

## ENFORCEABLE UNDERTAKING

The commitments in this enforceable undertaking are offered to the

Australian Securities and Investments Commission (ASIC)

by

Professional Investment Services Pty Ltd ACN 074 608 558 (PIS)

### Definitions

1. The following definitions are used:
  - a. "ASIC" means the Australian Securities and Investments Commission;
  - b. "ASIC's Surveillances" means the surveillances of PIS commenced by ASIC between 1 October 2006 and 1 August 2009;
  - c. "ASIC Act" means the *Australian Securities and Investments Commission Act 2001* (Cth);
  - d. "ASIC's Concerns" means the concerns outlined at paragraphs 8 to 17;
  - e. "Assess" means evaluate the ability or quality of the thing or person;
  - f. "Assessment" is the process of evaluating the ability or quality of the thing or person;
  - g. "AFSL" means Australian Financial Services Licence;
  - h. "books" has the meaning in section 5(1) of the ASIC Act;
  - i. "Client" means a client of PIS;
  - j. "Commencement Date" means the date on which this document is accepted and signed by ASIC;
  - k. "Corporations Act" means the *Corporations Act 2001* (Cth);

- l. "date of this enforceable undertaking" means the date on which it is accepted by ASIC;
- m. "document" has the meaning in section 25 of the *Acts Interpretation Act 1901* (Cth);
- n. "draft PIS Implementation Plan" means the report referred to in paragraph 35;
- o. "Expert Report" means any expert report required to be prepared pursuant to this enforceable undertaking;
- p. "Final Expert Report" means the report referred to in paragraph 48.3;
- q. "First Expert Report" means the report referred to in paragraph 41.3;
- r. "First Response" means the plan referred to in paragraph 42 or as modified in accordance with paragraph 43;
- s. "Independent Expert" means an expert required to be appointed pursuant to this enforceable undertaking as referred to in paragraph 28;
- t. "Implementation Assessment" means the report referred to in paragraph 38.2;
- u. "PIS" means Professional Investment Services Pty Ltd ACN 074 608 558;
- v. "PIS Implementation Plan" means the draft PIS Implementation Plan as amended in accordance with paragraph 39;
- w. "Response" means the First Response or Second Response;
- x. "Second Expert Report" means the report referred to in paragraph 45.3;
- y. "Second Response" means the plan referred to in paragraph 46 or as modified in accordance with paragraph 47.

### **Dates for Compliance**

- 1.1 Where the date for compliance with any requirement under this enforceable undertaking falls on a public holiday in Queensland or NSW or on a weekend, the date for compliance is the next business day. Where the date for compliance is comprised of a period including a "½ month" after the Commencement Date, it is taken to be 15 days. Annexure B contains the due dates for compliance with requirements of this enforceable undertaking.

### **Introduction**

2. Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
3. In furtherance of its responsibilities as set out in the ASIC Act, ASIC conducted ASIC's Surveillances of PIS.
4. PIS holds Australian Financial Services Licence (AFSL) number 234951 and is licensed to carry on a financial services business to:
  - 4.1 Provide financial product advice for the following classes of financial products:
    - (a) Basic deposit products
    - (b) Old law securities options contracts and warrants
    - (c) Debentures, stocks or bonds issued or proposed to be issued by a government
    - (d) Life products
    - (e) Interests in managed investment schemes
    - (f) Retirement savings account products
    - (g) Securities
    - (h) Superannuation

- 4.2 Deal in the financial products referred to at paragraph 4.1 above by applying for, acquiring, varying or disposing of the above financial products on behalf of another person.
5. As at 30 June 2010 PIS had 1354 authorised representatives, authorised to provide financial services on its behalf to its approximately 430,000 Clients.
6. Following ASIC's Surveillances ASIC identified a number of areas of concern in relation to PIS' compliance with financial services laws and these are set out at paragraphs 8 to 17 of this enforceable undertaking.
7. PIS does not concede that ASIC's Concerns have given rise to a contravention of all the provisions referred to in this enforceable undertaking and considers that many of the matters giving rise to the concerns referred to in this enforceable undertaking are now of an historical nature.

#### **ASIC's Concerns**

8. ASIC's Concerns relate to PIS' compliance culture, more specifically:
  - (a) arrangements for the management of conflicts of interest
  - (b) significant breach reporting
  - (c) dispute resolution system
  - (d) resources to carry out supervisory arrangements
  - (e) monitoring and supervision of authorised representatives
  - (f) record keeping
  - (g) risk management systems
  - (h) adviser training and competence.

#### **Arrangements for the management of conflicts of interest**

9. ASIC is concerned that PIS may not have in place adequate arrangements for the management of conflicts of interest that may arise in relation to activities

undertaken by PIS or an authorised representative of PIS in the provision of financial services required pursuant to s912A(1)(aa) of the Corporations Act.

9.1 ASIC considers, amongst other things, that:

- (a) PIS' contractual relationships with various fund managers, responsible entities, authorised representatives and employees give rise to conflicts of interests that need be managed; and
- (b) As at 1 July 2009, PIS had failed to finalise and implement an appropriate written conflicts of interest policy despite deficiencies being identified in PIS' conflicts statement.

Significant breach reporting

10. ASIC is concerned that PIS may have failed to both report significant breaches and report significant breaches within 10 business days in contravention of s912D of the Corporations Act.

10.1 ASIC considers, amongst other things, that PIS:

- (a) failed to finalise and implement an appropriate written Breach and Incident Management Policy; and
- (b) failed to both report significant breaches and report significant breaches within 10 business days to ASIC between 2008 and July 2009.

Dispute resolution system

11. ASIC is concerned PIS' dispute resolution system:
  - 11.1 failed to comply with Australian Standard AS 4269-1995- *Complaints handling* published by Standards Australia, as required by s912A(1)(g) and s912A(2)(a)(i) of the Corporations Act up until 31 December 2010; and
  - 11.2 may fail to comply with Australian Standard AS ISO 10002-2006- *Customer satisfaction — Guidelines for complaints handling in organizations* published by Standards Australia, as required by s912A(1)(g) and s912A(2)(a)(i) of the Corporations Act from 1 January 2010.
  - 11.3 ASIC considers, amongst other things, that as at 9 July 2009:
    - (a) PIS had failed to handle complaints promptly.
    - (b) PIS had, on occasion, failed to respond in a timely fashion to the Financial Ombudsman Service.
    - (c) There was a lack of involvement at PIS' management level and inadequate reporting of complaints to management.
    - (d) PIS' internal policies and procedures and PIS' website and Financial Services Guide contained inaccuracies and inconsistencies regarding complaint response times.
    - (e) Where PIS had not responded to a complainant within 45 days, PIS, on occasion, failed to:
      - (i) notify the complainant of the reasons for delay;
      - (ii) provide an indication of when a response will be given; and
      - (iii) notify the complainant of their right to refer the matter to the relevant external dispute resolution scheme.

Resources to carry out supervisory arrangements

12. ASIC is concerned that PIS does not have available adequate resources to carry out supervisory arrangements as required by s912A(1)(d) of the Corporations Act.
- 12.1 ASIC considers, amongst other things, that as at 9 July 2009:
- (a) PIS was operating with a sole Responsible Manager who was also the Responsible Manager for 2 other entities.
  - (b) PIS had insufficient senior compliance staff and audit staff; and
  - (c) 12 of the 16 high level policy documents that detail PIS' compliance procedures had not been finalised.

Monitoring and supervision of authorised representatives

13. ASIC is concerned that PIS is not taking all reasonable steps to ensure its authorised representatives comply with financial services laws as required by s912A(1)(ca) of the Corporations Act.
- 13.1 ASIC considers, amongst other things, that:
- (a) as at 9 July 2009, PIS was undertaking inadequate monitoring and supervision of authorised representatives, including inadequate supervision of inactive advisers;
  - (b) as at February 2009, PIS' audit checklist did not specifically check for compliance with s945A(1) of the Corporations Act;
  - (c) as at 9 July 2009, PIS was undertaking inadequate remedial action in relation to advisers who have given advice in breach of the Corporations Act;
  - (d) as at 9 July 2009, PIS was providing inadequate supervision of authorised representatives' websites; and

- (e) as at 9 July 2009, PIS had, on occasion, failed to adhere to its policies and procedures for the addition of new products on its Approved Product List (APL) and review of products on the APL.

#### Record keeping

- 14. ASIC is concerned that PIS has not retained copies of supporting documentation that underpins advice given by authorised representatives who cease to be authorised representatives of PIS in breach of condition 23 of its AFSL and therefore in breach of s912A(1)(b) of the Corporations Act.

#### Absence of risk management systems

- 15. ASIC is concerned that PIS does not have adequate risk management systems in place, as required by s912A(1)(h) of the Corporations Act.
- 15.1 ASIC considers that, among other things, PIS does not have a formalised, iterative risk management process whereby PIS:
  - (a) Identifies its business environment, stakeholders, legal & business obligations;
  - (b) Identifies risks to the business, its clients or broader market;
  - (c) Analyses these risks;
  - (d) Designs and implements controls to manage these risks; and
  - (e) Monitors risk issues on an ongoing basis.

#### Inadequate adviser training and competence

- 16. ASIC is concerned that PIS is not ensuring its representatives are adequately trained and competent to provide financial services, as required by s912A(1)(f) of the Corporations Act.
- 16.1 ASIC considers that, amongst other things:
  - (a) PIS had inadequate training and development plan for its compliance staff as at July 2009;



- (b) PIS' Adviser Training and Competency policy (describing the internal processes and procedures within PIS for the training of its representative) had not been finalised as at July 2009;
- (c) PIS' internal compliance auditors on occasions have not proposed training as a remedial action for advisers who may have contravened the Corporations Act.

17. Based on the matters set out above, ASIC is concerned that:

- 17.1 PIS has demonstrated a poor compliance culture; and
- 17.2 as a consequence, there may be instances where representatives of PIS have not provided appropriate advice pursuant to s945A(1) of the Corporations Act.

**Acknowledgments by ASIC**

18. ASIC acknowledges that:

- 18.1 On 11 March 2008, PIS engaged external consultants to prepare an independent report on PIS' compliance arrangements in relation to the provision of financial product advice;
- 18.2 The external consultants prepared a project plan for the "Building a Better Business" project (the majority of which was designed for completion by March 2009);
- 18.3 PIS has necessarily increased its investment in compliance;
- 18.4 While PIS considers:
  - (a) that the Building a Better Business project has been substantially implemented; and
  - (b) that many of ASIC's Concerns are now of an historical nature,

ASIC and PIS consider that it is appropriate for the Independent Expert to assess the degree to which the Building a Better Business project (and other process

improvements) have been satisfactorily implemented, and remedy or otherwise address ASIC's Concerns.

**Acknowledgments by PIS of ASIC's Concerns**

19. PIS acknowledges ASIC's Concerns and has offered this enforceable undertaking in the terms outlined below.
20. PIS acknowledges that the matters referred to in ASIC's Concerns may have, in aggregate, resulted in PIS failing to satisfy one or more of the following obligations under the Corporations Act:
  - 20.1 section 912A(1)(a) – the obligation to do all things necessary to ensure that financial services are provided efficiently, honestly and fairly;
  - 20.2 section 912A(1)(aa) – the obligation to have in place adequate arrangements for the management of conflicts of interest;
  - 20.3 section 912A(1)(b) – the obligation to comply with the conditions on the licence, namely the requirement to maintain proper records;
  - 20.4 section 912A(1)(c) – the obligation to comply with the financial services laws;
  - 20.5 section 912A(1)(ca) – the obligation to take reasonable steps to ensure that PIS' authorised representatives comply with the financial services laws;
  - 20.6 section 912 A(1)(d) – the obligation to have adequate resources to carry out supervisory arrangements;
  - 20.7 section 912A(1)(e) – the obligation to maintain the competence to provide the financial services being provided;
  - 20.8 section 912A(1)(f) – the obligation to ensure that representatives are adequately trained and are competent to provide the financial services being provided;
  - 20.9 sections 912A(1)(g) and 912A(2)(a)(i) – the obligation to have a dispute resolution system that complies with the standards and requirements made or approved by ASIC;

- 20.10 section 912A(1)(h) – the obligation to have adequate risk management systems; and
- 20.11 section 912D – the obligation to report significant breaches within 10 business days to ASIC.
21. Notwithstanding the acknowledgements contained in paragraphs 19 and 20 above, PIS does not concede that ASIC's Concerns have given rise to a contravention of all the provisions referred to in paragraph 20 above and considers that many of the matters giving rise to the concerns referred to in this enforceable undertaking are now of an historical nature.

#### **Undertakings**

22. Under section 93AA of the ASIC Act, PIS 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 22 to 57 inclusive.
23. PIS 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.
24. PIS undertakes that it will not seek reimbursement of, contribution towards or otherwise to directly or indirectly pass on its costs of compliance with this enforceable undertaking or any proportion of those costs to its Clients.
25. PIS 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 PIS' compliance with the terms of this enforceable undertaking. For the avoidance of doubt, PIS is not required to provide ASIC with documents or information that is the subject of legal professional privilege.

**Acknowledgements - Operation of Enforceable Undertaking**

26. PIS acknowledges that:

26.1 This enforceable undertaking has no operative force until accepted by ASIC, and PIS and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC;

26.2 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance, pursue a criminal prosecution or seek a pecuniary civil order in relation to:

- a. Fraud, misappropriation or misuse of money by PIS or any person or entity associated with PIS, whether or not based on information currently in its possession or derived from such information;
- b. Any contravention not the subject of ASIC's Concerns; or
- c. Any contravention arising from future conduct occurring after the date of this enforceable undertaking (including any matters disclosed to ASIC by PIS 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;
- d. Any person, other than PIS and its related bodies corporate or the officers and employees 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;

26.3 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;

26.4 This enforceable undertaking in no way derogates from PIS's obligation to report significant breaches in accordance with s912D of the Corporations Act and its AFSL as it becomes aware of any such breaches, whether or not they are

- identified by an independent expert pursuant to any paragraph of this enforceable undertaking and whether or not any such breaches concern conduct that occurred prior to the date of this enforceable undertaking;
- 26.5 ASIC may issue a media release on execution of this enforceable undertaking referring to its terms and to ASIC's Concerns that led to its execution;
- 26.6 ASIC may from time to time publicly refer to this enforceable undertaking;
- 26.7 ASIC will make this enforceable undertaking available for public inspection; and
- 26.8 ASIC's acceptance of this enforceable undertaking does not affect the legal rights of any Client, including any claim for compensation arising from PIS' conduct giving rise to ASIC's Concerns.
27. By accepting this enforceable undertaking ASIC concludes ASIC's Surveillances and ASIC, subject to paragraph 26.2 and compliance with this enforceable undertaking, will not take any other action against PIS (or its past or present officers) or any related entity (or its past or present officers) in relation to ASIC's Surveillances.

#### **Independent Expert**

28. Where the appointment of an independent expert is required pursuant to any paragraph of this enforceable undertaking PIS must appoint a person who is independent of PIS and its officers and has the necessary expertise, experience and operational capacity to complete the terms of engagement (**Independent Expert**).
29. PIS must:
- 29.1 Engage the Independent Expert to perform the tasks necessary to fulfil the obligations imposed by this enforceable undertaking;
- 29.2 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 its books, to interview any

present employees and to consult with ASIC and disclose to ASIC any information obtained by the Independent Expert in the course of carrying out their assessments;

- 29.3 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;
- 29.4 Otherwise reasonably assist the Independent Expert in conducting the assessments and producing Expert Reports.
- 30. PIS will ensure that the terms of engagement of the relevant Independent Expert will include a requirement that the Expert Reports will:
  - 30.1 Set out the steps that the Independent Expert has taken to fulfil their task, including but not limited to:
    - a. The people that have assisted the Independent Expert and in what way;
    - b. The personnel that have been interviewed; and
    - c. The documents that have been assessed.
  - 30.2 Set out any limitations or qualifications to the Expert Report.
  - 30.3 List those documents or extracts of documents most relevant (in the view of the Independent Expert) in producing the Expert Report.
  - 30.4 Otherwise comply (to the extent applicable) with those paragraphs of the Federal Court of Australia Practice Direction 'Guidelines for 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).
- 31. The Independent Expert and the Independent Expert's terms of engagement must be approved in writing by ASIC before the Independent Expert is engaged. PIS must advise ASIC of the expertise and prior association of the proposed

Independent Expert with PIS and its related bodies corporate and officers at the time approval is sought from ASIC. PIS must provide the draft terms of engagement to ASIC by no later than 7 days from the Commencement Date.

32. The Independent Expert must be engaged within 7 weeks of the Commencement Date.
33. PIS 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 31.
34. Paragraphs 28 to 33 apply to every appointment of an Independent Expert by PIS required pursuant to this enforceable undertaking.

#### **Draft PIS Implementation Plan**

35. Within 7 weeks of the Commencement Date PIS must submit a plan to ASIC and the Independent Expert incorporating each of ASIC's Concerns. PIS may permit the Independent Expert to review ASIC's letter to PIS dated 15 March 2010 and PIS' responses to that letter dated 22 March 2010 and 15 June 2010, for the purpose of providing guidance to PIS in relation to PIS' preparation of the plan pertaining to each of ASIC's Concerns (**draft PIS Implementation Plan**).
36. For the avoidance of doubt the draft PIS Implementation Plan will include each of ASIC's Concerns, irrespective of whether PIS considers it has already addressed ASIC's Concerns or disputes ASIC's Concerns, in order to enable the Independent Expert to independently assess whether those matters have been satisfactorily addressed or are not required to be addressed.
37. For each of ASIC's Concerns, the draft PIS Implementation Plan must provide details of:
  - a. Whether or not action has been taken to remediate the issue;
  - b. If not, the action proposed to be taken and timeframes for that action or PIS' reasons for not taking any action;

- c. If so, a description of the action taken to date and the progress;
- d. Whether or not any procedure, process or system implemented has been validated and tested for effectiveness and if so the organisation or team that conducted the validation and testing.

#### **Implementation Assessment**

- 38. Within 9 weeks of the Commencement Date the Independent Expert must:
  - 38.1 Conduct an assessment of the draft PIS Implementation Plan to determine whether it adequately addresses the matters raised in ASIC's Concerns; and
  - 38.2 Provide a written report to ASIC and PIS with the Independent Expert's recommendations regarding the draft PIS Implementation Plan.

#### **PIS Implementation Plan**

- 39. Within 10 weeks of the Commencement Date, PIS must amend the draft PIS Implementation Plan as reasonably recommended by the Independent Expert and resubmit the PIS Implementation Plan, as amended to the Independent Expert and ASIC.
- 40. PIS must implement the PIS Implementation Plan.

#### **First Assessment**

- 41. Within 6 months of the Commencement Date, the Independent Expert must:
  - 41.1 Conduct an assessment of the implementation of the PIS Implementation Plan, including:
    - a. An assessment of the progress of the implementation of the PIS Implementation Plan;
    - b. An assessment of the effectiveness of those implementation items in the PIS Implementation Plan that have been implemented;



- c. An assessment of compliance with procedures, processes and systems implemented in accordance with the PIS Implementation Plan;
- d. Whether newly employed and ongoing employees of PIS are appropriately trained in respect of any new processes, procedures and policies; and
- e. An assessment of compliance with s945A(1) of the Corporations Act.

41.2 Identify any deficiencies from the assessment referred to in paragraph 41.1.

**First Expert Report**

41.3 Provide a written report to PIS and ASIC (**First Expert Report**) that sets out:

- a. Details of its findings in respect of the matters referred to in paragraph 41.1;
- b. If applicable, details of:
  - i. the deficiencies identified under the process set out in paragraph 41.2;
  - ii. recommendations on how to rectify the deficiencies including a process for PIS to implement to compensate Clients for loss suffered arising out of any deficiency identified by the Independent Expert; and
  - iii. a reasonable time for a rectification program to be commenced and implemented; and
- c. A statement as to whether PIS will or will not likely complete all material aspects of the PIS Implementation Plan within 14 months of the Commencement Date.

**First Response**

42. Within 6½ months of the Commencement Date, PIS must consider the First Expert Report and provide to the Independent Expert and ASIC a plan (First Response) setting out the action it proposes to take to complete the PIS Implementation Plan and rectify the deficiencies identified in the First Expert Report, specifying the reasonable time in which this action will be taken.
43. If the Independent Expert requires any reasonable modifications to the First Response, the Independent Expert must notify PIS in writing within 7 months of the Commencement Date and PIS must make such modifications to the First Response.
44. PIS must implement the First Response within the time specified therein and in any event no later than 14 months from the Commencement Date.

**Second Assessment**

45. Within 10 months after the Commencement Date, the Independent Expert must:
  - 45.1 Conduct an assessment of the implementation of the PIS Implementation Plan, having regard to the First Response, including:
    - a. An assessment of the progress of the implementation of the PIS Implementation Plan;
    - b. An assessment of the effectiveness of those implementation items in the PIS Implementation Plan that have been implemented;
    - c. An assessment of compliance with procedures, processes and systems implemented in accordance with the PIS Implementation Plan;
    - d. An assessment of the implementation of the First Response;
    - e. Whether newly employed and ongoing employees of PIS are appropriately trained in respect of any new processes, procedures and policies; and

- f. An assessment of compliance with s945A(1) of the Corporations Act.

45.2 Identify any deficiencies from the assessment referred to in paragraph 45.1;

**Second Expert Report**

45.3 Provide a written report to PIS and ASIC (**Second Expert Report**) that sets out:

- a. Details of its findings in respect of the matters referred to in paragraph 45.1;
- b. If applicable, details of:
  - i. the deficiencies identified under the process set out in paragraph 45.2;
  - ii. recommendations on how to rectify the deficiencies including a process for PIS to implement to compensate Clients for loss suffered arising out of any deficiency identified by the Independent Expert; and
  - iii. a reasonable time for a rectification program to be commenced and implemented;
- c. A statement as to whether PIS has completed all material aspects of the PIS Implementation Plan; and
- d. A statement as to:
  - i. if PIS has completed all material aspects of the PIS Implementation Plan, whether the Independent Expert considers that the Second Response, Final Assessment and Final Report are required; or
  - ii. if PIS has not completed all material aspects of the PIS Implementation Plan, whether PIS will or will not likely complete all material aspects of the PIS Implementation Plan within 14 months of the Commencement Date.

**Second Response**

46. Within 10½ months of the Commencement Date, PIS must consider the Second Expert Report and unless the Second Expert Report contains a statement that the Second Response is not required PIS must provide to the Independent Expert and ASIC a plan (**Second Response**) setting out the action PIS proposes to take to complete the implementation of the PIS Implementation Plan and the First Response as well as to rectify the deficiencies identified in the Second Expert Report within 14 months of the Commencement Date.
47. If the Independent Expert requires any reasonable modifications to the Second Response, the Independent Expert must notify PIS in writing within 11 months of the Commencement Date. PIS must make such modifications to the Second Response.

**Final Assessment**

48. Unless the Second Expert Report contains a statement that the Second Response is not required, after the implementation of the Second Response and within 14½ months of the Commencement Date, the Independent Expert must:
  - 48.1 Conduct an assessment of the implementation of the PIS Implementation Plan, having regard to the First Response and Second Response, including:
    - a. An assessment of the progress of the implementation of the PIS Implementation Plan;
    - b. An assessment of the effectiveness of those implementation items in the PIS Implementation Plan that have been implemented;
    - c. An assessment of compliance with procedures, processes and systems implemented in accordance with the PIS Implementation Plan;
    - d. An assessment of the implementation of the First Response or Second Response;

- e. Consideration of whether newly employed and ongoing employees of PIS are appropriately trained in respect of any new processes, procedures and policies; and
- f. An assessment of compliance with s945A(1) of the Corporations Act.

48.2 Identify any deficiencies from the assessment referred to in paragraph 48.1.

48.3 Provide a written report to PIS and ASIC (**Final Expert Report**) that sets out:

- a. Details of its findings in respect of the matters referred to in paragraph 48.1;
- b. If applicable, details of:
  - i. the deficiencies identified under the process set out in paragraph 48.2;
  - ii. recommendations on how to rectify the deficiencies including a process for PIS to implement to compensate Clients for loss suffered arising out of any deficiency identified by the Independent Expert; and
  - iii. a reasonable time for a rectification program to be commenced and implemented; and
- c. A statement as to whether PIS has or has not completed all material aspects of the PIS Implementation Plan.

**Provision of documents to ASIC**

49. 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, Advisors, Retail Investors  
Australian Securities and Investments Commission  
GPO Box 9827  
SYDNEY VIC 3001

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

Group General Manager – Services  
Professional Investment Services  
Level 14, Corporate Centre One  
Cnr Bundall Road & Slatyer Ave  
Bundall QLD 4217

**Provision of documents to the Board of PIS**

51. Every report (including the PIS Implementation Plan, the Implementation Assessment, any Expert Report and any Response prepared pursuant to this enforceable undertaking) must be tabled at the next scheduled meeting, after the date of the report, of the Board of PIS. 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**

52. PIS must seek ASIC's written consent to vary the time by which any of the requirements of this enforceable undertaking must be completed. PIS 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.
53. If PIS fails to perform any of the requirements of this enforceable undertaking in the time required by this enforceable undertaking or as varied under paragraph 52, PIS 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.
54. In the event of:
  - 54.1 a material breach of the enforceable undertakings;
  - 54.2 a determination by the Independent Expert in the First Report or Second Report that PIS is unlikely to complete a material aspect of the PIS Implementation Plan within 13 months of the Commencement Date; or
  - 54.3 a determination by the Independent Expert in the Final Assessment that PIS has not completed a material aspect of the PIS Implementation Plan;

PIS must provide to ASIC written submissions setting out why ASIC should not take action to vary or revoke PIS' AFSL. PIS' submissions must be provided to ASIC within 14 days of written notification by ASIC to PIS of a requirement to do so.

55. Paragraph 54 does not limit ASIC's powers to take additional or alternative action.
56. PIS does not concede that a variation or revocation of its AFSL is necessarily an appropriate remedy in the event of a default by PIS under this enforceable undertaking.

**Conclusion of this enforceable undertaking**

57. 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 PIS) amend the date by which any such obligation is to be satisfied.
58. ASIC and PIS acknowledge that this enforceable undertaking ends on the earlier of:
- 58.1 The date that the Independent Expert provides to ASIC the Second Expert Report containing a statement that the Second Response, Final Assessment and Final Expert Report are not required; or
- 58.2 The date that the Independent Expert provides to ASIC the Final Report.

**EXECUTED BY** Professional  
Investment Services ACN 074 608  
558 pursuant to section 127(1) of the  
*Corporations Act 2001* by:

..... Director **Grahame Eans**

..... Director/Company Secretary **Kelly Wymor**

..... Director/Company Secretary

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:

.....

Delegate of Australian Securities and Investments Commission

20 DECEMBER 2010



### Annexure A

#### The Form of the Expert Reports

Adapted from the Federal Court of Australia Practice Direction  
'Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia'

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 ASIC.'
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 an expert changes a material opinion for any reason, the change should be communicated in a timely manner to ASIC and PIS.
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.<sup>1</sup>
10. The expert should make it clear when a particular question or issue falls outside the relevant field of expertise.

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<sup>1</sup>The *"Ikarian Reefer"* [1993] 20 FSR 563 at 565.

**Annexure B**  
**Due dates for compliance with Enforceable Undertaking**

Event	Party with responsibility	Date	Paragraph reference in EU
Commencement Date	N/A	20 December 2010	1(l)
Draft engagement letter for IE to be submitted to ASIC	PIS	29 December 2010	31
Expert engaged	PIS	7 February 2011	32
Draft PIS Implementation Plan	PIS	7 February 2011	35
Implementation Assessment	IE	21 February 2011	38
PIS Implementation Plan	PIS	28 February 2011	39
First Expert Report	IE	20 June 2011	41.3
First Response	PIS	5 July 2011	42
Notification of modifications to First Response	IE	20 July 2011	43
Second Expert Report	IE	20 October 2011	45.3
Second Response	PIS	4 November 2011	46
Notification of modifications to Second Response	IE	21 November 2011	47
Final date for implementation	PIS	20 February 2012	44 & 46
Final Expert Report	IE	6 March 2012	48.3