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## VARIATION OF 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:

**UBS WEALTH MANAGEMENT AUSTRALIA LTD**  
**ACN 005 311 937**  
**(UBS WMA)**

### DEFINITIONS

1. Defined terms used in this variation of enforceable undertaking have the same meaning as those in the Enforceable Undertaking given by UBS WMA on 17 March 2011 (**the Enforceable Undertaking**), a copy of which is attached as Annexure A to this document.

### BACKGROUND

2. On 17 March 2011, UBS WMA offered the Enforceable Undertaking to ASIC, and on the same date ASIC accepted the Enforceable Undertaking.

#### Disclosure and Compensation

3. As at the Commencement Date of the Enforceable Undertaking, UBS WMA had ascertained that between January 2006 and 13 March 2010, 764 retail clients who invested in a category of financial products classified by UBS WMA as structured products were not provided with SOAs in circumstances where some of those clients may have been provided with personal financial product advice. UBS WMA had also ascertained that the failure to send SOAs extended to an undetermined number of clients that had been provided with personal financial product advice in respect of certain products other than structured products.
4. On 26 August 2011, UBS WMA advised ASIC that in the course of implementing the UBS WMA Remediation Plan it had identified approximately 1,058 additional clients that had been provided with personal financial product advice in respect of products

other than structured products and had not been provided with SOAs. Given this rise in number, UBS WMA sought an extension to the timeframe in which UBS WMA undertook to send the documents referred to in paragraph 105.2 of the Enforceable Undertaking to each of the persons and entities in the Final Recipient List. UBS WMA advised that in dealing with a relatively small number of claims received since the Enforceable Undertaking it has become apparent that the task involved in assessing and responding to claims is more resource intensive and time consuming than anticipated by UBS WMA. UBS WMA has advised ASIC that a staged and tailored process in sending the documents to each of the persons and entities in the Final Recipient List would ensure that the timeframes for the steps in the claim process are met in full, and that claims received by UBS WMA can be processed efficiently and effectively.

5. On 26 August 2011, UBS WMA further advised ASIC that the remediation work being undertaken by UBS WMA pursuant to paragraph 57 of the Enforceable Undertaking in relation to investments in third party products, due for completion on 30 November 2011, may produce additional information about clients requiring notification under the disclosure and compensation provisions of the Enforceable Undertaking. UBS WMA has advised ASIC that once it completes this remediation work it intends to notify potentially affected clients and, where appropriate, to facilitate those clients to make a claim for compensation.
6. On 30 November 2011, UBS WMA advised ASIC that the number of clients referred to in paragraph 5 above totalled approximately 754. Given the number of further clients identified, UBS WMA sought to notify these potentially affected clients of their entitlement to make a claim for compensation in a similar staged and tailored process to that referred to in paragraph 4 above.
7. This variation of the Enforceable Undertaking gives effect to the matters set out in paragraphs 4 to 6 above.

#### **Final Expert Report and Final Response**

8. Pursuant to paragraphs 84.3 and 88.3 of the Enforceable Undertaking, UBS WMA has provided to ASIC the First and Second Expert Reports prepared by KPMG, the Independent Expert appointed under the Enforceable Undertaking.
9. Given the deficiencies identified in the First and Second Expert Reports, ASIC considers it appropriate that a final assessment of the implementation of the UBS WMA Remediation Plan should be conducted by KPMG and the findings reported in the Final

Expert Report in accordance with paragraph 99.3 of the Enforceable Undertaking. UBS WMA has agreed that the notice requirement set out in paragraph 98 of the Enforceable Undertaking is no longer required.

10. UBS WMA has requested an additional two months for the final assessment to be conducted by KPMG and the findings reported in the Final Expert Report so as to align this with the timeframe changes in the UBS WMA Remediation Plan made to the due date of delivery of SOAP Phase 1. Further, UBS WMA has advised ASIC that this extended time would give UBS WMA the ability to enable more comprehensive effectiveness testing by KPMG of the remaining remediation items not yet covered by the First and Second Expert Reports.
11. This variation of the Enforceable Undertaking gives effect to the matters set out in paragraphs 9 and 10 above.

#### **VARIATION OF ENFORCEABLE UNDERTAKING**

12. Pursuant to section 93AA of the Act, UBS WMA may vary the Enforceable Undertaking at any time, but only with the consent of ASIC. UBS WMA has offered, and ASIC has agreed to accept, the following variations to the Enforceable Undertaking.

##### **12.1 Under the heading 'Definitions':**

- (i) substituting the definition of 'Claim Form' with the following definition:

**"Claim Form** means a form to be sent to clients by UBS WMA in accordance with paragraphs 110 and 110A to facilitate a claim for compensation as a result of the conduct referred to in paragraph 16.1."

- (ii) deleting the definition of 'Further Compensation Report'; and

- (iii) inserting the following further definitions:

**"Supplementary Client List** means the list of clients referred to in paragraph 105A.

**Supplementary Recipient List** means the list referred to in paragraph 105A.3

**Supplementary Final Client List** means the list of clients referred to in paragraph 107.

**Supplementary Final Recipient List** means the list referred to in paragraph 107.”

12.2 The time “14 months” referred to in paragraph 99 of the Enforceable Undertaking is amended to “16 months”.

12.3 The time “15 months” referred to in paragraph 100 of the Enforceable Undertaking is amended to “17 months”.

12.4 Inserting the following paragraph immediately following paragraph 105:

“105A. Within 45 days of completion of the remediation work pursuant to paragraph 57, UBS WMA must submit to ASIC and the Independent Expert:

105A.1 a list of all the further clients whom UBS WMA has identified as having potentially received personal financial product advice in circumstances where a SOA was potentially required but was not provided in accordance with the Act. The list must include those clients who did not receive an SOA in accordance with s 946A and therefore also failed to receive an SOA (a) within the time specified by s 946C; and (b) containing the information required by s 947B (**Supplementary Client List**);

105A.2 a draft letter of disclosure and Claim Form (if appropriate) to be approved by ASIC to be sent to the clients referred to in paragraph 105A.3;

105A.3 a list of the clients selected from the Supplementary Client List to whom it is proposed the disclosure letter and Claim Form will be sent (**Supplementary Recipient List**);

105A.4 if UBS WMA does not propose to send the disclosure letter to any of the clients on the Supplementary Client List, an explanation as to the basis for this decision in each case; and

105A.5 a document setting out in detail the method used, including identification of all sources reviewed, to compile the Supplementary Client List and the Supplementary Recipient List.”

12.5 Substituting paragraphs 106 to 110 inclusive by the following new paragraphs 106 to 110:

106. Within 14 days of receipt of the documents referred to in paragraphs 105 or 105A, the Independent Expert must advise UBS WMA and ASIC of the suitability and appropriateness of the methodology used by UBS WMA as described in paragraphs 105.5 or 105.5A (as applicable). The Independent Expert must also advise what, if any, further steps ought reasonably to be taken by UBS WMA in compiling the Client List and the Recipient List, and the Supplementary Client List and the Supplementary Recipient List, and specify a reasonable time for those steps to be completed.
107. If the Independent Expert advises that further steps should be taken pursuant to paragraph 106, then UBS WMA must take those steps (to the extent they are reasonable), make any consequential amendments to the Client List (**Final Client List**) and the Recipient List (**Final Recipient List**) and to the Supplementary Client List (**Supplementary Final Client List**) and the Supplementary Recipient List (**Supplementary Final Recipient List**) and provide those lists to ASIC and Independent Expert within the time specified.
108. If ASIC requires any reasonable modifications to the documents referred to in paragraphs 105.2 or 105A.2 or to the Final Client List or the Final Recipient List or to the Supplementary Final Client List or the Supplementary Final Recipient List, ASIC must notify UBS WMA in writing within 14 days of receiving the final lists.
109. UBS WMA must make the reasonable modifications to the documents referred to in paragraphs 105.2 and 105A.2 and to the final lists referred to in paragraph 107 as required by ASIC pursuant to paragraph 108.
110. Following receipt by UBS WMA from ASIC of details of modifications pursuant to paragraph 108, or confirmation that no modifications are required, UBS WMA must:
- 110.1 within 14 days, send the documents referred to in paragraph 105.2 to each of the persons and entities identified in the Final Recipient List as having one relevant transaction in relation to

which a SOA was potentially required but was not provided in accordance with the Act;

- 110.2 within 14 days, send a notification letter to be approved by ASIC to each of the persons and entities identified in the Final Recipient List as having more than one relevant transaction in relation to which a SOA was potentially required but was not provided in accordance with the Act;
- 110.3 within 14 days, send a notification letter to be approved by ASIC to each of the persons and entities identified in the Supplementary Final Recipient List;
- 110.4 within 8 weeks, send the documents referred to in paragraph 105.2 to each of the persons and entities identified in the Final Recipient List as having either two or three relevant transactions in relation to which a SOA was potentially required but was not provided in accordance with the Act;
- 110.5 within 14 weeks, send the documents referred to in paragraph 105.2 to each of the persons and entities identified in the Final Recipient List as having either four or five relevant transactions in relation to which a SOA was potentially required but was not provided in accordance with the Act;
- 110.6 within 20 weeks, send the documents referred to in paragraph 105.2 to each of the persons and entities identified in the Final Recipient List as having more than five relevant transactions in relation to which a SOA was potentially required but was not provided in accordance with the Act;
- 110.7 within 6 weeks of sending the documents referred to in paragraph 110.6, send the documents referred to in paragraph 105A.2 to each of those persons and entities identified in the Supplementary Final Recipient List as having one, two or three relevant transactions in relation to which a SOA was potentially required but was not provided in accordance with the Act;

110.8 within 13 weeks of sending the documents referred to in paragraph 110.6, send the documents referred to in paragraph 105A.2 to each of those persons and entities identified in the Supplementary Final Recipient List as having more than three relevant transactions in relation to which a SOA was potentially required but was not provided in accordance with the Act.

If an address cannot be obtained from UBS WMA's records or the letter is returned, UBS WMA must follow the procedure in Annexure B."

12.6 Inserting the following paragraph immediately following paragraph

"110A. If UBS WMA in the course of implementing the UBS WMA Remediation Plan identifies a client requiring notification under the disclosure and compensation provisions of this Enforceable Undertaking, with such client having been omitted from the final lists (the **Additional Client**), UBS WMA must, within 14 days of identifying the Additional Client send a disclosure letter and Claim Form to the Additional Client and, where an Additional Client so notified provides UBS WMA with a completed Claim Form, UBS WMA must undertake an assessment of that claim for compensation in accordance with the spirit of the Enforceable Undertaking, including the payment of interest in similar terms provided in paragraph 112.4 below.

If an address cannot be obtained from UBS WMA's records or the letter is returned, UBS WMA must follow the procedure in Annexure B."

12.7 Inserting the following paragraph immediately following paragraph 112.3:

"112.4. pay simple interest calculated by reference to the 90-day Australian Bank Bill Swap Rate as at the date of the decision to accept a claim (**Interest**) as follows:

- (i) to each of those persons and entities referred to in paragraph 110.4 whose claim is accepted by UBS WMA, 56 days (8 weeks) of Interest on the amount of the claim accepted by UBS WMA;
- (ii) to each of those persons and entities referred to in paragraph 110.5 whose claim is accepted by UBS WMA, 98 days (14



weeks) of Interest on the amount of the claim accepted by UBS WMA;

- (iii) to each of those persons and entities referred to in paragraph 110.6 whose claim is accepted by UBS WMA, 140 days (20 weeks) of Interest on the amount of the claim accepted by UBS WMA;
- (iv) to each of those persons and entities referred to in paragraph 110.7 whose claim is accepted by UBS WMA, 182 days (26 weeks) of Interest on the amount of the claim accepted by UBS WMA; and
- (v) to each of those persons and entities referred to in paragraph 110.8 whose claim is accepted by UBS WMA, 224 days (32 weeks) of Interest on the amount of the claim accepted by UBS WMA"

12.8 Substituting paragraphs 113 and 114 by the following new paragraphs 113 and 114:

"113. UBS WMA must provide written reports (**Compensation Report**) to ASIC containing the following information concerning the status of all claims made:

- 113.1 the number of claims that have been received since the Commencement Date of this Enforceable Undertaking;
- 113.2 the number of claims that have been resolved and have been paid in full or in part;
- 113.3 the number of claims that have been rejected wholly or partially and UBS WMA's reasons for the rejection of each such claim; and
- 113.4 the number of unresolved claims and the reasons each such claim remains unresolved.

114. The first Compensation Report must be provided within 60 days of sending the letters and Claim Forms to the persons or entities in accordance with paragraph 110.1. Thereafter, the Compensation Report

must be provided to ASIC on a monthly basis until 31 December 2012 and, if there are outstanding claims under assessment by UBS WMA as at 31 December 2012, thereafter at such intervals as may be required by ASIC.

12.9 Substituting paragraph 1 in Annexure B: Procedure for contacting persons with the following new paragraph 1:

"1 In accordance with paragraphs 110 and 110A of this undertaking, UBS WMA must send the letter at Annexure B by ordinary pre-paid post to the most recent address the Company has recorded for each relevant person."

13. ASIC considers that the variation of the Enforceable Undertaking as described in paragraph 12 above is in all the circumstances appropriate.

14. No other aspects of the Enforceable Undertaking are changed in any way.

#### ACKNOWLEDGMENTS

15. UBS WMA acknowledges that ASIC:

15.1 may from time to time publicly refer to this variation of enforceable undertaking; and

15.2 will make this variation of enforceable undertaking available for public inspection.

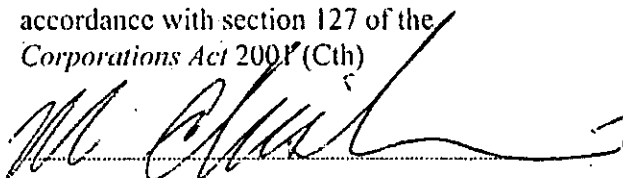
16. UBS WMA acknowledges that this variation of enforceable undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this variation of enforceable undertaking or the Enforceable Undertaking.

17. UBS WMA acknowledges that ASIC's acceptance of this variation of enforceable undertaking does not affect ASIC's power to investigate any contravention arising from future conduct.

18. UBS WMA acknowledges that the acceptance by ASIC of the variation in paragraph 12 above modifies the Enforceable Undertaking but does not affect the validity of the Enforceable Undertaking and does not prejudice ASIC's ability to take any action in relation to the Enforceable Undertaking.

19. UBS WMA acknowledges that this variation of enforceable undertaking has no operative force until accepted by ASIC.


Executed by UBS Wealth Management  
Australia Ltd ACN 005 311 937 in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth)



Signature of director

MICHAEL CHISHOLM

Full Name



Signature of director

MICHAEL BOOK

Full 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:



Greg Medcraft

Chairman and Delegate of Australian Securities and Investments Commission

20... December 2011

## **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:

**UBS WEALTH MANAGEMENT AUSTRALIA LTD  
ACN 005 311 937  
(UBS WMA)**

### **DEFINITIONS**

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

**Advisers** means Representatives who are client advisers.

**AFSL** means Australian Financial Services Licence.

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

**ASIC's Concerns** means the concerns set out in paragraphs 10 to 17.

**Claim Form** means a form to be sent to clients by UBS WMA in accordance with paragraph 109 to facilitate a claim for compensation as a result of the conduct referred to in paragraph 16.1.

**Client List** means the list of clients referred to in paragraph 105.

**Commencement Date** means 17 March 2011.

**Compensation Report** means the report referred to in paragraph 113.

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

**Draft UBS WMA Remediation Plan** means the report referred to in paragraph 40.

**Expert Report** means any expert report required to be prepared pursuant to this enforceable undertaking.

**Financial Services** has the meaning given to that term by Division 4 of Part 7.1 of Chapter 7 of the Corporations Act.

**Final Client List** means the list of clients referred to in paragraph 107.

**Final Expert Report** means the report referred to in paragraph 99.

**Final Recipient List** means the list referred to in paragraph 107.

**Final Response** means the plan referred to in paragraph 100 or as modified in accordance with paragraph 101.

**First Expert Report** means the report referred to in paragraph 84.

**First Response** means the plan referred to in paragraph 85 or as modified in accordance with paragraph 86.

**Further Compensation Report** means the report referred to in paragraph 114.

**Independent Expert** means an expert required to be appointed pursuant to this enforceable undertaking as referred to in paragraph 33.

**Legal and Compliance** means the Legal and Compliance department within UBS WMA.

**Recipient List** means the list referred to in paragraph 105.3

**Remediation Assessment** means the report referred to in paragraph 81.

**Representative** means a representative of UBS WMA within the meaning of s 910A of the Act.

**Second Expert Report** means the report referred to in paragraph 88.

**Second Response** means the report referred to in paragraph 89.

**SOA** means a statement of advice, as required by s 946A of the Corporations Act.

**SOAP** means UBS WMA's automated SOA production system.

**Third Expert Report** means the report referred to in paragraph 93.

**Third Response** means the report referred to in paragraph 94.

**UBS WMA Remediation Plan** means the report referred to in paragraph 82.

## BACKGROUND

1. Under s 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. Effective 1 January 2004, UBS WMA was granted an Australian Financial Services Licence pursuant to Division 4 of Part 7.6 of the Corporations Act to provide financial product advice pursuant to s 766B of the Corporations Act and to deal in financial products pursuant to s 766C of the Corporations Act, which remains current.
3. On 18 December 2009 UBS WMA lodged a breach notification ("Notification") with ASIC, in accordance with s 912D of the Corporations Act, informing ASIC of conduct by UBS WMA which may have contravened s 946A of the Corporations Act, namely the obligation to provide a Statement of Advice (SOA). The Notification indicated that between January 2006 and May 2009, approximately 684 retail clients who invested in a category of financial products classified by UBS WMA as structured products, were not provided with SOAs. UBS WMA has subsequently ascertained that the number of such clients not provided with SOAs up until 31 March 2010 is 764. UBS WMA notified ASIC that it was concerned about a potential breach insofar as its enquiries revealed that none of those clients had received a SOA in circumstances where some of those clients may have been provided with personal financial product advice. UBS WMA has also subsequently ascertained that the failure to send SOAs extended to clients provided with personal financial product advice in respect of certain products other than structured products.
4. As a result of the breach notification referred to in the preceding paragraph and additional information obtained by ASIC, an investigation pursuant to s 13 of the ASIC Act was commenced into the affairs of UBS WMA.

## UBS WMA

5. Since about January 2004 UBS WMA has operated a business which includes the provision of financial services (the **Financial Services**) within the meaning of Division 4 of Part 7.1 of Chapter 7 of the Corporations Act (the **Business**).

6. The Business is a financial services business within the meaning of Chapter 7 of the Corporations Act.
7. As at 1 March 2010 UBS WMA had 103 client advisers (Advisers) designated to act as representatives of UBS WMA. The Advisers are representatives within the meaning of s 910A of the Corporations Act.
8. WMA holds Australian Financial Services License number 231127 and is licensed to provide advice in relation to, and deal in, amongst other things, securities, derivatives, managed investment schemes, investor directed portfolio services, managed discretionary accounts and to provide custodial and depositary services (including operate an investor directed portfolio service).
9. As at 13 April 2010 UBS WMA had 4,139 clients recorded as wholesale clients, and 19,908 clients recorded as retail clients. Those clients include individuals, superannuation funds, family trusts, charitable trusts, investments managers and corporate.

#### ASIC'S CONCERNS

10. ASIC has identified a number of areas of concern within UBS WMA (ASIC's Concerns), set out in paragraphs 11 to 17 which relate to:
  - 10.1 poor compliance culture and framework;
  - 10.2 inadequate risk management;
  - 10.3 a breakdown in general processes;
  - 10.4 inadequate training and education;
  - 10.5 deficiencies in the production of SOAs; and
  - 10.6 inadequate breach assessment and reporting.

#### Poor Compliance Culture and framework

11. UBS WMA has failed to foster and maintain a proper commitment to, and culture of, compliance within the UBS WMA business, demonstrated by:
  - 11.1 the failure by both management and Advisers to take seriously the obligation to provide SOAs;

11.2 the failure to have in place proper procedures and framework for ensuring compliance with SOA obligations;

11.3 a failure to ensure staff received adequate compliance training and education.

#### Inadequate Risk Management

12. UBS WMA did not have, and still may not have, appropriate compliance risk management policies and systems having regard to the nature, size and complexity of its business.

13. Consequently:

13.1 not all material risks have been properly identified and/or actively managed;

13.2 risk activities have often been reactive or ad-hoc rather than pro-active, planned and preventative.

#### General processes

14. The following deficiencies exist in UBS WMA's general processes:

14.1 errors, inconsistencies and omissions in documentation regarding client details, including risk profiles, investment experience and objectives;

14.2 inadequate use of systems for recording retail client information obtained by Advisers during the course of their dealings with clients;

14.3 inadequate use of systems for recording communications between Advisers and clients;

14.4 inadequate monitoring and supervision of Adviser activities;

14.5 inadequate audit process for reviewing the content and quality of advice provided by Advisers;

14.6 inadequate monitoring to ensure that Advisers correctly identify when an SOA is required;

14.7 inadequate and insufficient documented policies to govern the SOA process;

14.8 a lack of detailed procedure documents regarding the SOA process;

14.9 inadequate processes for recording clients' wholesale or retail status;



- 14.10 inadequate processes for ensuring wholesale client certificates conform with the law;
- 14.11 inadequate processes to control the recommendation by Advisers of products outside of UBS WMA's approved product list;
- 14.12 the failure of UBS WMA's systems to record personal financial product advice that may have been given by Advisers to retail clients in relation to third party financial products (ie products that a client has acquired in their personal capacity and which are not supported by UBS WMA via UBS WMA platforms or in its capacity as custodian for the client);
- 14.13 inadequate systems for undertaking formal and regular client account reviews that could have addressed the matters in 14.11 and 14.12; and
- 14.14 inadequate systems for ensuring that risks associated with products are explained to clients.

#### Inadequate training and education

- 15. Deficiencies may exist in UBS WMA's training and education in the following respects:
  - 15.1 insufficient face-to-face training and an overreliance on online training with no active supervision or monitoring of content on the completion of the online training courses;
  - 15.2 insufficient training and education in relation to compliance obligations, in particular the requirement to provide SOAs;
  - 15.3 lack of monitoring of content of training requirements; and
  - 15.4 the absence of a compliance education and training officer or coordinator who could have addressed the matters in 15.1 and 15.3.

#### Failure to provide SOAs

- 16. Deficiencies exist in UBS WMA's systems relating to the provision of SOAs, which have resulted in:
  - 16.1 the failure to send SOAs to clients who received personal financial advice in accordance with s 946A of the Corporations Act (which includes the

obligations set out in s 946C concerning the timing of sending SOAs, and s 947B concerning the required content of a SOA);

- 16.2 the inability of UBS WMA to verify which clients have received SOAs and which clients have not;
- 16.3 the inability of UBS WMA to locate SOAs previously sent to clients;
- 16.4 the inability of UBS WMA to consistently ascertain if, and what, advice has been given to clients in respect of certain financial products, and whether such advice was appropriate to the clients' relevant personal circumstances as required by s945A; and
- 16.5 the ability of Advisers to avoid or cancel the production of SOAs.

#### Incident and breach assessment and reporting

- 17. ASIC considers that UBS WMA does not have in place adequate procedures for determining whether a breach or likely breach of UBS WMA's obligations in respect of its obligations in relation to the Financial Services was significant.

#### ACKNOWLEDGEMENTS – REMEDIATION PROGRAMME

- 18. ASIC acknowledges that UBS WMA:
  - 18.1 self reported these matters;
  - 18.2 has fully co-operated and has worked constructively with ASIC in its investigation; and
  - 18.3 has commenced a remediation programme to address problems identified within the Business;
  - 18.4 has restructured certain management functions to delineate responsibilities including appointing a Head of UBS WMA, Head of Compliance, Head of Legal and Chief of Staff;
  - 18.5 has engaged external consultants to assist with a preliminary assessment of aspects of the remediation programme; and
  - 18.6 has reorganised the reporting structure within UBS WMA, such that the Head of UBS WMA has a joint reporting line to the UBS Australia Country Head.

19. Given the significance of ASIC's Concerns, the significant number of those concerns and UBS WMA's previous failure to promote a culture of compliance, ASIC is concerned that the interim remediation programme may not have been fully implemented or effective. ASIC and UBS WMA consider that there is still a substantial amount of remediation required to address ASIC's Concerns.
20. If UBS WMA does not address all of the issues raised by ASIC, UBS WMA will not be able to ensure that the Financial Services will be provided in compliance with the requirements of the Corporations Act.

#### ACKNOWLEDGEMENT BY UBS WMA OF ASIC'S CONCERNS

21. UBS WMA acknowledges ASIC's Concerns. UBS WMA also acknowledges that deficiencies existed in the Business since at least January 2006 as outlined in ASIC's Concerns in respect of the failure to provide SOAs. UBS WMA also acknowledges that deficiencies have existed in respect of proper processes, risk management, training and education, compliance culture and incident and breach assessment and reporting. Accordingly, it has offered this enforceable undertaking.
22. UBS WMA acknowledges that the deficiencies referred to in the preceding paragraph may have resulted in UBS WMA failing to satisfy the following Corporations Act obligations in so far as they relate to the relevant aspects of the Business:
  - 22.1 section 912A(1)(a) – the obligation to do all things necessary to ensure that financial services are provided efficiently, honestly and fairly;
  - 22.2 section 912A(1)(b) – the obligation to comply with the conditions on the licence, namely the requirement to retain SOAs, and the information required by an SOA, for a period of seven years;
  - 22.3 section 912A(1)(c) – the obligation to comply with the financial services laws;
  - 22.4 section 912A(1)(ca) – the obligation to take reasonable steps to ensure that UBS WMA's representatives comply with the financial services laws;
  - 22.5 section 912A(1)(e) – the obligation to maintain the competence to provide the financial services being provided;

- 22.6 section 912A(1)(f) – the obligation to ensure that representatives are adequately trained and are competent to provide the financial services being provided;
  - 22.7 section 912A(1)(h) – the obligation to maintain adequate risk management systems; and
  - 22.8 section 946A – the obligation to give a client a SOA.
23. UBS WMA does not concede that ASIC's Concerns in relation to the failure to provide SOAs has given rise to a contravention of any law or obligation by UBS WMA, including section 945A – the obligation to have a reasonable basis for providing advice to clients and for ensuring that advice is appropriate.

#### UNDERTAKINGS

- 24. Under section 93AA of the ASIC Act, UBS WMA has offered, and ASIC has agreed to accept as an alternative to commencing civil proceedings or pursuing administrative action, undertakings as set out in paragraphs 25 to 28.
- 25. UBS WMA undertakes that it will pay the costs of its compliance with this enforceable undertaking, including the remuneration and costs associated with the engagement of any independent expert.
- 26. UBS WMA undertakes that it will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on its costs of compliance with this enforceable undertaking or any proportion of those costs to clients of the Business.
- 27. UBS WMA 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 UBS WMA's compliance with the terms of this enforceable undertaking. For the avoidance of doubt, UBS WMA is not required to provide ASIC with documents or information that is the subject of legal professional privilege.
- 28. UBS WMA undertakes that it will pay within two weeks of the Commencement Date ASIC's costs of this Enforceable Undertaking in the amount of \$30,000 for costs incurred to date. UBS WMA further undertakes that it will, within four weeks of receiving notification from ASIC, pay a further amount in respect of any additional

costs of this Enforceable Undertaking incurred by ASIC, such further amount not to exceed \$50,000.

#### INDUSTRY PROFESSIONAL DEVELOPMENT PROGRAMME

29. ASIC will arrange or supervise (as it elects) within twelve months of the date of this Enforceable Undertaking an educational workshop open to persons working within or in association with the wealth management industry in Australia, which will be principally concerned with promoting best practice within the wealth management industry in Australia.
30. UBS WMA undertakes that it will provide such assistance, including by making such financial contribution as ASIC may reasonably require, in respect of the educational workshop referred to in paragraph 29.

#### ACKNOWLEDGEMENTS -- OPERATION OF ENFORCEABLE UNDERTAKING

31. UBS WMA acknowledges that:
  - 31.1 this enforceable undertaking has no operative force until accepted by ASIC, and UBS WMA and ASIC acknowledge that the date of this enforceable undertaking is the date on which it is accepted by ASIC;
  - 31.2 ASIC's acceptance of this enforceable undertaking does not affect its power to investigate, conduct surveillance, pursue a criminal prosecution or seek a pecuniary civil order in relation to:
    - (i) fraud, misappropriation or misuse of money by UBS WMA or any person or entity associated with UBS WMA, whether or not based on information currently in its possession or derived from such information;
    - (ii) any contravention not the subject of ASIC's Concerns;
    - (iii) matters arising from future conduct occurring after the date of this enforceable undertaking (including any matters disclosed to ASIC by UBS WMA 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;

- (iv) any person, other than UBS WMA and its related bodies corporate or the officers and employees (present and former) 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;
  - (v) ASIC's acceptance of this enforceable undertaking does not affect its power to intervene in or become a party to any proceeding in relation to the interpretation of the Corporations Act;
  - (vi) 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, except where any action, proceeding or claim in respect of those rights and remedies is brought by, or in the name of, ASIC;
  - (vii) ASIC may from time to time publicly refer to this enforceable undertaking; and
  - (viii) ASIC will make this enforceable undertaking available for public inspection.
32. By accepting this enforceable undertaking ASIC concludes the investigation referred to in paragraph 4 giving rise to ASIC's Concerns and, subject to paragraph 31.2 and compliance with this enforceable undertaking, ASIC will not take, or cause to be taken, any other action against UBS WMA (or its 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

33. Where the appointment of an independent expert is required pursuant to any paragraph of this enforceable undertaking UBS WMA must appoint a person who is independent of UBS WMA and its officers and has the necessary expertise, experience and operational capacity to complete the terms of engagement (**Independent Expert**).
34. UBS WMA must:

- 34.1 engage the Independent Expert to perform the tasks necessary to fulfil the obligations imposed by this enforceable undertaking;
  - 34.2 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 further information obtained by the Independent Expert in the course of carrying out their assessments;
  - 34.3 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; and
  - 34.4 otherwise reasonably assist the Independent Expert in conducting the assessments and producing the Expert Reports.
35. UBS WMA will ensure that the terms of engagement of the relevant Independent Expert will include a requirement that the Expert Reports will:
- 35.1 set out the steps that the Independent Expert has taken to fulfil their task, including but not limited to:
    - (i) the people that have assisted the Independent Expert and in what way;
    - (ii) the personnel that have been interviewed;
    - (iii) the documents that have been assessed;
    - (iv) any limitations or qualifications to the Expert Report;
    - (v) list those documents or extracts of documents most relevant (in the view of the Independent Expert) in producing the Expert Report; and
    - (vi) otherwise comply (to the extent applicable) with those paragraphs of the Practice Note CM 7 issued by the Chief Justice of the Federal Court of Australia 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).

36. Paragraphs 33 to 35 apply to every appointment of an Independent Expert by UBS WMA required pursuant to this enforceable undertaking.
37. The Independent Expert and the Independent Expert's terms of engagement must be approved in writing by ASIC before the Independent Expert is engaged. UBS WMA must advise ASIC of the expertise and prior association of the proposed Independent Expert with UBS WMA 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 seven days from the Commencement Date.
38. UBS WMA and ASIC will respectively use their best endeavours to ensure that the Independent Expert is engaged within two weeks of the Commencement Date.
39. UBS WMA 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 37.

#### Remediation Plan

40. Within two weeks of the Commencement Date UBS WMA must submit a plan to ASIC and the Independent Expert (**draft UBS WMA Remediation Plan**) incorporating each of the matters identified in paragraphs 41, 42 and 43 below. For the avoidance of doubt, the draft UBS WMA Remediation Plan will include matters that UBS WMA considers have already been addressed as part of the interim remediation programme referred to in paragraph 18, in order to enable the Independent Expert to assess independently whether those matters have been satisfactorily addressed.
41. For each of the matters identified in paragraphs 42 and 43 below, the draft UBS WMA Remediation Plan must provide details of:
  - 41.1 whether or not action has been taken to remediate the issue;
  - 41.2 if not, the action proposed to be taken and timeframes for that action;
  - 41.3 if so, a description of the action taken to date and the progress;
  - 41.4 whether or not any procedure, process or system implemented has been validated and tested for ongoing effectiveness and if so, the organisation or team that conducted the validation and testing.



42. The draft UBS WMA Remediation Plan must include a description of each of the issues requiring remediation (or which has required remediation) as agreed with ASIC.
43. The draft UBS WMA Remediation Plan must include the forms of remediation for the Business that have or will be taken as set out in paragraphs 44 to 80 below.

#### Compliance culture and framework

44. Establish a compliance framework, including preparing a compliance program with clear compliance objectives and compliance risks.
  - 44.1 Relevant compliance activities should be assigned to each material compliance risk to reduce the residual compliance risk to an acceptable level approved by Legal and Compliance and the Board of UBS WMA.
  - 44.2 The compliance program should be reviewed on an annual basis but in any event, should be treated as a living document to be amended and updated as necessary.
45. Maintain a compliance framework, including a compliance plan with clear compliance objectives and compliance risks.
46. Clearly define roles and responsibilities for the key compliance activities within the compliance framework.
47. Provide monthly compliance reports to the Board of UBS WMA, covering the compliance activities of the month, including a summary of breaches, complaints, training activity, correspondence with regulators and other relevant compliance-related activity.
48. Establish clear and measurable key performance indicators in relation to compliance obligations for Representatives, as relevant to their role and responsibilities.
  - 48.1 These indicators should be reviewed regularly and monitored by an independent party (eg. Head of Legal and Compliance or the Board of Directors).

#### Risk management

49. Establish a documented compliance risk management procedure.

50. Establish a detailed compliance risk register which identifies all material risks relevant to the Business. This compliance risk register should be reviewed on an annual basis to add, amend or delete specific risks, but in any event should be treated as a living document to be amended and updated as necessary.
51. The compliance risk register should include:
  - 51.1 an appropriate risk rating definition that is measurable;
  - 51.2 assignment of the risk ratings to each risk identified on the register with documented explanations;
  - 51.3 each risk should have relevant control activities assigned to ensure that the risk profile is reduced to an acceptable residual risk level; and
  - 51.4 regular review and approval by Legal and Compliance and the Board of UBS WMA.

#### Breakdown in general processes

52. Establish a documented policy and detailed procedure to govern and describe the required activities with regard to the provision of advice to clients.
53. Establish a documented policy and detailed procedure with regard to the use of UBS WMA's approved product lists, with specific written approval required for any deviation from the approved product list.
54. Establish a system for recording and maintaining client information, including:
  - 54.1 the ability to verify the client's wholesale/retail status;
  - 54.2 to communicate with clients on an annual basis in order to enable them to confirm the accuracy of client details, including personal details, risk profiles, investment experience and objectives;
  - 54.3 a process to verify that wholesale certificates comply with the law; and
  - 54.4 regular reviews to ensure that clients' wholesale/retail status is accurate.
55. Improve the existing system whereby communications with retail clients regarding their relevant personal circumstances are recorded in writing within the system in a timely manner to ensure that complete and accurate details are maintained.

56. Establish a procedure for the issuance of SOAs in accordance with the requirements of the Corporations Act and associated obligations under UBS WMA'S AFSL.
57. In relation to investments in third party products by a client at an Adviser's recommendation:
  - 57.1 Amend current systems to ensure that advice is recorded and maintained in accordance with the requirements of the Corporations Act and associated obligations under UBS WMA'S AFSL; and
  - 57.2 for clients who have agreed with UBS WMA to receive ongoing advice, to maintain details of those investments.
58. Establish a system for monitoring and supervising Advisers' activities (eg. Advisers correctly identifying when an SOA is required, correctly recording reasons for not providing a SOA, approvals obtained for any deviations from the approved product list, etc).
59. Establish a programme for undertaking regular client account reviews by a suitably senior and independent staff member to assess the quality of advice provided.
60. Establish a programme to be undertaken by a function independent of the Adviser function, to ensure compliance with UBS WMA policies and the Law including, but not limited to, the SOA obligations.

#### Training and education

61. Engage a compliance education and training officer or coordinator.
62. Establish a training policy and training procedures in order to implement the training policy.
63. Complete a skills assessment of existing representatives of UBS WMA (within the meaning of section 910A of the Corporations Act) and any new representative and maintain a detailed compliance training programme specific to their roles and responsibilities.
64. Training programmes should consider the level of training to be completed for all representatives at various levels (as relevant to their roles and responsibilities), frequency of completing the training, component of assessment if relevant (i.e.

examination) including required 'pass' rate and contents to be consistent with documented procedures as well as contents to be reviewed and updated regularly.

65. Establish a procedure whereby training on key compliance requirements requires mandatory attendance.
66. Establish and maintain a training register documenting the attendance, completion and assessment (where UBS WMA determines assessment is relevant) of required training programmes for all Representatives, which is monitored and linked with performance assessments of Representatives.
67. Establish a procedure which ensures that any non-completion or poor assessment be addressed appropriately and that the respective Representative should be restricted from executing any activities which may lead to a risk of non-compliance, i.e. providing advice to clients.
68. Develop training programmes which are executed in a combination of face-to-face training workshops and online training. For any online training, the ability of staff to 'skip contents' should be restricted and any components of assessment (i.e. examination) (where UBS WMA determines assessment is relevant) should be closely monitored to ensure required level of 'pass' rate is achieved.
69. Develop annual compliance refresher training.
70. Attendance, completion and assessment (where UBS WMA determines assessment is relevant) with regards to the compliance refresher training should be documented and monitored.
71. Where appropriate to the role, training content should incorporate the following to ensure relevant staff and management understand and comply with their respective compliance obligations with regard to Corporations Act regulations and relevant ASIC Regulatory Guides (i.e. RG 175 Licensing Financial Product Advisers – conduct and disclosure):
  - 71.1 the requirement under the Corporations Act to provide SOAs, including in circumstances where advice is given and no transaction entered into;
  - 71.2 exemptions to the requirement to provide SOAs as provided in the Corporations Act;

- 71.3 the required content of a SOA under the Corporations Act;
  - 71.4 the operation of the SOAP system;
  - 71.5 the details of which conversations with retail clients must be recorded in writing;
  - 71.6 responsibilities of Advisers in relation to the production and dispatch of SOAs; and
  - 71.7 monitoring by management of Advisers' compliance with the SOA provisions of the Corporations Act.
72. Provide mandatory training to all staff (including executives) involved in the provision of financial services with respect to the incident and breach reporting process and obligations of staff to report and record such matters. The training should include an assessment component to ensure staff understand their obligations as it pertains to incident and breach reporting.

#### Provision of SOAs

73. Changes to the SOAP system should be made:
- 73.1 to ensure that SOAs are produced as required by law in every instance, including instances where advice is given but no transaction is entered into;
  - 73.2 to enable UBS WMA to identify when SOAs have been produced in respect of any client and/or product type and/or date of advice given;
  - 73.3 to ensure that copies of SOAs sent to a client are electronically linked to, and stored together with, that client's account details;
  - 73.4 to provide a central repository for all SOAs sent to clients and the ability for UBS WMA to monitor and audit at any point in time, the provision of SOAs compared with relevant transactions generated;
  - 73.5 to prevent Advisers or any other representative of UBS WMA from cancelling or circumventing the production of a SOA without documented approval from the Business Risk Management or Legal and Compliance groups;

- 73.6 to provide a reconciliation process to confirm that instructions to the mailroom and final SOA production align with the SOAP system;
  - 73.7 to provide a reconciliation process to confirm that the final production and sending of SOAs by email align with the SOAP system; and
  - 73.8 to require an Adviser to record the reason why a SOA was not provided in circumstances where personal financial product advice was given to a retail client but no SOA was required for whatever reason (including whether an exemption applies and if so, what exemption applies).
- 74. As part of the independent client account reviews set out in paragraph 59, such reviews should cover the production and content of SOAs to the relevant client, and reviewing whether Advisers have complied with the obligation to prepare and provide SOAs to that client.
  - 75. Establish a process to test the effectiveness of the monitoring arrangements referred to in paragraph 59.

#### Incident and breach assessment and reporting

- 76. Maintain satisfactory documented policy and procedures for the identification, escalation, notification and other responses to incidents and breaches of UBS WMA's obligations as the holder of an AFSL so as to ensure ongoing compliance with section 912D of the Corporations Act.
- 77. Establish procedures for Legal and Compliance to review regularly the breach register to ensure that systemic issues are identified and assessed for their significance.
- 78. Establish procedures for reviewing the complaints register to assess and consider if any of the complaints indicate that an incident (or breach) has occurred.
- 79. Establish procedures for senior executives and management to certify regularly to Legal and Compliance and the Board of UBS WMA that the incident management and breach reporting procedures have been adhered to. These certifications should be included as part of Legal and Compliance's audit procedures.
- 80. Provide to the Independent Expert the register of breaches of UBS WMA's obligations at the end of every month for eight months commencing two months after the Commencement Date.

## Remediation Assessment

81. Within four weeks of the Commencement Date the Independent Expert must:
- 81.1 Conduct an assessment of the draft UBS WMA Remediation Plan to determine whether it adequately addresses the matters raised in paragraphs 44 to 80.
  - 81.2 Provide a written report (**Remediation Assessment**) to ASIC and the UBS WMA with the Independent Expert's recommendations regarding the draft UBS WMA Remediation Plan.
82. Within six weeks of the Commencement Date, UBS WMA must amend the draft UBS WMA Remediation Plan as reasonably recommended by the Independent Expert and resubmit the UBS WMA Remediation Plan, as amended (**UBS WMA Remediation Plan**) to the Independent Expert and ASIC.
83. UBS WMA must implement the UBS WMA Remediation Plan.

## First Expert Report

84. Within 12 weeks of the Commencement Date, the Independent Expert must:
- 84.1 Conduct an assessment of the implementation of the UBS WMA Remediation Plan, including:
    - (i) an assessment of the progress of the implementation of the UBS WMA Remediation Plan;
    - (ii) an assessment of the effectiveness of those remediation items in the UBS WMA Remediation Plan that have been implemented;
    - (iii) an assessment of compliance with procedures, processes and systems implemented in accordance with the UBS WMA Remediation Plan;
    - (iv) whether newly employed and ongoing employees of UBS WMA are appropriately trained in respect of any new processes, procedures and policies;
  - 84.2 Identify deficiencies from the assessment referred to in paragraph 84.1.
  - 84.3 Provide a written report to UBS WMA and ASIC (**First Expert Report**) that sets out:

- (i) details of its findings in respect of the matters referred to in paragraph 84.1;
- (ii) details of:
  - A. the deficiencies identified in paragraph 84.2;
  - B. recommendations on how to rectify the deficiencies; and
  - C. a reasonable time for a rectification program to be commenced and implemented.

#### First Response

- 85. Within 14 weeks of the Commencement Date, UBS WMA must consider the First Expert Report and provide to the Independent Expert and ASIC a plan (First Response) setting out the action UBS WMA proposes to take to complete the implementation of the UBS WMA Remediation Plan and rectify the deficiencies identified in the First Expert Report (to the extent reasonable), specifying the reasonable time in which this action will be taken.
- 86. If ASIC or the Independent Expert requires any reasonable modifications to the First Response, ASIC or the Independent Expert must notify UBS WMA in writing within two weeks of receipt of the First Response. UBS WMA must make such modifications to the First Response.
- 87. UBS WMA must implement the First Response within a reasonable time specified.

#### Second Expert Report

- 88. Within six months after the Commencement Date, the Independent Expert must:
  - 88.1 Conduct an assessment of the implementation of the UBS WMA Remediation Plan, having regard to the First Response, including:
    - (i) an assessment of the progress of the implementation of the UBS WMA Remediation Plan;
    - (ii) an assessment of the effectiveness of those remediation items in the UBS WMA Remediation Plan that have been implemented;
    - (iii) an assessment of compliance with procedures, processes and systems implemented in accordance with the UBS WMA Remediation Plan;



(iv) an assessment of the implementation of the First Response; and

(v) whether newly employed and ongoing employees of UBS WMA are appropriately trained in respect of any new processes, procedures and policies;

88.2 Identify deficiencies from the assessment referred to in paragraph 88.1;

88.3 Provide a written report to UBS WMA and ASIC (**Second Expert Report**) that sets out:

(i) details of its findings in respect of the matters referred to in paragraph 88.1;

(ii) details of:

A. the deficiencies identified in paragraph 88.2;

B. recommendations on how to rectify the deficiencies; and

C. a reasonable time for a rectification program to be commenced and implemented.

#### **Second Response**

89. Within seven months of the Commencement Date, UBS WMA must consider the Second Expert Report and provide to the Independent Expert and ASIC a plan (**Second Response**) setting out the action UBS WMA proposes to take to complete the implementation of the UBS WMA Remediation Plan and the First Response as well as to rectify the deficiencies identified in the Second Expert Report (to the extent reasonable), specifying the reasonable time in which this action will be taken.

90. If ASIC or the Independent Expert requires any reasonable modifications to the Second Response, ASIC or the Independent Expert must notify UBS WMA in writing within two weeks of receipt of the Second Response. UBS WMA must make such modifications to the Second Response.

91. UBS WMA must implement the Second Response within a reasonable time specified.

92. If ASIC or the Independent Expert do not provide notification in accordance with paragraph 90, UBS WMA must provide to ASIC a written report detailing the implementation of the UBS WMA Remediation Plan and the Second Response within

14 days of the final step in the UBS WMA 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 UBS WMA of the UBS WMA Remediation Plan and the Second Response.

### Third Expert Report

93. Within ten months after the Commencement Date, the Independent Expert must:

93.1 Conduct an assessment of the implementation of the UBS WMA Remediation Plan, having regard to the First and Second Response, including:

- (i) an assessment of the progress of the implementation of the UBS WMA Remediation Plan;
- (ii) an assessment of the effectiveness of those remediation items in the UBS WMA Remediation Plan that have been implemented;
- (iii) an assessment of compliance with procedures, processes and systems implemented in accordance with the UBS WMA Remediation Plan;
- (iv) an assessment of the implementation of the Second Response;
- (v) whether newly employed and ongoing employees of UBS WMA are appropriately trained in respect of any new processes, procedures and policies;

93.2 Identify deficiencies from the assessment referred to in paragraph 93.1;

93.3 Provide a written report to UBS WMA and ASIC (**Third Expert Report**) that sets out:

- (i) details of its findings in respect of the matters referred to in paragraph 93.1;
- (ii) details of:
  - A. the deficiencies identified in paragraph 93.2;
  - B. recommendations on how to rectify the deficiencies; and
  - C. a reasonable time for a rectification program to be commenced and implemented.

### Third Response

94. Within 11 months of the Commencement Date, UBS WMA must consider the Third Expert Report and provide to the Independent Expert and ASIC a plan (Third Response) setting out the action UBS WMA proposes to take to complete the implementation of the UBS WMA Remediation Plan and the First and Second Responses as well as to rectify the deficiencies identified in the Third Expert Report (to the extent reasonable), specifying the reasonable time in which this action will be taken.
95. If ASIC or the Independent Expert requires any reasonable modifications to the Third Response, ASIC or the Independent Expert must notify UBS WMA in writing within two weeks of receipt of the Third Response. UBS WMA must make such modifications to the Third Response.
96. UBS WMA must implement the Third Response within a reasonable time specified.
97. If ASIC or the Independent Expert do not provide notification in accordance with paragraph 95, UBS WMA must provide to ASIC a written report detailing the implementation of the UBS WMA Remediation Plan and the Third Response within 14 days of the final step in the UBS WMA Remediation Plan and the Third Response being completed. ASIC may at its discretion consult with the Independent Expert in relation to the adequacy of the implementation by UBS WMA of the UBS WMA Remediation Plan and the Third Response.

### Final Assessment

98. In the event ASIC considers that a further assessment should be conducted by the Independent Expert, ASIC must notify UBS WMA and the Independent Expert within six weeks of receipt of the Third Response.
99. In the event notice is provided by ASIC pursuant to paragraph 98, within 14 months of the Commencement Date the Independent Expert must:
  - 99.1 Conduct an assessment of the implementation of the UBS WMA Remediation Plan, having regard to the First Response, Second Response and Third Response, including:
    - (i) an assessment of the progress of the implementation of the UBS WMA Remediation Plan;

- (ii) an assessment of the effectiveness of those remediation items in the UBS WMA Remediation Plan that have been implemented;
  - (iii) an assessment of compliance with procedures, processes and systems implemented in accordance with the UBS WMA Remediation Plan;
  - (iv) an assessment of the implementation of the Third Response;
  - (v) consideration of whether newly employed and ongoing employees of UBS WMA are appropriately trained in respect of any new processes, procedures and policies;
- 99.2 Identify deficiencies from the assessment referred to in paragraph 99.1;
- 99.3 Provide a written report to UBS WMA and ASIC (**Final Expert Report**) that sets out:
- (i) details of its findings in respect of the matters referred to in paragraph 99.1;
  - (ii) details of:
    - A. the deficiencies identified in paragraph 99.2;
    - B. recommendations on how to rectify the deficiencies; and
    - C. a reasonable time for a rectification program to be commenced and implemented.

#### **Final Response**

100. Within 15 months of the Commencement Date, UBS WMA must consider the Final Expert Report and provide to the Independent Expert and ASIC a plan (**Final Response**) setting out the action UBS WMA proposes to take to complete the implementation of the UBS WMA Remediation Plan and the Third Response as well as to rectify the deficiencies identified in the Final Expert Report (to the extent reasonable), specifying the reasonable time in which this action will be taken.
101. If ASIC or the Independent Expert requires any reasonable modifications to the Final Response, ASIC or the Independent Expert must notify UBS WMA in writing within

two weeks of receipt of the Final Response. UBS WMA must make such modifications to the Final Response.

- 102. UBS WMA must implement the Final Response within a reasonable time specified.
- 103. UBS WMA must provide to ASIC a written report detailing the implementation of the UBS WMA Remediation Plan and the Final Response within 14 days of the final step in the UBS WMA 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 UBS WMA of the UBS WMA Remediation Plan and the Final Response.

#### DISCLOSURE AND COMPENSATION

- 104. The purpose of this section of the enforceable undertaking is to require UBS WMA to notify potentially affected clients of the failures referred to in paragraph 16.1 and, where appropriate, to facilitate those clients to make a claim for compensation if they so wish arising out of any actual breaches.
- 105. Within 45 days of receipt of the First Expert Report UBS WMA must submit to ASIC and the Independent Expert:
  - 105.1 a list of all the clients whom UBS WMA has identified as having potentially received personal financial product advice in circumstances where a SOA was potentially required but was not provided in accordance with the Act. The list must include those clients who did not receive an SOA in accordance with s 946A and therefore also failed to receive an SOA (a) within the time specified by s 946C; and (b) containing the information required by s 947B (**Client List**);
  - 105.2 a draft letter of disclosure and Claim Form (if appropriate) to be approved by ASIC to be sent to the clients referred to in paragraph 105.3;
  - 105.3 a list of the clients selected from the Client List to whom it is proposed the disclosure letter and Claim Form will be sent (**Recipient List**);
  - 105.4 if UBS WMA does not propose to send the disclosure letter to any of the clients on the Client List, an explanation as to the basis for this decision in each case; and

- 105.5 a document setting out in detail the method used, including identification of all sources reviewed, to compile the Client List and the Recipient List.
106. Within 14 days of receipt of the documents referred to in paragraph 105, the Independent Expert must advise UBS WMA and ASIC of the suitability and appropriateness of the methodology used by UBS WMA as described in paragraph 105.5. The Independent Expert must also advise what, if any, further steps ought reasonably to be taken by UBS WMA in compiling the Client List and the Recipient List, and specify a reasonable time for those steps to be completed.
107. If the Independent Expert advises that further steps should be taken pursuant to paragraph 106, then UBS WMA must take those steps (to the extent they are reasonable), make any consequential amendments to the Client List (**Final Client List**) and the Recipient List (**Final Recipient List**) and provide those lists to ASIC and Independent Expert within the time specified.
108. If ASIC requires any reasonable modifications to the documents referred to in paragraph 105.2 or to the Final Client List or the Final Recipient List, ASIC must notify UBS WMA in writing within 14 days of receiving the final lists.
109. UBS WMA must make the reasonable modifications to the documents referred to in paragraph 105.2 and to the final lists referred to in paragraph 107 as required by ASIC pursuant to paragraph 108.
110. Within seven days of receipt by UBS WMA from ASIC of details of modifications pursuant to paragraph 108, or confirmation that no modifications are required, UBS WMA must send the documents to each of the persons and entities in the Final Recipient List. If an address cannot be obtained from UBS WMA's records or the letter is returned, UBS WMA must follow the procedure in Annexure B.
111. Within five days of UBS WMA receiving a completed Claim Form, it must send a letter to those persons and entities to acknowledge receipt of the Claim Form.
112. UBS WMA must:
- 112.1 within 28 days of receipt of a Claim Form assess any claim for compensation made by a person or entity;
- 112.2 Seek to resolve such claim within 14 days of assessment;

- 112.3 if UBS WMA is unable to resolve the claim within 45 days of receipt of a Claim Form it must:
- (a) provide a substantive response to the client giving reasons why the claim cannot be resolved; and
  - (b) provide information to the client regarding the process for referring the matter to the external dispute resolution body of which it is a member.
113. Within 45 days of sending letters and Claim Forms to persons or entities in accordance with paragraph 109 UBS WMA must provide a report (**Compensation Report**) to ASIC containing the following information concerning the status of claims made:
- 113.1 the number of claims that have been received since the Commencement Date of this enforceable undertaking;
  - 113.2 the number of claims that have been resolved and have been paid in full or in part;
  - 113.3 the number of claims that have been rejected wholly or partially and UBS WMA's reasons for the rejection of each such claim; and
  - 113.4 the number of unresolved claims and the reasons each such claim remains unresolved.
114. If there are claims that are under assessment as at the date of the Compensation Report UBS WMA must provide a further compensation report setting out the matters referred to in paragraph 113 within 30 days of the Compensation Report (**Further Compensation Report**).

#### PROVISION OF DOCUMENTS TO ASIC

115. 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  
Consumers and Retail Investors  
Australian Securities and Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001

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

Managing Director, Legal & Compliance  
UBS Wealth Management Australia Ltd  
Level 16, Chifley Tower  
2 Chifley Square  
SYDNEY NSW 2000

#### PROVISION OF DOCUMENTS TO THE BOARD OF UBS WMA

117. Every report (including the UBS WMA 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 UBS WMA. 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

118. UBS WMA must seek ASIC's written consent to vary the time by which any of the requirements of this enforceable undertaking must be completed. UBS WMA 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.
119. If UBS WMA fails to perform any of the requirements of this enforceable undertaking in the time required by this enforceable undertaking or as varied under paragraph 118, UBS WMA 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.
120. In the event of:
- 120.1 a material breach of the enforceable undertakings; or



120.2 a determination by the Independent Expert in respect of the Final Response that UBS WMA has not completed a material aspect of the UBS WMA Remediation Plan;

UBS WMA must provide to ASIC written submissions setting out why ASIC should not take action to vary UBS WMA's AFSL to revoke UBS WMA's authorisation to operate the Financial Services. UBS WMA's submissions must be provided to ASIC within 14 days of notification by ASIC to UBS WMA of a requirement to do so.

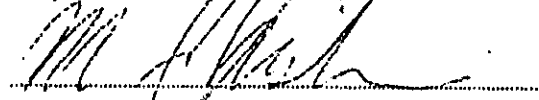
121. Paragraph 120 does not limit ASIC's powers to take additional or alternative action.

**CONCLUSION OF THIS ENFORCEABLE UNDERTAKING**

122. 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 UBS WMA) amend the date by which any such obligation is to be satisfied.

123. ASIC and UBS WMA acknowledge that this enforceable undertaking ends on the completion of all of the requirements under this enforceable undertaking.

Executed by UBS Wealth Management  
Australia Ltd ACN 005 311 937 in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth)

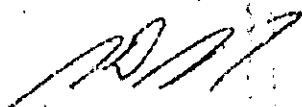
  
Signature of director

MICHAEL CHISHOLM  
Full Name

  
Signature of director

MICHAEL BOOK  
Full 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

17..... March 2011

## Annexure A: The form of the Expert Reports

This is an extract from the Federal Court of Australia Practice Direction 'Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia'.

Note: See also rule 35.10 Civil Procedure Rules (UK) and Practice Direction 35-Experts and Assessors (UK); *HG v the Queen* (1999) 197 CLR 414 per Gleeson CJ at [39]-[43]; *Ocean Marine Mutual Insurance Association (Europe) OV v Jetopay Pty Ltd* [2000] FCA 1463 (FC) at [17]-[23].

- 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 the Court.'
- 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, after exchange of reports or at any other stage, an expert witness changes a material opinion, having read another expert's report or for any other reason, the change should be communicated in a

timely manner (through legal representatives) to each party to whom the expert witness's report has been provided and, when appropriate, to the Court.

- 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.
- 10 The expert should make it clear when a particular question or issue falls outside the relevant field of expertise.
- 11 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the exchange of reports.

## Annexure B: Procedure for contacting persons

- 1 In accordance with paragraph 109 of this undertaking, UBS WMA must send the letter at Annexure B by ordinary pre-paid post to the most recent address the Company has recorded for each relevant person.
- 2 If the letter is returned, UBS WMA must attempt to ascertain a current address for those persons 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, UBS WMA will send the letter by ordinary pre-paid post to that different address.
- 3 If Australia Post notifies UBS WMA that a person has changed address but has not given their consent to Australia Post to release their new details, UBS WMA 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 Company is 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, UBS WMA 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, UBS WMA must ask Australia Post to notify the person that the proposed communication relates to 'possible compensation payable to you arising from an enforceable undertaking made to the Australian Securities and Investments Commission'.
- (c) If the person:

- (i) consents to the release of their new address to UBS WMA, UBS WMA will send the letter by ordinary pre-paid post to that different address; or
  - (ii) does not consent to the release of their new address to UBS WMA, UBS WMA must follow the procedure in paragraph 4.
- 4 (a) UBS WMA will carry out an Internet search of the Telstra White Pages On-Line at [www.whitepages.com.au](http://www.whitepages.com.au) if:
  - (i) Australia Post's 'Change of Address' database and 'Re-Connect' service reveal no different addresses for those persons 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 sought, UBS WMA 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 sought, UBS WMA is not required to send the letter to that person, subject to paragraph 4(c).
- (c) UBS WMA must send the letter by ordinary pre-paid post to the person if at any time within 18 months from the date of ASIC's acceptance of the undertaking:
  - (i) a person for whom no address has been found contacts UBS WMA; or
  - (ii) UBS WMA otherwise becomes aware of an address which it has reasonable grounds to suspect is the current address of the person.