestic, global and managed fund clients;
  - 7.3 Asset Services – the facilitation of corporate actions, instruction handling, entitlement posting, tax processing, reconciliation and proxy voting services;
  - 7.4 Standard Securities Lending – loan of securities to institutional borrowers, collateralised by cash or securities. The collateral is usually more than the value of the securities lent. ANZ acquires the securities lent to institutional borrowers from certain of its custody clients pursuant to Australian Master Securities Lending Agreements entered into between ANZ and those clients;
  - 7.5 Equity Finance – functionally similar to Standard Securities Lending, involving the provision of collateral to clients under a securities lending

facility, the extent of which is determined by reference to the value of listed securities transferred by the client to ANZ and a loan to valuation ratio. The collateral is usually less than the value of the securities borrowed, where those securities are borrowed by ANZ. ANZ has advised ASIC that Equity Finance has been wound down and ANZ Custodian Services ceased to offer this product in July 2008;

7.6 Investment Accounting – tailored portfolio/investment administration services that encompass reporting, administration and accounting functions.

8. ANZ provides custody services to a range of clients, including managed investment schemes and other investment managers, superannuation funds, financial institutions, private clients and other business units operated by other parts of ANZ.

9. The provision of custodian services carries inherent risks principally as a result of the extremely large volume of transactions involved in conducting such a business. Transaction risk and compliance risk are two of the most prominent risks faced by a custody business:

9.1 Transaction risk includes the risk of loss arising from fraud, error, the inability to deliver products or services and the inability to properly manage information. In a custody business, transaction risk is most evident in corporate actions, settlement, foreign exchange and operating account processing. Transaction risk can be controlled by efficient identification of risks, strong policies and procedures, a strong control environment, efficient use of technology and meaningful and accurate reporting to management;

9.2 Compliance risk is the risk of loss arising from non-compliance with the custodian's legal obligations, internal policies or procedures and contractual obligations to its clients. Non-standard products and services increase compliance risk. Compliance risk is controlled by efficient monitoring of the custodian's legal and contractual obligations and the

efficient detection, reporting and rectification of any contraventions of internal procedure, policy and the law.

#### ASIC's Concerns

10. In the course of the investigation referred to in paragraph 3 ASIC has identified a number of areas of concern within ANZ Custodian Services as set out in paragraphs 11 to 19 that relate to:

- 10.1 the performance of reconciliations;
- 10.2 a breakdown in proper processes;
- 10.3 resourcing;
- 10.4 risk management;
- 10.5 responses to beneficial tracing notices,
- 10.6 prohibited acquisitions and substantial holdings notifications;
- 10.7 significant breach reporting; and
- 10.8 compliance culture.

#### Reconciliations

11. Deficiencies existed in ANZ Custodian Services' reconciliation processes, including:

- 11.1 Reconciliation of accounts relating to ANZ Custodian Services' securities lending operations were not conducted:
  - a. with adequate regularity; or
  - b. to the individual Client level, such thatreconciliation errors were not identified, investigated and rectified in a timely manner;

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- 11.2 Records in respect of reconciliation investigations and rectification were not maintained;
- 11.3 Lack of separation of the staff responsible for conducting reconciliations from those that conducted the day to day transactions to which the reconciliations related;
- 11.4 Lack of segregated monitoring and supervision of reconciliation staff and processes;
- 11.5 High levels of manual activity were required in the reconciliation process increasing the likelihood of errors and manipulation; and
- 11.6 Reconciliation procedures were not fully documented.

Breakdown in proper processes

- 12. The following deficiencies existed in ANZ Custodian Services' general processes:
  - 12.1 Lack of documentation or understanding by relevant staff of end to end and Client account administration processes, including, in some instances, those relating to the recording of Clients' instructions, the use of Client assets, compliance with Client contractual obligations and corporate actions;
  - 12.2 Failure to pay rebates in respect of two Client accounts in accordance with contractual obligations;
  - 12.3 Lack of formal processes to determine whether new Clients were retail or wholesale;
  - 12.4 Inadequate segregation of duties between front office and back office staff with respect to ANZ Custodian Services' securities lending operations;
  - 12.5 Inadequate monitoring and supervision of some staff with respect to payment discretions and acceptance of new Clients;

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- 12.6 Inadequate processes for identifying, monitoring and resolving potential conflicts of interest between ANZ employees and Clients, in the course of securities lending.
- 12.7 Inadequate processes to ensure that trades settled on time and failed trades were properly investigated to determine the underlying cause and to prevent recurrence. This was most obvious in relation to the 'Opes Prime sell-down'; and
- 12.8 Lack of adequate quality assurance processes.

Inadequate resources

- 13. ANZ Custodian Services' human and technological resources were not optimal having regard to the nature and complexity of the particular business it conducted. In particular:
  - 13.1 The systems utilised in connection with ANZ Custodian Services' securities lending operations did not have an appropriate degree of automation or integration;
  - 13.2 An insufficient number of appropriate staff were dedicated to quality assurance and reconciliations; and
  - 13.3 Some functions and processes were susceptible to key man risk.

Inadequate risk management

- 14. ANZ Custodian Services did not implement appropriate risk management policies and systems to manage ANZ's potential reputational and financial exposure in connection with ANZ Custodian Services' operations, as identified in the ANZ Securities Lending Review, including:
  - 14.1 Lack of a proper control environment;
  - 14.2 Poor accountability;
  - 14.3 Failure to identify and act on warning signs;



- 14.4 Failure to report relevant issues to the Chief Executive Officer and the Board of ANZ.

Responses to beneficial tracing notices

15. The Companies did not comply with their obligations under section 672B of the Corporations Act in that:

15.1 Delays were experienced in responding to notices in April and May 2008 (recognising that as at 24 April 2008 ANZ Custodian Services was in receipt of 252 notices that were not responded to within two business days, and of those over 100 had not been responded to in over 10 days); and

15.2 Of the 966 responses issued between 3 March 2008 and 22 May 2008, a large proportion contained inaccurate data as a result of issues arising from the introduction of a new IT system. These inaccurate responses may have mislead recipients of the response.

Prohibited acquisitions and substantial holdings notifications

16. Between 2001 and 12 May 2008 ANZ did not account for relevant interests in securities acquired as a result of transactions entered into in the course of its securities lending business. ASIC is of the view that the limited relief instrument did not operate to disregard relevant interests in securities acquired by ANZ or its subsidiaries pursuant to their securities lending operations. If ASIC's view was correct (which ANZ does not concede) ANZ would:

16.1 have acquired relevant interests in issued voting shares in a number of companies such that ANZ had more than 20% of the voting power in those companies; and/or

16.2 not have made relevant notifications, as required, when it began or ceased to have a substantial holding, or there was a movement of at least 1% in its holding, in companies whose securities it acquired in the course of its securities lending business. The omission to make such notifications may have mislead the public.

Significant breach reporting

17. ASIC considers that ANZ may have failed to report significant breaches of its obligations under section 912A of the Corporations Act and/or the financial services laws to ASIC in respect of ANZ Custodian Services in accordance with section 912D of the Corporations Act.
18. ASIC further considers that ANZ did not have in place adequate procedures for determining whether a breach or likely breach of ANZ's obligations in respect of ANZ Custodian Services was significant. ANZ also did not have in place adequate procedures to provide ASIC with written reports within 10 business days of becoming aware of a breach or likely breach in respect of ANZ Custodian Services.

Poor compliance culture

19. ASIC considers that ANZ Custodian Services demonstrated a poor compliance culture. In particular:
  - 19.1 ANZ Custodian Services did not take adequate steps to remedy issues identified in a timely manner;
  - 19.2 management within ANZ Custodian Services dismissed or explained away issues and failed to escalate them as necessary;
  - 19.3 management of ANZ Custodian Services did not place sufficient focus on adverse internal audit ratings and did not take sufficient, timely and appropriate measures to remedy the underlying issues that were the cause of those adverse ratings;
  - 19.4 progress of steps taken to remedy deficiencies were initially slow with lack of sufficiently skilled resources and the existence of competing priorities consistently stated as reasons for the slow progress.
20. ASIC acknowledges that in early 2008, the Companies commenced a remediation program to address the problems identified within ANZ Custodian Services. External consultants have been engaged to assist ANZ Custodian Services with

the structure and implementation of the remediation program. While the Companies consider that the remediation program has been substantially implemented, and that many of the deficiencies referred to in this enforceable undertaking are now of an historical nature, ASIC and the Companies consider that it is appropriate for the Independent Expert to assess the degree to which the remediation program has been satisfactorily implemented, in accordance with the procedures described in paragraphs 42 to 67.

#### **Acknowledgments by the Companies of ASIC's Concerns**

21. The Companies acknowledge ASIC's Concerns and have offered this enforceable undertaking in the terms outlined below.
22. The Companies acknowledge that deficiencies existed since at least October 2007 in ANZ Custodian Services' operations as outlined in ASIC's Concerns in respect of reconciliations, proper processes, resources, risk management, responses to beneficial tracing notices and compliance culture.
23. The Companies acknowledge that, in aggregate, the deficiencies referred to in paragraph 22 may have resulted in the Companies' failing to satisfy the following obligations so far as they relate to the relevant aspects of ANZ Custodian Services' business:
  - 23.1 section 912A(1)(a) -- the obligation to do all things necessary to ensure that financial services are provided efficiently, honestly and fairly;
  - 23.2 section 912A(1)(aa) -- the obligation to have in place adequate arrangements for the management of conflicts of interest;
  - 23.3 section 912A(1)(b) -- the obligation to comply with the conditions on the licence, namely the requirement to maintain proper records in relation to the financial products held in the course of providing custodial services;
  - 23.4 section 912A(1)(c) -- the obligation to comply with the financial services laws;

- 23.5 section 912A(1)(ca) – the obligation to take reasonable steps to ensure that ANZ's authorised representatives comply with the financial services laws;
  - 23.6 section 912A(1)(e) – the obligation to maintain the competence to provide the financial services being provided;
  - 23.7 section 912A(1)(f) – the obligation to ensure that representatives are adequately trained and are competent to provide the financial services being provided; and
  - 23.8 section 672B – the obligation to provide accurate information in response to a beneficial tracing notice within two business days after receiving the notice.
24. The Companies do not concede that the deficiencies referred to in paragraph 22, whether separately or in aggregate, impair the title of ANZ or its related bodies corporate to securities acquired by them pursuant to their Standard Securities Lending or Equity Finance operations.
25. The Companies do not concede that ASIC's Concerns in relation to prohibited acquisitions and substantial holding notifications, significant breach reporting or concerns relating to the use of clients funds or the maintenance of proper books and records have given rise to a contravention of any law or obligation by the Companies, including:
- 25.1 Sections 606(1) and 606(2) of the Corporations Act – prohibition on certain acquisitions of relevant interests in companies;
  - 25.2 Sections 671B(1)(a) and 671B(1)(b) Corporations Act – requirement to provide information about substantial holdings;
  - 25.3 Section 912D of the Corporations Act – the requirement to provide ASIC with a written report within 10 business days of becoming aware of a breach or likely significant breach of statutory obligations or the financial services laws;



- 25.4 Sections 981C, 984B, 988A and 988E of the Corporations Act – various obligations in relation to dealing with Client's money and property and the keeping of financial records.

Further, the Companies do not concede that any other of ASIC's Concerns have given rise to a contravention of the provisions referred to in paragraphs 25.1 to 25.4.

26. In respect of ASIC's Concerns in relation to ANZ Custodian Services' human and technological resourcing, risk management and compliance culture, ANZ acknowledges that it is working with APRA to resolve, amongst other things, these concerns.

#### Undertakings

27. Under section 93AA of the ASIC Act, the Companies have offered, and ASIC has agreed to accept as an alternative to commencing civil proceedings or pursuing administrative action, undertakings as set out in paragraphs 28 to 77 inclusive.
28. The Companies undertake that they will pay the costs of their compliance with this enforceable undertaking including the remuneration and costs associated with the engagement of any independent expert.
29. The Companies undertake that they will not seek reimbursement of, contribution towards or otherwise to directly or indirectly pass on their costs of compliance with this enforceable undertaking or any proportion of those costs to clients of the ANZ business unit known as Institutional, which includes ANZ Custodian Services.
30. The Companies will, within a reasonable period of time after receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing the Companies' compliance with the terms of this enforceable undertaking. For the avoidance of doubt, the Companies are not required to provide ASIC with documents or information that is the subject of legal professional privilege.

31. The Companies undertake that they will pay within 14 days of the date of the enforceable undertaking the costs of ASIC's investigation referred to in paragraph 3 fixed in the amount of \$50,000.00.

**Acknowledgements - Operation of Enforceable Undertaking**


32. The Companies acknowledge that:

- 32.1 This enforceable undertaking has no operative force until accepted by ASIC, and the Companies and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC;
- 32.2 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance, pursue a criminal prosecution or seek a pecuniary civil order in relation to:
- a. Fraud, misappropriation or misuse of money by the Companies or any person or entity associated with the Companies, whether or not based on information currently in its possession or derived from such information;
  - b. Any contravention not the subject of ASIC's Concerns; or
  - c. Arising from future conduct occurring after the date of this enforceable undertaking (including any matters disclosed to ASIC by the Companies or any independent expert in the course of compliance with this enforceable undertaking) whether or not the future conduct arises from the conduct described in ASIC's Concerns;
  - d. Any person, other than the Companies and their related bodies corporate or the officers and employees thereof, in respect of any matter, whether or not arising from future conduct or relating to matters or contraventions the subject of ASIC's Concerns;



- 32.3 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to intervene in or become a party to any proceeding in relation to the interpretation of the limited relief instrument or the Corporations Act.
- 32.4 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 ASIC's Concerns or arising from future conduct;
- 32.5 ASIC may issue a media release on execution of this enforceable undertaking referring to its terms and to ASIC's Concerns that led to its execution;
- 32.6 ASIC may from time to time publicly refer to this enforceable undertaking; and
- 32.7 ASIC will make this enforceable undertaking available for public inspection.
33. By accepting this enforceable undertaking ASIC concludes the investigation referred to in paragraph 3 giving rise to ASIC's Concerns and, subject to paragraph 32.2 and compliance with this enforceable undertaking, ASIC will not take any other action against the Companies (or their past or present officers) or any related entity (or their past or present officers) in relation to matters the subject of ASIC's Concerns.

#### Independent Expert

34. Where the appointment of an independent expert is required pursuant to any paragraph of this enforceable undertaking the Companies must appoint a person who is independent of the Companies and its officers and has the necessary expertise, experience and operational capacity to complete the terms of engagement (**Independent Expert**).
35. The Companies must:
- 35.1 Engage the Independent Expert to perform the tasks necessary to fulfil the obligations imposed by this enforceable undertaking;
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- 35.2 Permit the Independent Expert, subject to any claim of legal professional privilege, and to the extent that is reasonable having regard to the requirements of this enforceable undertaking, to have access to their books, to interview any past or present employee and to consult with ASIC and disclose to ASIC any information obtained by the Independent Expert in the course of carrying out their assessments;
  - 35.3 Give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with the reports required to be prepared by the Independent Expert under this enforceable undertaking;
  - 35.4 Otherwise reasonably assist the Independent Expert in conducting the assessments and producing Expert Reports.
36. The Companies will ensure that the terms of engagement of the relevant Independent Expert will include a requirement that the Expert Reports will:
- 36.1 Set out the steps that the Independent Expert has taken to fulfil their task, including but not limited to:
    - a. The people that have assisted the Independent Expert and in what way;
    - b. The personnel that have been interviewed; and
    - c. The documents that have been assessed;
  - 36.2 Set out any limitations or qualifications to the Expert Report;
  - 36.3 List those documents or extracts of documents most relevant (in the view of the Independent Expert) in producing the Expert Report;
  - 36.4 Otherwise comply (to the extent applicable) with those paragraphs of the Federal Court of Australia Practice Direction 'Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia', that fall under the sub-heading 'The form of the expert evidence' (see Annexure A);



37. Paragraphs 34 to 36 apply to every appointment of an Independent Expert by the Companies required pursuant to this enforceable undertaking.
38. The Independent Expert and the Independent Expert's terms of engagement must be approved in writing by ASIC before the Independent Expert is engaged. The Companies must advise ASIC of the expertise and prior association of the proposed Independent Expert with the Companies and its related bodies corporate and officers at the time approval is sought from ASIC. ASIC must be given the draft terms of engagement by no later than 7 days from the Commencement Date.
39. The Independent Expert must be engaged within 2 weeks of the Commencement Date.
40. The Companies must seek written approval from ASIC to vary the terms of engagement of the Independent Expert once those terms of engagement are approved by ASIC in accordance with paragraph 38.

#### Remediation Plan

41. Within 2 weeks of the Commencement Date the Companies must submit a plan to ASIC and the Independent Expert (**draft ANZ Remediation Plan**) incorporating each of the matters identified in sub-paragraphs 41.1, 41.2 and 41.3 below. For the avoidance of doubt, the draft ANZ Remediation Plan will include matters that the Companies consider have already been addressed as part of the remediation program referred to in paragraph 20, in order to enable the Independent Expert to independently assess whether those matters have been satisfactorily addressed.

41.1 For each of the issues identified in paragraph 41.2 and 41.3 below, the draft ANZ Remediation Plan must provide details of:

- a. Whether or not action has been taken to remediate the issue;
- b. If not, the action proposed to be taken and timeframes for that action;
- c. If so, a description of the action taken to date and the progress;

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- d. Whether or not any procedure, process or system implemented has been validated and tested for effectiveness and if so the organisation or team that conducted the validation and testing.
- 41.2 The draft ANZ Remediation Plan must include a description of each of the issues requiring remediation (or which has required remediation) as agreed with ASIC.
- 41.3 The draft ANZ Remediation Plan must include the following forms of remediation for ANZ Custodian Services that have or will be taken:

Reconciliations

- a. All outstanding uncleared items within the ANZ Custodian Services' suspense or holding accounts as at the Commencement Date (including but not limited to cash, stock, tax credits and rebates) must be reconciled within 4 months of the Commencement Date;
- b. Such reconciliations to be cleared appropriately and in accordance with relevant accounting standards;
- c. An audit trail be clearly visible to justify the appropriateness of cleared items within the ANZ Custodian Services' suspense or holding accounts since 1 January 2008;
- d. An explanation as to the reason (including considerations of materiality) for any unreconciled item referred to above as at 4 months of the Commencement Date;
- e. A new procedure for proper reconciliations is implemented;
- f. Training of all relevant staff in proper reconciliation procedures is conducted within 2 months of the Commencement Date;
- g. A process is implemented for identifying all Clients adversely affected by reconciliation issues in relation to the items referred to above and where appropriate for Clients to be notified and compensated in accordance with the procedure outlined in paragraphs 60 to 67;


- h. Where reconciliation items cannot be validly cleared, a process be implemented for:
  - i. Client moneys and/or assets to be held in a specific purpose trust account; and
  - ii. those moneys and/or assets to be dealt with as appropriate (including, where feasible, by notifying current or former Clients in accordance with Annexure B that they have an entitlement or interest in the money or asset and providing a mechanism for dealing with unclaimed money or assets);

Breakdown in processes (such as supervision and segregation of staff, Client account administration and failed trades)

- i. Satisfactory end to end processes and Client administration processes (including recording of Clients' instructions, use of Client assets, compliance with Client contractual obligations and corporate actions) to be implemented;
- j. ANZ must, to the extent considered reasonable by the Independent Expert, implement a process to identify instances in which a Client has been adversely affected by any failures in respect of Client account administration processes (including recording of Client's instructions, use of Client assets contrary to instructions, compliance with Client contractual obligations and corporate actions) occurring on or after 1 January 2007. In determining what is reasonable in this respect, the Independent Expert must have regard to the likelihood of a Client having been materially adversely affected by such failures (having regard to the status of reconciliations referred to in paragraphs 41.3a to 41.3h above), the internal and external costs to ANZ in identifying such failures and all other relevant matters. ANZ Custodian Services must, where appropriate, notify (including making all relevant disclosure) and compensate relevant Clients in accordance with the procedure outlined in paragraphs 60 to 67;

- k. The employee code of conduct, ethics and conflict of interest policies within ANZ Custodian Services are satisfactory and training conducted for all current and new employees is up to date;
- l. Any retail Clients within ANZ Custodian Services are identified and adequate processes are implemented for identifying new Clients as retail Clients where applicable;
- m. A review of all securities lending Client rebate accounts as at the Commencement Date and where appropriate for Clients to be notified and compensated in accordance with the procedure outlined in paragraphs 60 to 67;
- n. Satisfactory procedures are implemented to limit the incidents of failed trades;
- o. Satisfactory procedures are implemented for the detection, investigation and remediation of failed trades, such remediation to include the payment of compensation to Clients where appropriate;

Disclosure of relevant interests

- p. There is current compliance with the Companies' obligations regarding prohibited acquisitions and substantial holding notifications on the basis that the limited relief instrument does not apply to relevant interests acquired by ANZ pursuant to its securities lending operations;
  - q. Any instances of non-compliance with disclosure of relevant interests obligations, on the basis that the limited relief instrument does not apply to relevant interests acquired by ANZ pursuant to its securities lending operations, occurring on or after 12 May 2008, have been appropriately remedied;
  - r. A process is implemented for addressing any breaches, occurring after 1 June 2008, of obligations relating to substantial holdings, determined on the basis that the limited relief instrument does not apply to relevant interests acquired by ANZ pursuant to its securities lending operations, that requires:
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- i. immediate compliance with the Companies' obligations under the Corporations Act upon the Companies becoming aware of any breach, including the provision of required information in the appropriate form if there had been a failure to do so and, where appropriate, the provision of updated and accurate information;
  - ii. nomination of a specified contact at the Companies with appropriate skills and seniority, to receive, assess and escalate as necessary any complaints received as a result of any breach of an obligation relating to substantial holdings;
  - iii. in the period from the Commencement Date to the Second Expert Report, alternatively the Final Expert Report (if ASIC provides notification in accordance with paragraph 54) the Companies must notify ASIC and the Independent Expert of any complaints received as a result of any breach of an obligation relating to substantial holdings including details of the nature of the complaint and the Companies' response to the complaint;
- s. There is current compliance with the Companies' obligations regarding responses to beneficial tracing notices;
- t. A process is implemented for addressing any breaches by the Companies, occurring after 1 June 2008, of obligations relating to beneficial tracing notices that requires:
- i. as soon as reasonably practicable on detection of any breach, identification of the recipients of a response to a direction pursuant to section 672A of the Corporations Act that were affected by the breach of obligation (affected recipients);
  - ii. as soon as reasonably practicable on detection of any breach notification in writing to the affected recipients of:
    - (A) the fact and nature of the breach of obligation;
    - (B) where appropriate, provision of updated and accurate information;

- (C) the fact of the statutory right to compensation where a breach has caused loss or damage; and
  - (D) a contact point at the companies for receipt of complaints or requests for compensation;
- iii. nomination of a specified contact at the Companies with appropriate skills and seniority, to receive, assess and escalate as necessary any complaints and requests for compensation received by the Companies;
  - iv. in addition to ANZ's obligations under section 912D of the Corporations Act, for the period from the Commencement Date to the Second Expert Report, alternatively the Final Expert Report (if ASIC provides notification in accordance with paragraph 54) the Companies must notify ASIC and the Independent Expert of any complaints or requests for compensation received as a result of a breach of an obligation relating to beneficial tracing notices, including details of the nature of the complaint and the Companies' response;

#### Significant breach reporting

- u. Satisfactory procedures are documented and implemented for the identification, escalation, remediation and notification of breaches of the Companies' obligations as the holder of an AFSL and as an authorised representative;
- v. Training for all staff, including senior executives, in ANZ Custodian Services in respect of the procedures referred to in sub-paragraph 41.3u;
- w. Register of breaches of the Companies' obligations in respect of ANZ Custodian Services to be provided to the Independent Expert at the end of every month for 8 months commencing two months after the Commencement Date.

#### Remediation Assessment

42. Within 4 weeks of the Commencement Date the Independent Expert must:

- 42.1 Conduct an assessment of the draft ANZ Remediation Plan to determine whether it adequately addresses the matters raised in paragraph 41;
  - 42.2 Provide a written report (**Remediation Assessment**) to ASIC and the Companies with the Independent Expert's recommendations regarding the draft ANZ Remediation Plan.
43. Within 6 weeks of the Commencement Date, ANZ must amend the draft ANZ Remediation Plan as reasonably recommended by the Independent Expert and resubmit the ANZ Remediation Plan, as amended (**ANZ Remediation Plan**) to the Independent Expert and ASIC.
44. ANZ must implement the ANZ Remediation Plan.

**First Expert Report**

45. Within 3 months of the Commencement Date, the Independent Expert must:
- 45.1 Conduct an assessment of the implementation of the ANZ Remediation Plan, including:
    - a. An assessment of the progress of the implementation of the ANZ Remediation Plan;
    - b. An assessment of the effectiveness of those remediation items in the ANZ Remediation Plan that have been implemented;
    - c. An assessment of compliance with procedures, processes and systems implemented in accordance with the ANZ Remediation Plan;
    - d. Whether newly employed and ongoing employees of the Companies are appropriately trained in respect of any new processes, procedures and policies;
  - 45.2 Identify deficiencies from the assessment referred to in paragraph 45.1.
  - 45.3 Provide a written report to the Companies and ASIC (**First Expert Report**) that sets out: //

- a. Details of its findings in respect of the matters referred to in paragraph 45.1;
- b. Details of:
  - i. the deficiencies identified in paragraph 45.2
  - ii. recommendations on how to rectify the deficiencies; and
  - iii. a reasonable time for a rectification program to be commenced and implemented.

**First Response**

- 46. Within 4 months of the Commencement Date, the Companies must consider the First Expert Report and provide to the Independent Expert and ASIC a plan (First Response) setting out the action the Companies propose to take to complete the implementation of the ANZ Remediation Plan and rectify the deficiencies identified in the First Expert Report, specifying the reasonable time in which this action will be taken.
- 47. If ASIC or the Independent Expert require any reasonable modifications to the First Response, ASIC or the Independent Expert must notify the Companies in writing within 4½ months of the Commencement Date. The Companies must make such modifications to the First Response.
- 48. The Companies must implement the First Response within the time specified.

**Second Expert Report**

- 49. Within 9 months after the Commencement Date, the Independent Expert must:
  - 49.1 Conduct an assessment of the implementation of the ANZ Remediation Plan, having regard to the First Response, including:
    - a. An assessment of the progress of the implementation of the ANZ Remediation Plan;



- b. An assessment of the effectiveness of those remediation items in the ANZ Remediation Plan that have been implemented;
- c. An assessment of compliance with procedures, processes and systems implemented in accordance with the ANZ Remediation Plan;
- d. An assessment of the implementation of the First Response;
- e. Whether newly employed and ongoing employees of the Companies are appropriately trained in respect of any new processes, procedures and policies;

49.2 Identify deficiencies from the assessment referred to in paragraph 49.1;

49.3 Provide a written report to the Companies and ASIC (Second Expert Report) that sets out:

- a. Details of its findings in respect of the matters referred to in paragraph 49.1;
- b. Details of:
  - i. the deficiencies identified in paragraph 49.2;
  - ii. recommendations on how to rectify the deficiencies; and
  - iii. a reasonable time for a rectification program to be commenced and implemented.

#### Second Response

50. Within 10 months of the Commencement Date, the Companies must consider the Second Expert Report and provide to the Independent Expert and ASIC a plan (Second Response) setting out the action the Companies propose to take to complete the implementation of the ANZ Remediation Plan and the First Response as well as to rectify the deficiencies identified in the Second Expert Report, specifying the reasonable time in which this action will be taken.

51. If ASIC or the Independent Expert require any reasonable modifications to the Second Response, ASIC or the Expert must notify the Companies in writing within 10½ months of the Commencement Date. The Companies must make such modifications to the Second Response.
52. The Companies must implement the Second Response within the time specified.
53. If ASIC does not provide notification in accordance with paragraph 54, the Companies must provide to ASIC a written report detailing the implementation of the ANZ Remediation Plan and the Second Response within 14 days of the final step in the ANZ Remediation Plan and the Second Response being completed. ASIC may at its discretion consult with the Independent Expert in relation to the adequacy of the implementation by the Companies of the ANZ Remediation Plan and the Second Response.

#### **Final Assessment**

54. In the event ASIC considers that a further assessment should be conducted by the Independent Expert, ASIC must notify the Companies and the Independent Expert within 11 months of the Commencement Date.
55. In the event notice is provided by ASIC pursuant to paragraph 54, within 13 months of the Commencement Date, the Independent Expert must:
  - 55.1 Conduct an assessment of the implementation of the ANZ Remediation Plan, having regard to the First Response and Second Response, including:
    - a. An assessment of the progress of the implementation of the ANZ Remediation Plan;
    - b. An assessment of the effectiveness of those remediation items in the ANZ Remediation Plan that have been implemented;
    - c. An assessment of compliance with procedures, processes and systems implemented in accordance with the ANZ Remediation Plan;
    - d. An assessment of the implementation of the Second Response;

- e. Consideration of whether newly employed and ongoing employees of the Companies are appropriately trained in respect of any new processes, procedures and policies;
- 55.2 Identify deficiencies from the assessment referred to in paragraph 55.1;
- 55.3 Provide a written report to the Companies and ASIC (**Final Expert Report**) that sets out:
- a. Details of its findings in respect of the matters referred to in paragraph 55.1;
  - b. Details of:
    - (a) the deficiencies identified in paragraph 55.2;
    - (b) recommendations on how to rectify the deficiencies; and
    - (c) a reasonable time for a rectification program to be commenced and implemented.

#### Final Response

56. Within 14 months of the Commencement Date, the Companies must consider the Final Expert Report and provide to the Independent Expert and ASIC a plan (**Final Response**) setting out the action the Companies propose to take to complete the implementation of the ANZ Remediation Plan and the Second Response as well as to rectify the deficiencies identified in the Final Expert Report, specifying the reasonable time in which this action will be taken.
57. If ASIC or the Independent Expert require any reasonable modifications to the Final Response, ASIC or the Independent Expert must notify the Companies in writing within 14½ months of the Commencement Date. The Companies must make such modifications to the Final Response.
58. The Companies must implement the Final Response within the time specified.
59. The Companies must provide to ASIC a written report detailing the implementation of the ANZ Remediation Plan and the Final Response within 14

days of the final step in the ANZ Remediation Plan and the Final Response being completed. ASIC may at its discretion consult with the Independent Expert in relation to the adequacy of the implementation by the Companies of the ANZ Remediation Plan and the Final Response.

**Disclosure and Compensation**

60. Within 45 days of receipt of the First Expert Report the Companies must submit to ASIC and the Independent Expert:
  - 60.1 A document setting out the relevant conduct requiring disclosure or compensation arising from sub-paragraphs 41.3g, 41.3j or 41.3m and each person or entity that has been or might have been affected by that conduct;
  - 60.2 A draft letter or other form of disclosure and Claim Form (if appropriate) to be approved by ASIC and the Independent Expert to be sent to persons or entities referred to in paragraph 60.1;
  - 60.3 A list of persons or entities identified in paragraph 60.1 to whom it is proposed the letter, disclosure and Claim Form will be sent;
  - 60.4 If the Companies do not propose to send the letter to any person or entity identified in paragraph 60.1, an explanation as to the basis for this decision.
61. If ASIC or the Independent Expert require any reasonable modifications to the documents referred to in paragraph 60.2 or to the list identified in paragraph 60.3, ASIC or the Independent Expert must notify the Companies in writing within 14 days of receiving those documents.
62. The Companies must make any reasonable modifications to the documents referred to in paragraph 60.2 and to the list identified in paragraph 60.3 as required by ASIC or the Independent Expert.
63. Within 7 days of receipt by the Companies from ASIC and the Independent Expert of details of modifications pursuant to paragraph 61, the Companies must send the documents to each of the persons and entities in the list, as modified

pursuant to paragraph 62. If an address cannot be obtained from the Companies' records or the letter is returned, the Companies must follow the procedure in Annexure B.

64. Within 14 days of the Companies receiving a completed Claim Form, the Companies must send a letter to those persons and entities to acknowledge receipt of the Claim Form.
65. The Companies must:
  - 65.1 Within 28 days of receipt of all relevant information assess any claim for compensation made by a person or entity;
  - 65.2 Pay such claims within 14 days of assessment in whole or in part unless ANZ reasonably believes that there are legitimate grounds for rejection of the claim.
66. Within 30 days of sending letters and Claim Forms to persons or entities in accordance with paragraph 63 the Companies must provide a report (Compensation Report) to ASIC and the Independent Expert containing the following information concerning the status of claims made:
  - 66.1 the number of claims that have been received since the Commencement Date of this enforceable undertaking;
  - 66.2 the number of claims that have been paid in full;
  - 66.3 the number of claims rejected wholly or partially, and the grounds for the rejection of each such claim; and
  - 66.4 the number of claims that are under assessment at the date of the report.
67. If there are claims that are under assessment as at the date of the Compensation Report the Companies must provide a further compensation report setting out the matters referred to in paragraph 66 within 30 days of the Compensation Report (Further Compensation Report).

**Provision of documents to ASX, ASTC or APRA**

68. Upon receiving a request from the ASX, ASTC or APRA the Companies must provide a copy of the ANZ Remediation Plan, the Remediation Assessment, any Expert Report, any Response, the Compensation Report, the Further Compensation Report or any other document prepared further to this enforceable undertaking to those entities within 7 days of receiving the request.

**Provision of documents to ASIC**

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

Senior Manager, Investment Banks  
Australian Securities and Investments Commission  
GPO Box 9827  
MELBOURNE VIC 3001

70. The address for providing the Companies with any document or response, including but not limited to any plan or report, which this enforceable undertaking requires to be provided to the Companies is:

For ANZ                      Anthony Cahill  
Global Head of Product, Payments and Cash Management  
– Financial Institutions  
Transaction Banking  
Australia and New Zealand Banking Group Ltd  
Level 25  
530 Collins Street  
Melbourne VIC 3000

For ANZ Nominees      Anthony Cahill  
Director  
ANZ Nominees Limited  
Level 25  
530 Collins Street  
Melbourne VIC 3000

*AS*

**Provision of documents to the Boards of ANZ and ANZ Nominees**

71. Every report (including the ANZ Remediation Plan, the Remediation Assessment, any Expert Report, any Response, the Compensation Report and the Further Compensation Report) prepared pursuant to this enforceable undertaking must be tabled at the next scheduled meeting, after the date of the report, of the Board of ANZ and ANZ Nominees. If no such Board meeting is scheduled as at the date of the report a meeting must be scheduled within one month of the date of the report.

**Default**

72. The Companies must seek ASIC's written consent to vary the time by which any of the requirements of this enforceable undertaking must be completed. The Companies must provide ASIC with written reasons for the variation sought prior to the expiry of the time required by this enforceable undertaking for completion of the requirement and the time is not varied until ASIC has provided its written consent. ASIC's consent will not be unreasonably withheld.
73. If the Companies fail to perform any of the requirements of this enforceable undertaking in the time required by this enforceable undertaking or as varied under paragraph 72, the Companies must immediately notify ASIC in writing of the failure to perform the relevant requirement and when compliance with the relevant requirement of the enforceable undertaking will occur.
74. In the event of:
- 74.1 a material breach of the enforceable undertakings; or
  - 74.2 a determination by the Independent Expert that ANZ has not completed a material aspect of the ANZ Remediation Plan;

ANZ must provide to ASIC written submissions setting out why ASIC should not take action to vary ANZ's AFSL to revoke ANZ's authorisation to operate and/or provide, to retail or wholesale Clients, custodial or depository services, other than investor directed portfolio services. ANZ's submissions must be provided to ASIC within 14 days of notification by ASIC to ANZ of a requirement to do so.

75. Paragraph 74 does not limit ASIC's powers to take additional or alternative action.
76. ANZ does not concede that a variation of its AFSL is necessarily an appropriate remedy in the event of a default by the Companies under this enforceable undertaking.

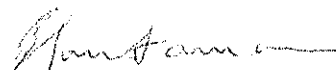
**Conclusion of this enforceable undertaking**

77. Notwithstanding anything else in this enforceable undertaking, ASIC may expressly in writing waive any of the obligations contained in this enforceable undertaking, or (with the consent of ANZ) amend the date by which any such obligation is to be satisfied.
78. ASIC and the Companies acknowledge that this enforceable undertaking ends on the completion of all of the requirements under this enforceable undertaking.

Signed for Australia and New Zealand  
Banking Group Limited ACN 005 357  
522 by its duly authorised representative  
in the presence of:


  
\_\_\_\_\_  
Witness Signature

GUY GAUDION  
\_\_\_\_\_  
Print Name

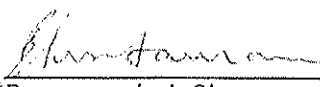
  
\_\_\_\_\_  
Representative's Signature

RICHARD B. SANTAMARÍA  
\_\_\_\_\_  
Print Name

Signed for ANZ Nominees Limited  
ACN 005 357 568 by its duly authorised  
representative in the presence of:

  
\_\_\_\_\_  
Witness Signature

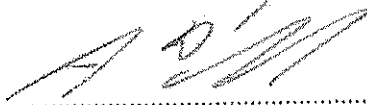
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Representative's Signature

RICHARD B. SANTAMARÍA  
\_\_\_\_\_  
Print Name



Accepted by the Australian Securities and Investments Commission under section 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth) by its duly authorised delegate:



.....  
Anthony Michael D'Aloisio  
Chairman and Delegate of Australian Securities and Investments Commission

6 MARCH 2009

Annexure AThe Form of the Expert Reports

Adapted from the Federal Court of Australia Practice Direction  
'Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia'

1. An expert's written report must give details of the expert's qualifications, and of the literature or other material used in making the report.
2. All assumptions of fact made by the expert should be clearly and fully stated.
3. The report should identify who carried out any tests or experiments upon which the expert relied in compiling the report, and state the qualifications of the person who carried out any such test or experiment.
4. Where several opinions are provided in the report, the expert should summarise them.
5. The expert should give reasons for each opinion.
6. At the end of the report the expert should declare that '[the expert] has made all the inquiries which [the expert] believes are desirable and appropriate and that no matters of significance which [the expert] regards as relevant have, to [the expert's] knowledge, been withheld from ASIC.'
7. There should be included in or attached to the report (i) a statement of the questions or issues that the expert was asked to address; (ii) the factual premises upon which the report proceeds; and (iii) the documents and other materials which the expert has been instructed to consider.
8. If an expert changes a material opinion for any reason, the change should be communicated in a timely manner to ASIC and the Companies.
9. If an expert's opinion is not fully researched because the expert considers that insufficient data are available, or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.<sup>1</sup>
10. The expert should make it clear when a particular question or issue falls outside the relevant field of expertise.

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<sup>1</sup> The "Ikarian Reefer" [1993] 20 FSR 563 at 565.

Annexure BProcedure for contacting persons

1. In accordance with paragraph 63 of this enforceable undertaking, the Company must send the letters referred to in those paragraphs by ordinary pre-paid post to the most recent address the Companies have recorded for each relevant person or entity.
2. If the letter is returned, the Companies must attempt to ascertain a current address for those persons or entities by using the 'Change of Address' database provided by Australia Post. If Australia Post's 'Change of Address' database reveals a different address for any such persons or entities, the Companies will send the letter by ordinary pre-paid post to that different address.
3. If Australia Post notifies the Companies that a person or entity has changed address but has not given their consent to Australia Post to release their new details, the Companies will use the 'Re-Connect' service provided by Australia Post to seek to obtain that new address.

Note: Australia Post's 'Re-Connect' service is a service whereby Australia Post writes to relevant persons advising them that the Companies are trying to contact them, and asking for their consent to the release of their new address.

- (a) Before using Australia Post's 'Re-Connect' service, the Companies will consult with ASIC and Australia Post on the content of any correspondence to be sent to persons using the 'Re-Connect' service.
- (b) When using the 'Re-Connect' service, the Companies must ask Australia Post to notify the person that the proposed communication relates to 'possible compensation payable to you arising from an undertaking made to the Australian Securities and Investments Commission'.
- (c) If the person:
  - (i) consents to the release of their new address to the Companies, the Companies will send the letters by ordinary pre-paid post to that different address; or
  - (ii) does not consent to the release of their new address to the Companies, the Companies must follow the procedure in paragraph 4.
- 4 (a) The Companies will carry out an Internet search of the Telstra White Pages On-Line at [www.whitopages.com.au](http://www.whitopages.com.au) if:
  - (i) Australia Post's 'Change of Address' database and 'Re-Connect' service reveal no different addresses for those persons or entities whose letter is returned; or

- (ii) a letter has been sent to an address revealed by the 'Change of Address' or 'Re-connect' service and has again been returned.
- (b) If:
  - (i) an entry which includes an address is found and that entry appears on reasonable grounds to correspond with the person or entity sought, the Companies must send the letter by ordinary pre-paid post to that address; or
  - (ii) no entry which includes an address is found which appears on reasonable grounds to correspond with the person or entity sought, the Companies are not required to send the letter to that person or entity, subject to paragraph 4(c).
- (c) The Companies must send the letter by ordinary pre-paid post to the person or entity if at any time within 18 months from the Commencement Date:
  - (i) a person or entity for whom no address has been found contacts the Companies; or
  - (ii) the Companies otherwise become aware of an address which they has reasonable grounds to suspect is the current address of the person or entity.

**Annexure C**  
**Due dates for compliance with Enforceable Undertaking**

Event	Party with responsibility	Date
Commencement Date	N/A	1 April 2009
Draft engagement letter for IE to be submitted to ASIC	Companies	8 April 2009
Expert engaged	Companies	15 April 2009
Draft ANZ Remediation Plan	Companies	15 April 2009
Remediation Assessment	IE	29 April 2009
ANZ Remediation Plan	Companies	13 May 2009
First Expert Report	IE	1 July 2009
First Response	Companies	3 August 2009
Notification of modifications to First Response	ASIC and IE	17 August 2009
Second Expert Report	IE	4 January 2010
Second Response	Companies	1 February 2010
Notification of modifications to Second Response	ASIC and IE	15 February 2010
Notification of implementation of Second Response (if applicable)	Companies	Within 14 days of the final step in the ANZ Remediation Plan and the Second Response being completed (paragraph 53)
Notification of Final Assessment (if applicable)	ASIC	1 March 2010
Final Expert Report (if applicable)	IE	3 May 2010
Final Response (if applicable)	Companies	1 June 2010
Notification of modifications to Final Response (if applicable)	ASIC and IE	15 June 2010
Notification of implementation of Final Response (if applicable)	Companies	Within 14 days of the final step in the ANZ Remediation Plan and the Final Response being completed (paragraph 59)

Proposal re disclosure and compensation	Companies	17 August 2009
Notification of modifications to proposal re disclosure and compensation	ASIC and IE	31 August 2009
Postal of letter, disclosure and Claim Form	Companies	7 September 2009
Acknowledgement of receipt of completed Claim Form	Companies	Within 14 days of receiving a completed Claim Form (paragraph 64).
Assessment of claims received	Companies	Within 28 days of receipt of all relevant information relating to a completed Claim Form (paragraph 65.1)
Payment of claims, unless legitimately rejected	Companies	Within 14 days of assessment of Claim Forms (paragraph 65.2)
Compensation Report	Companies	7 October 2009
Further Compensation Report	Companies	6 November 2009
Provision of register of breaches to IE	Companies	1 June 2009 1 July 2009 3 August 2009 1 September 2009 1 October 2009 2 November 2009 1 December 2009 4 January 2010