

## 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:

**Carey Fraser**  
47 Victoria Street  
North Ward 4810

#### 1. Definitions

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

**AFSL** means Australian Financial Services Licence as defined in section 913B of the Corporations Act;

**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;

**Mrs Fraser** means Carey Fraser, date of birth 7 April 1972;

**Notification Period** means from two years from the end of the suspension period;

**Relevant Period** means from January 2004 until December 2008;

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

**Suspension Period** means a period of two years from the date of the execution of this enforceable undertaking.

## 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 industry 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 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 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 were 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 While Storm was the 'providing entity' of the financial product advice given to its clients (within the meaning of ss944A and 945A of the Corporations Act), Storm employed and/or engaged a number of financial advisers, who (amongst

other duties) acted – in accordance with Storm's policies and procedures – as the point of contact between Storm and its clients, presenting and discussing the recommendations made by Storm, in the financial product advice provided by Storm to those clients ("**the Storm representatives**").

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

#### *Mrs Fraser*

- 3.13 Mrs Fraser commenced employment with Storm in January 2004 and, during the relevant period, acted as one of the Storm representatives, dealing with approximately 300 Storm clients.
4. **ASIC's investigation/ surveillance and analysis**

- 4.1 ASIC has conducted an investigation into the conduct of Mrs Fraser during the Relevant Period and in particular, into whether she contravened provisions Chapter 7 of the Corporations Act with respect to her conduct as one of the Storm representatives.

#### *Details of Conduct*

- 4.2 During the Relevant Period Mrs Fraser, in accordance with Storm's policies and procedures:
  - (a) only advised Storm clients to invest in accordance with the Storm Strategy;
  - (b) applied the Storm Strategy 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 was not necessarily tailored to meet their financial goals and objectives; and
  - (e) allowed clients to request an increase to the credit limit of their margin loans, in accordance with advice to do so provided by Storm, without ensuring whether those clients were fully aware of what they were doing and of the potential consequences of those clients acting in accordance that advice.

## 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) Mrs Fraser may not have complied with s1041H of the Corporations Act, by engaging in conduct, in relation to financial product or a financial services, by recommending the Storm Strategy, that was likely to mislead or deceive clients;
- (b) Mrs Fraser may not have complied with s1041E of the Corporations Act, by disseminating information, namely financial product advice provided by Storm (via Statements of Advice and/or Statements of Additional Advice) that was materially misleading and likely to induce persons to apply for financial products, when Mrs Fraser ought reasonably to have known that such information was materially misleading;
- (c) Mrs Fraser made representations with respect to future matters without having reasonable grounds for making those representations;
- (d) Mrs Fraser promoted the Storm Strategy and gave clients Statements of Advice and/or Statements of Additional Advice (provided by Storm) containing misleading and deceptive information which information had the effect of inducing some of them to invest in accordance with in the Storm Strategy; and
- (e) Mrs Fraser did not have an understanding of the nature and risks of the financial product advice, provided by Storm, in so far as that advice concerned the implementation of a gearing strategy.

## 6. Acknowledgement of concerns

6.1 Mrs Fraser acknowledges ASIC's concerns set out in clause 5.1 above.

## 7. Undertakings

7.1 Under s93AA of the ASIC Act, Mrs Fraser 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 Mrs Fraser, the following undertakings:

### *Undertaking to refrain from providing financial services*

7.2 Mrs Fraser undertakes that during the Suspension Period she will not:

- (a) carry on a financial services business;
- (b) hold out that she holds an Australian Financial Services License;
- (c) provide financial services;
- (d) apply to ASIC under section 911A of the Corporations Act 2001 for an Australian Financial Services License; or

- (c) become an authorised representative of an Australian Financial Services License holder.

### *Notification*

7.3 Mrs Fraser undertakes that, during the Notification Period, if Mrs Fraser enters into a position where she will provide financial services, she will within five (5) business days of providing such financial services notify ASIC of:

- (a) the name and address of her employer; and
- (b) her position title;

and provide to ASIC copies of her employer's compliance plan.

### **8. Costs**

8.1 Mrs Fraser undertakes to bear her own costs of and incidental to the entry into this enforceable undertaking.

### **9. Acknowledgements**

9.1 Mrs Fraser 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.

9.2 Further Mrs Fraser 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 in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking, or arising from future conduct;
- (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.

9.3 Mrs Fraser 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. This acknowledgement does not amount to an admission, at law, by Mrs Fraser.

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

**10. Provision of Documents**

10.1 The address for providing ASIC with any notice is:

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

10.2 The address for providing Mrs Fraser with any notice or document is:

Carey Fraser  
47 Victoria Street  
North Ward QLD 4810

or

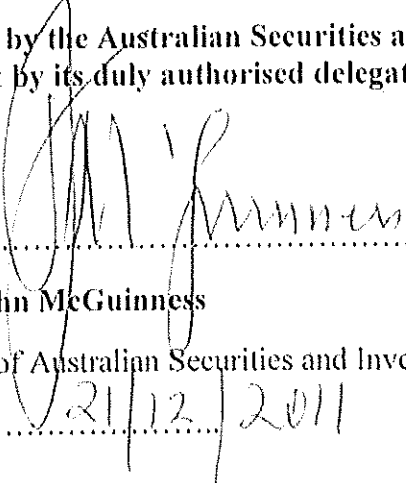
justin-carey@bigpond.com

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**Carey Fraser**

Dated: ..... 10 - 10 - 2011 .....

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

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**David John McGuinness**

Delegate of Australian Securities and Investments Commission

Date: ..... 21/12/2011 .....