

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:

David Robert McCulloch
56 Rundle Street
Mount Louisa, Qld 4814

1. Definitions

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

AFSL means Australian Financial Services Licence;

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

ASX means Australian Securities Exchange Limited ACN 008 624 691;

business day means a day on which banks are open for Business in Townsville excluding a Saturday, Sunday or public holiday in that city;

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

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

financial services has the meaning given to it by s766A of the Corporations Act;

financial product has the meaning given to it by s763A of the Corporations Act

financial product advice has the meaning given by s766B of the Corporations Act;

Mr Cassimatis means Emmanuel George Cassimatis, date of birth 11 November 1952;

Mrs Cassimatis means Julie Gladys Cassimatis, date of birth 3 October 1965;

Mr McCulloch means David Robert McCulloch, date of birth 15 May 1957;

MFP means McCulloch Financial Planning Pty Ltd (ACN 135 198 757);

Relevant Period means from March 2006 until December 2008;

Review Period means the two (2) year period from the date of this Enforceable Undertaking, or such further period as may be caused by any cessation in accordance with clause 7.1.2 of this Enforceable Undertaking;

SBS means Synchronised Business Services Pty Ltd (ACN 007 207 650);

Storm means Storm Financial Limited (In Liquidation) (Receivers and Managers Appointed) (ACN 064 804 691).

2. ASIC's Role

- 2.1 Pursuant to s1 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. Background

- 3.1 Storm carried on a financial services business primarily based in Townsville, Queensland and provided financial services to clients across Australia. Mr Cassimatis and Mrs Cassimatis were the two executive directors of Storm. Storm was originally incorporated under the name of Cassimatis Securities Pty Ltd and has also been known by the name of Ozdaq Securities Pty Ltd. Storm held a securities dealer's licence since 31 August 1994. On 23 May 2003 Storm was granted an AFSL (No. 228 905).

Storm Strategy

- 3.2 Predominantly, Storm recommended a single financial strategy when providing investment advice to its clients (**the Storm Strategy**). The Storm Strategy, which was described as a 'Journey to Capitalism', involved using debt to invest.
- 3.3 The Storm Strategy advised Storm's clients to use up to all available equity they had, which often involved taking out a loan against the equity in their home, and invest the equity into one or more index funds. A client's available equity was often used as security for a margin loan to increase the size of that client's investment portfolio.
- 3.4 From time to time, clients were advised to increase the size of their investment portfolio by increasing their existing margin loan or further borrowing against any increase in equity in their home.
- 3.5 The indexed funds that Storm recommended its clients invest in were primarily Colonial First State (CFS) managed funds and Challenger Managed Investments Limited (CHGR) managed funds, which had been created specifically for Storm clients (collectively, **the Storm Indexed Trusts**). The Storm Indexed Trusts were based upon various indices of the Australian share market.
- 3.6 The Storm Indexed Trusts are financial products within the meaning of s761A and s764(1)(b) of the Corporations Act. Accordingly, the advice that Storm gave clients was financial product advice.
- 3.7 In providing financial product advice, Storm was providing a financial service.
- 3.8 Following significant falls in the value of shares traded on the ASX, in late 2008, many of Storm's clients became subject to margin call. Most clients were

unable to meet the margin call and suffered significant losses when their margin lenders closed out their positions.

- 3.9 On or about 8 January 2009, Storm was placed into voluntary administration.
- 3.10 On or about 15 January 2009, the Commonwealth Bank of Australia Ltd appointed receivers and managers over Storm's property.
- 3.11 On 26 March 2009, the Federal Court of Australia ordered that Storm be wound up. Storm remains in external administration.

Mr McCulloch

- 3.12 Mr McCulloch commenced employment with Storm in March 1999 as Storm's in-house accountant. He reported directly to Mr Cassimatis and/or Mrs Cassimatis in this role.
- 3.13 Mr McCulloch became an authorised representative of Storm on 31 May 2004.
- 3.14 In approximately 2006 Mr McCulloch's role changed significantly and he became a full time financial adviser. Mr McCulloch commenced providing advice to Storm's clients in accordance with the Storm Strategy.
- 3.15 On or about 17 July 2007 Mr McCulloch entered into an Employee Services Agreement with Storm.
- 3.16 Mr McCulloch ceased to be an authorised representative of Storm on 18 June 2009.
- 3.17 Mr McCulloch's employment with Storm was terminated by the receivers and managers of Storm in January 2009.

4. ASIC's investigation/ surveillance and analysis

- 4.1 ASIC has conducted an investigation into the conduct of Mr McCulloch during the Relevant Period and in particular, into whether he contravened provisions of Chapter 7 of the Corporations Act with respect to financial services provided by him as an employee of Storm.

Details of Conduct

- 4.2 During the Relevant Period, Mr McCulloch was responsible for providing financial advice to approximately 300 hundred Storm clients.
- 4.3 During the Relevant Period Mr McCulloch:
 - (a) only advised Storm clients to invest in accordance with the Storm Strategy;
 - (b) applied the Storm Strategy, in accordance with Storm's policies and procedures, to each client without considering whether any other strategy would meet their needs;
 - (c) applied the Storm Strategy to clients for whom the Storm Strategy was inappropriate;

- (d) failed to warn clients that the advice provided to them may not have been tailored to meet their financial goals and objectives; and
- (e) allowed clients to request an increase to the credit limit of their margin loans without Mr McCulloch being aware whether those clients were fully informed of what they were doing and of the potential consequences of their request.

5. ASIC's concerns

5.1 As a consequence of the conduct outlined above at clause 4.2, ASIC has concerns that, during the relevant period:

- (a) Mr McCulloch may not have complied with s1041H of the Corporations Act by engaging in conduct, in relation to a financial product or a financial service that was likely to mislead or deceive his clients;
- (b) Mr McCulloch may not have complied with s1041E of the Corporations Act by disseminating information that was materially misleading and likely to induce persons to apply for financial products when Mr McCulloch ought reasonably to have known that such information was materially misleading;
- (c) that Mr McCulloch put the interests of Storm and his own interests, as an authorised representative and employee of Storm, above the interests of his clients; and
- (d) that Mr McCulloch may not have had an understanding of the nature and risks of the financial product advice provided, in so far as that advice concerned the implementation of a gearing strategy.

6. Acknowledgement of concerns

6.1 Mr McCulloch acknowledges ASIC's concerns set out in clause 5.1 above.

7. Undertakings

7.1 Under s93AA of the ASIC Act, Mr McCulloch 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 Mr McCulloch, the following undertakings:

Undertaking to complete continuing professional education

7.1.1 Mr McCulloch undertakes to:

- (a) participate in the following continuing professional education:
 - (i) individual assessment in accordance with paragraphs RG146.74 to RG146.76 ASIC Regulatory Guide 146 Licensing: Training of financial product advisors ("RG146") in the areas of Generic Knowledge and Margin Lending Facilities (RG146.131); and

(ii) a course in 'Ethics and Conduct' that is listed on the ASIC Training Register.

(collectively, the Continuing Professional Education)

- (b) obtain documentary evidence from the providers of the Continuing Professional Education that he has attended and successfully completed (or been assessed in respect of) the relevant aspect of the Continuing Professional Education (Documentary Confirmation);
- (c) provide ASIC with a statutory declaration within 14 days of successfully completing the Continuing Professional Education, that is signed by him and attaches certified copies of the Documentary Confirmation and stating that he has otherwise complied with the requirements of clause 7.1.1.

7.1.2 Should Mr McCulloch fail to comply with clause 7.1.1 within six (6) months of the date of this Enforceable Undertaking, Mr McCulloch agrees:

- (a) to cease providing financial services of any kind whatsoever until such time as clause 7.1.1 has been complied with; and
- (b) that the Review Period will be extended by the duration of any such cessation.

Supervision

7.1.3 Mr McCulloch undertakes, in the event Mr McCulloch is employed to provide financial services as at the date of this Enforceable Undertaking or in the event he subsequently becomes employed to provide financial services, that he will within five (5) business days notify ASIC of:

- (a) the name and address of his employer;
- (b) his position title; and
- (c) the date of commencement of employment

(Notification)

7.1.4 Mr McCulloch will notify ASIC in writing within three (3) business days of any change to the details comprising the Notification.

Independent Reviewer

7.1.5 Within 30 business days of the date of this Enforceable Undertaking, Mr McCulloch must obtain the agreement of a senior financial planner who has particular expertise in the area of compliance, who is independent of:

- (a) Mr McCulloch,
- (b) MFP and its officers; and
- (c) SBS and its officers;

or any other company where McCulloch is working as a financial advisor, to be Mr McCulloch's independent reviewer for the purposes of this Enforceable Undertaking (Independent Reviewer).

7.1.6 The Independent Reviewer must be approved by ASIC before the Independent Reviewer is formally engaged by Mr McCulloch. Mr McCulloch must provide ASIC with written details of the Independent Reviewer, including their name, position and a summary of their qualifications and experience in the financial services industry and with written details of any prior association of the proposed Independent Reviewer with:

- (a) Mr McCulloch;
- (b) MFP and its related bodies corporate and officers; or
- (c) SBS and its related bodies corporate and officers;

at the time approval is sought from ASIC. The terms of engagement may only be varied with the agreement of ASIC.

7.1.7 The Independent Reviewer is to undertake six (6) monthly reviews of the financial services provided by Mr McCulloch to retail clients, in accordance with clause 7.1.10 to 7.1.12 below (with a final review at the expiry of the Review Period). The agreement of the Independent Reviewer shall be effected by signing the document marked Annexure A to this Enforceable Undertaking and Mr McCulloch providing a copy of it to ASIC within three (3) business days thereafter.

7.1.8 Mr McCulloch must provide the Independent Reviewer with a copy of the relevant compliance policies of any AFSL holder that he is working for, once the Independent Reviewer has signed the agreement in Annexure A of this Enforceable Undertaking. In doing so, Mr McCulloch acknowledges that he has obtained the consent of such AFSL holder to provide such policies to the Independent Reviewer.

7.1.9 In the event that:

- (a) Mr McCulloch is unable to obtain the agreement of a senior financial planner to be his Independent Reviewer;
- (b) ASIC fails to approve the Independent Reviewer proposed by Mr McCulloch; or
- (c) The Independent Reviewer becomes unable, for any reason, to comply with the matters specified in clauses 7.1.10 – 7.1.12

another person must, within five (5) business days of the event in clause 7.1.9(a), 7.1.9(b) or 7.1.9(c) occurring, be nominated by Mr McCulloch to be the Independent Reviewer subject to:

- (i) Mr McCulloch providing ASIC with details in writing of the alternative Independent Reviewer as otherwise required by clause 7.1.6 above; and

- (ii) ASIC providing Mr McCulloch of its agreement in writing to the alternative Independent Reviewer; and
 - (iii) Within seven (7) business days of Mr McCulloch receiving ASIC's written agreement to any alternative independent reviewer, Mr McCulloch will undertake to procure the agreement of the alternative Independent Reviewer to the terms of the agreement annexed to this Enforceable Undertaking marked "A", and provide a signed copy of that document to ASIC.
- 7.1.10 The Independent Reviewer will undertake a minimum of five (5) reviews across the Review Period. The first review will be undertaken within three (3) months of commencement of the Review Period, with subsequent reviews occurring every six (6) months thereafter, with the exception of the final review which will be undertaken at the expiry of the Review Period.
- 7.1.11 The Independent Reviewer shall undertake the following tasks:
- (a) audit a random sample of a minimum of five (5) clients that received financial services advice by Mr McCulloch during the relevant preceding three (3) or six (6) monthly period, as the case may be (the Audit);
 - (b) for each client file the subject of the Audit the Independent Reviewer shall consider:
 - (i) whether or not any advice provided by Mr McCulloch was appropriate, having regard to s945A of the Corporations Act;
 - (ii) whether or not the AFSL holders' policies were complied with by Mr McCulloch; and
 - (iii) whether or not the disclosure provided by Mr McCulloch, in relation to any advice, complied with the requirements of s947C and/or s947D of the Corporations Act.
- 7.1.12 Within five (5) business days of completion of each Audit, or any other reasonable period of time requested by the Independent Reviewer and agreed to in writing by ASIC, the Independent Reviewer will provide Mr McCulloch and ASIC with a written statement (Independent Reviewer's Statement) setting out the matters referred to in clause 7.1.11.
- 7.1.13 Mr McCulloch will provide all reasonable assistance to the Independent Reviewer in fulfilling the obligations set out above in clause 7.1.11 to clause 7.1.12 and Annexure A to this Enforceable Undertaking.

Non compliance

- 7.1.14 Should the Independent Reviewer's Statement identify non compliance with any or all of clauses 7.1.11(b)(i), 7.1.11(b)(ii) or 7.1.11(b)(iii):
- (a) Mr McCulloch will consider the reasons for the opinion in the Independent Reviewer's Statement and then provide to ASIC a written plan (Remedial Action Plan) setting out the action he proposes to take to

address the issues of non-compliance set out in the Independent Reviewer's Statement and specifying the time in which this action will be taken. Mr McCulloch will provide the Remedial Action Plan to ASIC within fourteen (14) days of the date of the Independent Reviewer's Statement;

- (b) Mr McCulloch must implement the Remedial Action Plan within the time specified in the Remedial Action Plan. If ASIC requests any reasonable modifications to the Remedial Action Plan Mr McCulloch must implement the Remedial Action Plan as so modified; and
- (c) Where the Independent Reviewer is of the opinion that clients did not receive appropriate advice (in accordance with clause 7.1.11(b)(i)) or did not receive appropriate disclosure (in accordance with clause 7.1.11(e)), any further advice provided by Mr McCulloch to those clients shall be further audited by the Reviewer (in addition to any remaining review(s)), each time Mr McCulloch provides further financial advice to such clients, until the expiration of this Enforceable Undertaking.

7.1.15 Should Mr McCulloch fail to comply with clause 7.1.14 in any way (including but not limited to, failing to take remedial action within the time frame specified in the Remedial Action Plan, or at all), Mr McCulloch will be in default of this undertaking.

7.1.16 Mr McCulloch undertakes that should such a default as described in clause 7.1.15 occur, Mr McCulloch undertakes, for a period of two (2) years from the date of default, that he will not:

- (a) do any act or engage in any conduct as a representative of an Australian Financial Services Licensee;
- (b) hold himself out as a representative of an Australian Financial Services Licensee;
- (c) provide a financial service or services whether on his own behalf or on behalf of a person who carries on a financial services business whether as an employee of that person or otherwise;
- (d) carry on a business in relation to financial products or financial services within the meaning of s761A of the Corporations Act, either directly or indirectly as director, partner, manager, servant or agent;
- (e) hold out that he is in any way authorised to provide a particular financial service or services or that he is in any way authorised to provide financial services generally; or
- (f) apply to ASIC under s913A of the Corporations Act for an AFSL.

Costs

7.1.17 Mr McCulloch undertakes to pay the costs of compliance with this Enforceable Undertaking.

Requests for Documents from ASIC

7.1.18 Mr McCulloch will provide all documents and information requested by ASIC from time to time for the purpose of assessing Mr McCulloch's compliance with the terms of this Enforceable Undertaking.

8. Acknowledgements

8.1 Mr McCulloch acknowledges that ASIC:

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

8.2 Further Mr McCulloch acknowledges that:

- (a) ASIC's acceptance of this Enforceable 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 in relation to any contravention not the subject of ASIC's concerns in this Enforceable Undertaking, or known to ASIC at the date of this Enforceable Undertaking, or arising from future conduct;
- (b) this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking, or arising from future conduct.

8.3 Mr McCulloch acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraph 7.1 above.

8.4 Mr McCulloch acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and Mr McCulloch and ASIC acknowledge that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

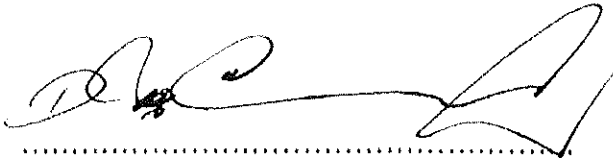
9. Provision of Documents

9.1 The address for providing ASIC with any notice, document, including but not limited to the Reviewer Statement is:

ASIC
Level 20, 240 Queen Street
Brisbane QLD 4001
Attention: Regional Commissioner

9.2 The address for providing Mr McCulloch with any notice or document is:

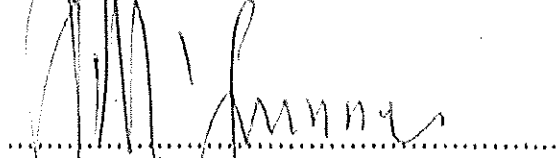
C/- Levitt Robinson Solicitors
Level 6, 162 Goulburn Street
Sydney (East) NSW 2010
Attent: Stewart Levitt



David Robert McCulloch

Dated: 12 - Oct - 2011

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



David John McGuinness

Delegate of Australian Securities and Investments Commission

Date: 21/12/2011

Annexure A

TERMS OF AGREEMENT WITH INDEPENDENT REVIEWER

Background

1. Under the enforceable undertaking which Mr McCulloch made to the Australian Securities and Investments Commission (ASIC) on [.....] (**Enforceable Undertaking**), Mr McCulloch undertook to obtain the agreement of an independent person who is independent of:
 - (a) Mr McCulloch,
 - (b) McCulloch Financial Planning Pty Ltd (ACN 135 198 757) and its officers; and
 - (c) Synchronised Business Services Pty Ltd (ACN 007 207 650) and its officers;or any other company where McCulloch is working as a financial advisor, to be Mr McCulloch's independent reviewer for the purposes of the Enforceable Undertaking (**Independent Reviewer**).

2. The Independent Reviewer must be approved by ASIC before the Independent Reviewer is engaged. Mr McCulloch must provide ASIC with written details of the proposed Independent Reviewer, including the Independent Reviewer's name, position and a summary of their qualifications and experience in the financial services industry, as well as details and of any prior association of the proposed Independent Reviewer with:
 - (a) Mr McCulloch;
 - (b) McCulloch Financial Planning Pty Ltd (ACN 135 198 757) and its related bodies corporate and officers; or
 - (c) Synchronised Business Services Pty Ltd (ACN 007 207 650) and its related bodies corporate and officers;or any other company where McCulloch is working as a financial advisor, at the time approval is sought from ASIC.

3. Upon engagement, Mr McCulloch must provide the Independent Reviewer with a copy of the relevant compliance policies of any AFSL holder that he is working for.

4. The terms of engagement may only be varied with the agreement of ASIC.

Obligations

5. The Independent Reviewer will conduct the following tasks under the Enforceable Undertaking:
 - (a) review the financial services advice provided by Mr McCulloch, a minimum of five (5) times, on a six (6) monthly basis for the period of two (2) years from the date of the Enforceable Undertaking, with a final review upon expiry of the Review Period;
 - (b) consider whether, in the Independent Reviewer's opinion;

- i. any advice provided by Mr McCulloch is appropriate having regard to s945A of the Corporations Act;
 - ii. whether or not the AFSL holders' policies were complied with by Mr McCulloch; and
 - iii. whether or not the disclosure provided by Mr McCulloch, in relation to any advice, complied with the requirements under s947C and/or s947D of the Corporations Act.
 - (c) Provide Mr McCulloch and ASIC with a statement (**Independent Reviewer's Statement**) setting out his/her opinion and the reasons for it, within five (5) business days or any other period agreed to by ASIC after completion of the relevant audits undertaken.
6. Mr McCulloch will provide all reasonable assistance to the Independent Reviewer in fulfilling the obligations set out in clause 2 above.

Reporting

7. The Independent Reviewer's Statement, required to be written by the Independent Reviewer, will:
- (a) be produced in accordance with the Enforceable Undertaking. If there is any inconsistency between these terms and the Enforceable Undertaking, the Enforceable Undertaking shall prevail;
 - (b) set out any limitations or qualifications to it; and
 - (c) list those documents or extracts of documents most relevant (in the view of the Independent Reviewer) in producing the Independent Reviewer's Statement.

Independence

8. The Independent Reviewer warrants that:
- (a) he/she is independent of Mr McCulloch, and will at all material times be capable of exercising objective and impartial judgment;
 - (b) the Independent Reviewer will notify Mr McCulloch and ASIC immediately if he/she is no longer capable of exercising objective and impartial judgment in relation to this engagement. This includes, but is not limited to, circumstances where the Independent Reviewer:
 - i. could directly or indirectly benefit from a financial interest in any company in which Mr McCulloch also has an interest (where "financial interest" refers to an interest in any equity or other security, debenture, loan or other debt instrument of a company);
 - ii. is promoting, or may be perceived to promote, Mr McCulloch's position or opinion to the point that objectivity and/or impartiality is/are compromised;
 - iii. begins to have a close relationship with Mr McCulloch;

- iv. may be deterred from acting objectively and/or impartially by the conduct of the AFSL holder's employees; or
- v. becomes aware of past or current circumstances the existence of which places the Independent Reviewer in breach of any of the warranties contained in this Agreement.

.....
Reviewer Name

.....
Signature

Dated:

