

## 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:

Trevor Alan Benson  
3 Gatehouse Court  
Aspley, Qld 4034

#### 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;

**Infoeus** means Infoeus Securities Australia Pty Ltd (ACN 097 797 049), the holder of Australian Financial Services Licence No. 236523;

**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 Benson** means Trevor Alan Benson, date of birth 25 April 1962;

**Relevant Period** means from May 2006 until 30 June 2011;

**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 6.1.2 of this Enforceable Undertaking;

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

WAG means Wealth Accumulation Group Pty Ltd (ACN 135 031 793), a corporate Authorised Representative (No. 334096) of Infocus, trading as "Infocus Money Management", of which Mr Benson is the sole director.

## 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 provided to 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 (among 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. Some clients were unable to meet the margin call and suffered significant losses when their 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.

*Mr Benson*

- 3.13 Mr Benson has worked as a financial advisor for approximately 22 years. Mr Benson holds an Advanced Diploma in Financial Services (Financial Planning) from Tribeca Learning (Aust) Pty Limited.
- 3.14 Mr Benson became an authorised representative of Storm on 15 May 2006 and continued in that capacity until 26 April 2007. Between 26 April 2007 and 18 June 2009, Mr Benson was an employee representative of Storm, albeit he did not act in that capacity following the termination of his retainer by the receivers and managers of Storm in January 2009. During this time, in his capacity as one of the Storm representatives, Mr Benson dealt with around 2,000 Storm clients, many of whom received advice to invest in accordance with the Storm Strategy and, of these, about 70 of whom Mr Benson had a prior relationship with and introduced to Storm ("the Storm portion of the Relevant Period").
- 3.15 Since 2 February 2009, Mr Benson has acted an authorised representative of Infocus, both personally and via WAG. In this capacity, either Mr Benson or WAG has acted as the providing entity for advice to clients of Infocus, some of whom Mr Benson had introduced to Infocus, having previously been clients of Storm ("the Infocus portion of the Relevant Period").

4. ASIC's Concerns

- 4.1 ASIC has conducted an investigation into the conduct of Mr Benson during the Relevant Period and in particular, into whether he contravened provisions of Chapter 7 of the Corporations Act with respect to (i) his conduct as one of the Storm representatives and/or (ii) the financial services provided by him (and/or WAG) as an authorised representative of Infocus.

- 4.2 During the Storm portion of the Relevant Period, in accordance with Storm's policies and procedures concerning those clients who invested in accordance with the Storm Strategy, ASIC is concerned that Mr Benson may have:
- (a) only advised those clients to invest in accordance with the Storm Strategy;
  - (b) applied the Storm Strategy, to each of those clients without considering whether any other strategy would meet their needs;
  - (c) applied the Storm Strategy to those clients for whom the Storm Strategy may have been inappropriate;
  - (d) failed to warn those clients that the advice provided to them may not have been tailored to meet their financial goals and objectives;
  - (e) allowed those clients to request an increase to the credit limit of their margin loans, in accordance with advice to do so provided by Storm, without Mr Benson being aware whether those clients were fully informed of what they were doing and of the potential consequences of them acting in accordance with that advice; and
  - (f) recommended that those clients invest in accordance with the Storm Strategy without a proper understanding of that strategy or the risks associated with that strategy.
- 4.3 During the Infocus portion of the Relevant Period, ASIC is concerned that Mr Benson may have:
- (a) provided personal advice to some clients in circumstances where Mr Benson may not have had a reasonable basis for that advice;
  - (b) provided incomplete personal advice to some clients, when advising them to switch from one particular financial product to another particular financial product; and
  - (c) failed to follow the written guidelines set out by Infocus, prior to providing personal advice to some clients, by not completing or inadequately completing documentation pertinent to that advice.
- 4.4 As a consequence of the concerns outlined above at clauses 4.2 and 4.3, ASIC has further concerns that, during the relevant period:
- (a) Mr Benson 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 Benson 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 Benson ought reasonably to have known that such information was materially misleading;

- (c) that Mr Benson may not have had 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;
- (d) that Mr Benson may not have complied with s945A(1) of the Corporations Act in providing advice to clients whilst an authorised representative (in a personal capacity and/or via WAG) of Infocus;
- (e) that Mr Benson may not have complied with s947D(2) of the Corporations Act in providing switching advice to clients whilst an authorised representative (in a personal capacity and/or via WAG) of Infocus;
- (f) that Mr Benson may have put the interests of Storm and/or Infocus and/or his own interests (whether personally or via WAG), above the interests of the clients with whom he was dealing; and
- (g) that the above concerns, together with Mr Benson's failure to follow the written guidelines of Infocus, suggests that Mr Benson may not comply with financial services laws.

## 5. Acknowledgement of concerns

5.1 Mr Benson acknowledges that ASIC has reason to be concerned in respect of matters set out in clauses 4.2 to 4.4 above and has offered an enforceable undertaking in the terms of paragraph 6 below. This acknowledgement does not amount to an admission, at law, by Mr Benson.

## 6. Undertakings

6.1 Under s93AA of the ASIC Act, Mr Benson 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 Benson, the following undertakings:

### *Undertaking to complete continuing professional education*

6.1.1 Mr Benson 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 subclauses (a) and (b) above.
- 6.1.2 Should Mr Benson fail to comply with clause 6.1.1 within six (6) months of the date of this Enforceable Undertaking, Mr Benson agrees:
- (a) to cease providing financial services of any kind whatsoever until such time as clause 6.1.1 has been complied with; and
  - (b) that the Review Period will be extended by the duration of any such cessation.

#### *Supervision*

- 6.1.3 Mr Benson undertakes, in the event Mr Benson 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)
- 6.1.4 Mr Benson will notify ASIC in writing within three (3) business days of any change to the details comprising the Notification.

#### *Independent Reviewer*

- 6.1.5 Within 30 business days of the date of this Enforceable Undertaking, Mr Benson must obtain the agreement of a senior financial planner who has particular expertise in the area of compliance, who is independent of:
- (a) Mr Benson,
  - (b) WAG and its related bodies corporate and its officers; and
  - (c) Infocus and its related bodies corporate and its officers;
- or any other entity where Benson is working as a financial advisor, to be Mr Benson's independent reviewer for the purposes of this Enforceable Undertaking ("Independent Reviewer").
- 6.1.6 The Independent Reviewer must be approved by ASIC before the Independent Reviewer is formally engaged by Mr Benson. Mr Benson 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 Benson;
- (b) WAG and its related bodies corporate and officers; or
- (c) Infocus 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.

6.1.7 The Independent Reviewer is to undertake quarterly reviews of the financial services provided by Mr Benson to retail clients, in accordance with clause 6.1.10 to 6.1.12 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 Benson providing a copy of it to ASIC within three (3) business days thereafter.

6.1.8 Mr Benson must provide the Independent Reviewer with a copy of the relevant compliance policies of any AFSI 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 Benson acknowledges that he has obtained the consent of such AFSI holder to provide such policies to the Independent Reviewer.

6.1.9 In the event that:

- (a) Mr Benson 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 Benson; or
- (c) The Independent Reviewer becomes unable, for any reason, to comply with the matters specified in clauses 6.1.10 -- 6.1.12

another person must, within five (5) business days of the event in clause 6.1.9, 6.1.9(a), 6.1.9(b) or 6.1.9(c) occurring, be nominated by Mr Benson to be the Independent Reviewer subject to:

- (i) Mr Benson providing ASIC with details in writing of the alternative Independent Reviewer as otherwise required by clause 6.1.6 above; and
- (ii) ASIC providing Mr Benson of its agreement in writing to the alternative Independent Reviewer; and
- (iii) within seven (7) business days of Mr Benson receiving ASIC's written agreement to any alternative independent reviewer, Mr Benson 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.

- 6.1.10 The Independent Reviewer will undertake a minimum of eight (8) 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 three (3) months thereafter, with the final review being undertaken at the expiry of the Review Period.
- 6.1.11 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 Benson during the relevant preceding three (3) month period ("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 Benson was appropriate, having regard to s945A of the Corporations Act;
    - (ii) whether or not the AFSL holders' policies were complied with by Mr Benson; and
    - (iii) whether or not the disclosure provided by Mr Benson, in relation to any advice, complied with the requirements of s947C and/or s947D of the Corporations Act.
- 6.1.12 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 Benson and ASIC with a written statement ("**Independent Reviewer's Statement**") setting out the matters referred to in clause 6.1.11.
- 6.1.13 Mr Benson will provide all reasonable assistance to the Independent Reviewer in fulfilling the obligations set out above in clause 6.1.11 to clause 6.1.12 and Annexure A to this Enforceable Undertaking.

*Non compliance*

- 6.1.14 Should the Independent Reviewer's Statement identify non compliance with any or all of clauses 6.1.11(b)(i), 6.1.11(b)(ii) or 6.1.11 (b)(iii):
- (a) Mr Benson 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 Benson will provide the Remedial Action Plan to ASIC within fourteen (14) days of the date of the Independent Reviewer's Statement;
  - (b) Mr Benson 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 Benson 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 6.1.11 6.1.11(b)(i)) or did not receive appropriate disclosure (in accordance with clause 6.1.11(b)(iii)), any further advice provided by Mr Benson to those clients shall be further audited by the Reviewer (in addition to any remaining review(s)), each time Mr Benson provides further financial advice to such clients, until the expiration of this Enforceable Undertaking.

6.1.15 Should Mr Benson fail to comply with clause 6.1.14 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 Benson will be in default of this undertaking.

6.1.16 Mr Benson undertakes that should such a default as described in clause 6.1.15 occur, Mr Benson 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*

6.1.17 Mr Benson undertakes to pay the costs of compliance with this Enforceable Undertaking.

#### *Requests for Documents from ASIC*

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

## 7. Acknowledgements

7.1 Mr Benson 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.

7.2 Further Mr Benson 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; and
- (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.

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

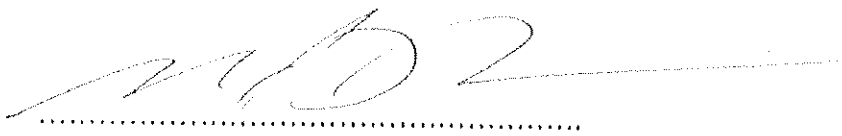
## 8. Provision of Documents

8.1 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

8.2 The address for providing Mr Benson with any notice or document is:

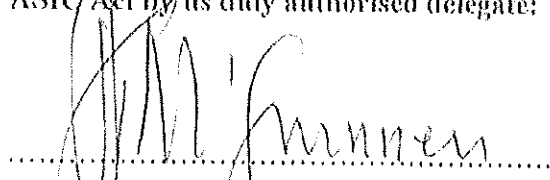
**Trevor Alan Benson**  
C/- McCullough Robertson Lawyers  
Level 11, 66 Eagle Street  
Brisbane QLD 4000  
Attention: Brendan Leighton



Trevor Alan Benson

Dated: 14/11/2011

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

Dated: 21/12/2011

Annexure A

TERMS OF AGREEMENT WITH INDEPENDENT REVIEWER

*Background*

1. Under the enforceable undertaking which Mr Benson made to the Australian Securities and Investments Commission (ASIC) on [.....] ("Enforceable Undertaking"), Mr Benson undertook to obtain the agreement of an independent person who is independent of:
  - (a) Mr Benson,
  - (b) Wealth Accumulation Group Pty Ltd (ACN 135 031 793), trading as "Infocus Money Management" and its officers; and
  - (c) Infocus Securities Australia Pty Ltd (ACN 097 797 049) and its officers;or any other company where Benson is working as a financial advisor, to be Mr Benson'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 Benson 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 Benson;
  - (b) Wealth Accumulation Group Pty Ltd (ACN 135 031 793), trading as "Infocus Money Management" and its related bodies corporate and officers; or
  - (c) Infocus Securities Australia Pty Ltd (ACN 097 797 049) and its related bodies corporate and officers;or any other company where Benson is working as a financial advisor, at the time approval is sought from ASIC.
3. Upon engagement, Mr Benson 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 Benson, a minimum of eight (8) times, on a three (3) monthly basis for the period of two (2) years from the date of the Enforceable Undertaking, with the final review at the expiry of the Review Period;
  - (b) consider whether, in the Independent Reviewer's opinion:

- i. any advice provided by Mr Benson is appropriate having regard to s945A of the Corporations Act;
  - ii. whether or not the AFSL holders' policies were complied with by Mr Benson; and
  - iii. whether or not the disclosure provided by Mr Benson, in relation to any advice, complied with the requirements under s947C and/or s947D of the Corporations Act.
- (e) Provide Mr Benson 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 Benson will provide all reasonable assistance to the Independent Reviewer in fulfilling the obligations set out in clauses 2 and 5 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 Benson, and will at all material times be capable of exercising objective and impartial judgment;
  - (b) the Independent Reviewer will notify Mr Benson 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 Benson 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 Benson's position or opinion to the point that objectivity and/or impartiality is/are compromised;
    - iii. begins to have a close relationship with Mr Benson;

- 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: .....