



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

SUSANNE RAE PERCIVAL

Address known to ASIC

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth);

Corporations Act means the *Corporations Act 2001* (Cth);

Ms Percival means Susanne Rae Percival (address known to ASIC).

Investment Companies means companies which Ms Percival controlled and/or held an interest in, to raise funds from private investors as venture capital to assist in the financing of property development projects being conducted by various project development companies associated with Ms Percival, namely: -

Supersafe Australia Pty Ltd (ACN 111 030 203);

Supersafe Qld Pty Ltd (ACN 100 408 866);

Northcoast (Qld) Australia Pty Ltd (ACN 126 069 556);

Supersafe N.S.W. Pty Ltd (ACN 109 965 308); and

Bricks and Mortar Australia Ltd (ACN 110 886 701).

2. Background

2.1 ASIC's role

- 2.1.1 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.

2.2 Details of Conduct

- 2.2.1 Between about 2003 and 2007 Ms Percival conducted a financial services business as an authorised representative of AAA Shares Pty Ltd (ACN 008180 952) ("Ms Percival's Licensee").
- 2.2.2 During this period, in the course of her financial services business, Ms Percival provided financial advice and made recommendations to particular clients of hers that they invest in one of a number of property development schemes being operated by her.
- 2.2.3 The relevant advice provided by Ms Percival to the particular clients involved advice and recommendations that they invest in the property development schemes through either: -
- (a) the granting of unsecured loans to: -
 - (i) Supersafe Australia Pty Ltd;
 - (ii) Supersafe Qld Pty Ltd;
 - (iii) Northcoast (Qld) Australia Pty Ltd; and/or
 - (iv) Supersafe N.S.W. Pty Ltd; or
 - (b) the purchase of redeemable preference shares in Bricks and Mortar Ltd.

- 2.2.4 In some cases, Ms Percival further advised and recommended to particular clients that they set up a self managed superannuation fund, transfer preserved superannuation benefits to that fund and invest such funds into the Investment Companies, as outlined in paragraphs 2.2.2 to 2.2.3 above.
- 2.2.5 In the majority of cases the advice and recommendations were made orally by Ms Percival, with no Statement of Advice being made or provided to the client.
- 2.2.6 The purpose of the Investment Companies was to raise venture capital to fund various property development projects Ms Percival was from time to time engaged in. The funds raised by the Investment Companies were advanced by the Investment Companies to property development companies for use in various property development projects.
- 2.2.7 The property development scheme/s, comprising the Investment Companies, property development companies and related property development projects, were, at all material times, under the ultimate control and management of Ms Percival.
- 2.2.8 Loans from investors to the Investment Companies were not secured. The investments were thus relatively high risk, in that the invested funds were not secured and relied upon the value of the underlying development projects being maintained at certain levels.
- 2.2.9 In about late 2007/ early 2008, due largely to a number of economic factors, many of the property development projects and their associated property development companies failed and were unable to meet repayment of their loans owing to the Investment Companies. The Investment Companies were thus, in turn, unable to meet their obligations to the investors. In turn the property development scheme/s became insolvent and investors' funds were lost.

2.2.10 On 24 November 2009 Ms Percival was declared bankrupt. As at the date of this Undertaking, Ms Percival remains an undischarged bankrupt.

2.2.11 ASIC has commenced proceedings in the Supreme Court of Queensland to wind up and have liquidators appointed to each of the Investment Companies, with the exception of Bricks and Mortar Australia Ltd which was previously deregistered.

2.3 ASIC's investigation

2.3.1 ASIC has conducted an investigation into the conduct of Ms Percival during the period 2003 to 2008 and, in particular, whether she contravened Chapter 7 of the Corporations Act with respect to financial services provided by her during this period.

2.4 ASIC's Concerns

As a result of its investigation, ASIC is concerned that: -

2.4.1 The property development scheme/s, encompassing the Investment Companies, together with their associated property development companies and property development projects, may have been managed investment schemes required to be registered pursuant to section 601ED of the Corporations Act and that interests in such scheme/s were financial products pursuant to 911A of the Corporations Act.

2.4.2 In providing the advice and recommendations to investors, Ms Percival failed in a number of cases, to adequately take into account the investors' personal circumstances in ensuring the recommended investments were within the investors' risk profile.

- 2.4.3 Ms Percival failed to provide Statements of Advice to numerous investors she advised and recommended to invest in the property development schemes.
- 2.4.4 In providing advice and recommendations to clients to invest in the property development schemes, Ms Percival failed to appropriately advise clients as to:-
- (a) the unsecured nature and relative risks of their investment;
 - (b) her own interest in the issuer of the financial products she was recommending; and
 - (c) the costs and obligations associated with conducting a self managed superannuation fund (where applicable).
- 2.4.5 In providing advice and recommendations to clients to set up self managed superannuation funds, transfer preserved superannuation benefits to that fund and invest such funds in the Investment Companies, Ms Percival failed to adequately advise investors as to: -
- (a) the costs and obligations associated with conducting a self managed superannuation fund; and
 - (b) comparison information regarding a switch from existing superannuation investments to commence the self managed superannuation fund.
- 2.4.6 Where Statements of Advice were provided by Ms Percival, they were deficient in that they did not contain:-
- (a) information giving an adequate explanation about the basis on which the advice was given;

- (b) information regarding the unsecured nature and relative risks of the investments given the investors' profiles and personal circumstances;
- (c) information regarding her own interest in the issuer of the financial products she was recommending;
- (d) any comparison information regarding a switch from existing superannuation investments to commence the self managed superannuation funds (where applicable);
- (e) information regarding the costs and obligations associated with conducting a self managed superannuation fund (where applicable); and
- (f) information refuting the representation contained in each of the Statements of Advice that the products being recommended were on Ms Percival's Licensee's Approved Product List.

2.5 Acknowledgement of concerns

- 2.5.1 Percival asserts that all investors were aware that she held an interest in the issuers of the products being recommended by her and that they had approached her to invest on that understanding. However, she nevertheless acknowledges ASIC's concerns as set out in paragraph 2.2.1 above.

3. Undertakings

- 3.1 Under s93AA of the ASIC Act, Ms Percival has offered, and ASIC has agreed to accept as an alternative to ASIC exercising its power under s920A of the Corporations Act to make a banning order against Ms

Percival and/or to commence proceedings against her seeking, inter alia, a declaration under section 601ED of the Corporations Act, the following undertakings: -

- 3.2 Ms Percival undertakes not to provide any financial services for a period of ten (10) years from the time of acceptance of this undertaking by ASIC.
- 3.3 Without in any way limiting the undertaking in paragraph 3.2 above, Ms Percival undertakes, for a period of ten (10) years from the time of the acceptance of this undertaking by ASIC, not to: -
- (a) do any act or engage in any conduct as a representative of an Australian Financial Services Licensee;
 - (b) hold herself out as a representative of an Australian Financial Services Licensee;
 - (c) carry on a business in relation to financial products or financial services, within the meaning of section 761A of the Corporations Act, either directly or indirectly as a director, partner, manager, servant or agent;
 - (d) hold out that she is in anyway authorised to provide a particular financial service or services or that she is in any way authorised to provide financial services generally; and
 - (e) apply to ASIC under section 913A of the Corporations Act for an Australian Financial Services Licence.
- 3.4 Ms Percival undertakes to provide all documents and information, as requested by ASIC from time to time, for the purposes of assessing Ms Percival's compliance with the terms of this enforceable undertaking.

4. Acknowledgements

4.1 Ms Percival acknowledges that ASIC: -

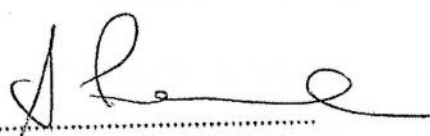
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

4.2 Further, Ms Percival acknowledges that: -

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order or damages in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct; and
- (b) 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 or arising from future conduct.

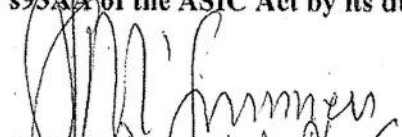
4.3 Ms Percival acknowledges that ASIC had reason to be concerned as to the alleged facts and have offered an enforceable undertaking in the terms of paragraphs 3.1. to 3.4 above.

4.4 Ms Percival acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and Ms Percival and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.


Signed: Susanne Rae Percival

Dated: 2/11/2010

Accepted by the Australian Securities and Investments Commission under
s93AA of the ASIC Act by its duly authorised delegate:



Signed: David J McGinness

Delegate of Australian Securities and Investments Commission

Dated: 3/11/2010

