

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:

Joseph Paterniti

**Lot 45 Magenup Drive
Wandi WA 6167**

and

**Paterniti Financial Services Pty Ltd
ACN 130 472 365**

**123 Read Street
Rockingham WA 6168**

1. Definitions

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

AFSL means Australian financial services licence and **Australian financial services licence** has the meaning given by s 761A of the Corporations Act.

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

authorised representative has the meaning given by s761A of the Corporations Act 2001 (Cth).

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

disclosure document or statement has the meaning given by s 952B of the Corporations Act.

Dover means Dover Financial Advisers Pty Ltd ACN 112 139 321.

financial service has the meaning given by s766A of the Corporations Act.

financial services business has the meaning given by s761A of the Corporations Act.

financial services licensee has the meaning given by s761A of the Corporations Act.

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

MDA means managed discretionary account, operated for the purpose of provision of MDA services.

MDA service means a service with the following features:

- (a) a person ("the client") makes client contributions; and
- (b) the client agrees with another person that the client's portfolio assets will:
 - (i) be managed by that other person at their discretion, subject to any limitation that may be agreed, for purposes that include investment; and
 - (ii) not be pooled with property that is not the client's portfolio assets to enable an investment to be made or made on more favourable terms; and
 - (iii) be held by the client unless a beneficial interest but not a legal interest in them will be held by the client; and
- (c) the client and the person intend that the person will use client contributions of the client to generate a financial return or other benefit from the person's investment expertise.

Mr Paterniti means Joseph Paterniti, also known as Giuseppe Paterniti, date of birth 18 October 1963.

Paterniti Financial Services means Paterniti Financial Services Pty Ltd ACN 130 472 365.

SMSF means self-managed superannuation fund and **self-managed superannuation fund** has the meaning given by s761A of the Corporations Act.

Statement of Advice has the meaning given by s761A of the Corporations Act.

Trefigli means Trefigli Pty Ltd ACN 064 899 154.

2. Background

2.1 ASIC's role

- 2.1.1 Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

2.2 Details of Conduct

- 2.2.1 From 1 July 2005 to 14 April 2008 Mr Paterniti conducted a financial services business through his company Trefigli; thereafter, he conducted that business through Trefigli and or Paterniti Financial Services.
- 2.2.2 Mr Paterniti is sole director and the secretary of Paterniti Financial Services; he is also a director of Trefigli, which is the trustee for the

Joseph Paterniti Family Trust, operating as Joseph Paterniti & Associates Business Law Accountants.

- 2.2.3 Mr Paterniti provided unlicensed financial product advice to his clients from 1 July 2005 until 14 April 2008.
- 2.2.4 Prior to 14 April 2008 neither Mr Paterniti nor Paterniti Financial Services were authorised representatives of an AFSL holder; Trefigli has never been an authorised representative of an AFSL holder.
- 2.2.5 Mr Paterniti, Paterniti Financial Services and Trefigli have never held an AFSL.
- 2.2.6 From 14 April 2008, Paterniti Financial Services has been an authorised representative of Dover.
- 2.2.7 From 19 March 2010, Mr Paterniti has been an authorised representative of Dover.
- 2.2.8 As an authorised representatives of Dover, Mr Paterniti and Paterniti Financial Services were permitted to provide financial product advice subject to the conditions of Dover's AFSL.
- 2.2.9 Condition 21 of Dover's AFSL relates to MDAs and is headed "*Prohibition to Operate Managed Discretionary Account Service*". It states "*The licensee must not provide an MDA service to a retail client except when operating a registered scheme.*"
- 2.2.10 The conduct subject of this enforceable undertaking occurred in the course of Mr Paterniti providing financial services and or financial product advice to his clients, clients of Trefigli and or clients of Paterniti Financial Services during the period commencing 1 July 2005.
- 2.2.11 During the period commencing 1 July 2005, in the course of conducting his financial services business, Mr Paterniti provided financial product advice and made recommendations to particular clients to trade in certain Australian listed securities.
- 2.2.12 Advice provided by Mr Paterniti to particular clients included advice and recommendations that they establish a self-managed superannuation fund and trade in certain Australian listed securities through their SMSF.
- 2.2.13 In some cases, Mr Paterniti further advised and recommended to particular clients that they transfer existing preserved superannuation benefits into their SMSF and invest those funds in certain Australian listed securities.
- 2.2.14 In some cases, Mr Paterniti was a trustee for his client's SMSF.
- 2.2.15 For certain clients, Mr Paterniti opened an MDA account and or provided MDA services, in the course of which he engaged in discretionary trading of certain Australian listed securities on behalf of the clients, in contravention of s911B(1) of the Corporations Act.

2.3 ASIC's surveillance and investigation

- 2.3.1 On 1 February 2010 ASIC commenced a surveillance of Dover. As a result of that surveillance ASIC became concerned about the conduct of Mr Paterniti and Paterniti Financial Services.
- 2.3.2 ASIC has conducted an investigation into the conduct of Mr Paterniti and Paterniti Financial Services during the period from 1 July 2005 to 13 May 2011 and, in particular, in relation to suspected contraventions of Chapter 7 of the Corporations Act with respect to the provision of financial services during that period.

2.4 ASIC's concerns

- 2.4.1 As a result of its investigation, ASIC is concerned that Mr Paterniti and/or Paterniti Financial Services (as the case may be) in providing financial services and/or financial product advice:
- 2.4.1.1 did so when he and/or it neither held an AFSL nor was an authorised representative of a financial services licensee;
 - 2.4.1.2 provided MDA services to clients without holding an AFSL, and/or without being an authorised representative of a financial services licensee who was authorised to provide MDA services;
 - 2.4.1.3 failed to adequately take into account certain clients' personal circumstances by ensuring the recommended investment was within the client's risk profile;
 - 2.4.1.4 failed to have a reasonable basis for the provision of financial product advice to certain clients;
 - 2.4.1.5 provided clients with a deficient Statement of Advice in that it did not contain information:
 - 2.4.1.5.1 giving an adequate explanation regarding the basis on which the financial advice was given;
 - 2.4.1.5.2 regarding the relative risks of investing in the financial product having regard to the client's risk profile and personal circumstances;
 - 2.4.1.5.3 providing a comparison switch analysis regarding switching investments from the client's existing superannuation investments to a SMSF.

- 2.4.1.6 failed to give certain clients any Statement of Advice before investments in financial products were made;
 - 2.4.1.7 made false or misleading statements regarding the expected returns from investing in certain Australian listed securities;
 - 2.4.1.8 in providing financial advice to clients to set up a SMSF, transfer preserved superannuation benefits to that SMSF and invest such funds in Australian listed securities, failed to adequately provide clients with comparison information regarding switching from their existing superannuation investments to a SMSF; and
 - 2.4.1.9 failed to provide clients with additional information as required by s947D of the Corporations Act when advising in relation to and/or recommending the replacement of one financial product with another.
- 2.4.2 ASIC is concerned that by engaging in the conduct giving rise to its concerns identified in paragraph 2.4.1 above, Mr Paterniti, Paterniti Financial Services and Trefigli either alone, jointly, or severally have contravened, or have been involved in contraventions, of provisions of Chapter 7 of the Corporations Act.

2.5 Acknowledgement of ASIC's concerns

- 2.5.1 Mr Paterniti acknowledges that ASIC has concerns that he (in his own capacity and/or through Trefigli) provided financial product advice to clients when not authorised, or licensed to do so.
- 2.5.2 Mr Paterniti and Paterniti Financial Services acknowledges that ASIC has concerns that they have provided MDA services to clients when not authorised, or licensed to do so.
- 2.5.3 Mr Paterniti, Paterniti Financial Services and Trefigli each acknowledge ASIC's concerns as set out in paragraph 2.4 above.

3. Undertakings

- 3.1 Under s93AA of the ASIC Act, each of Mr Paterniti and Paterniti Financial Services has offered, and ASIC has agreed to accept as an alternative to ASIC pursuing court action and/or exercising its administrative powers under the Corporations Act, the following undertakings:
 - 3.1.1 Mr Paterniti undertakes not to provide financial services, whether personally, or in any other capacity, including but not limited to:
 - 3.1.1.1 director;
 - 3.1.1.2 manager;
 - 3.1.1.3 key person;

3.1.1.4 employee; or

3.1.1.5 authorised representative.

of a financial services licensee or corporate authorised representative (as the case may be) for a minimum period of three years commencing from the date of acceptance of this undertaking by ASIC.

- 3.1.2 Mr Paterniti and Paterniti Financial Services will resign as authorised representatives of Dover no later than the date of acceptance of this undertaking by ASIC.
- 3.1.3 Paterniti Financial Services undertakes that it will not in any capacity provide financial services, or conduct any financial services business at any time before it and Mr Paterniti have each fully complied with all obligations imposed by, or in connection with this undertaking.
- 3.1.4 Mr Paterniti undertakes that he will not in any capacity provide any financial services before complying in full with all of the requirements of paragraphs 3.1.5 to 3.1.7.
- 3.1.5 Mr Paterniti will complete the Graduate Diploma of Applied Finance course with a major in Investment Management and including the subject Advanced Investment Management (FIN237) as provided by Kaplan Education Pty Ltd or, if not available, an equivalent Graduate Diploma course specified by ASIC.
- 3.1.6 Before providing any financial services in any capacity after the expiry of the three year period referred to in paragraph 3.1.1, Mr Paterniti will provide to ASIC documentary evidence as required by ASIC, including copies of Kaplan Education Pty Ltd's (or other education service provider's) certificates attesting that he has successfully completed and passed the relevant course referred to in paragraph 3.1.5.
- 3.1.7 Further, Mr Paterniti will not recommence providing any financial services in any capacity until after:
- 3.1.1.1 he has obtained written confirmation from ASIC that ASIC has to its reasonable satisfaction received the documentary evidence referred to in paragraph 3.1.6; and
 - 3.1.1.2 he has provided to ASIC each of the following:
 - i. the name and such other details as may be requested by ASIC of the financial services licensee under, or in connection with whom, he proposes to provide financial services; and
 - ii. the precise date on which he proposes to recommence provision of financial services.

- 3.1.8 Upon recommencing to provide financial services in any capacity (including, but not limited to, becoming an authorised representative of an AFSL holder), Mr Paterniti and Paterniti Financial Services will be subject to internal and external review processes as follows:
- 3.1.8.1 All Statements of Advice to be issued by Mr Paterniti (in any capacity) and or Paterniti Financial Services during the period of 6 months commencing from the date that they or either of them first recommence providing financial services after the expiry of the three year period referred to in paragraph 3.1.1 must be pre-vetted either by their financial services licensee's compliance manager or a senior financial planner (with a minimum of 5 years' financial planning experience) (**Statement of Advice Review**).
 - 3.1.8.2 Within 14 days after the date that they or either of them recommences providing financial services (in any capacity, after the expiry of the three year period referred to in paragraph 3.1.1) Mr Paterniti and Paterniti Financial Services must engage the services of an external reviewer (**Reviewer**) under an agreement including terms to the effect of those in Annexure A.
 - 3.1.8.3 The Reviewer and the Reviewer's terms of engagement must be approved by ASIC before the Reviewer is engaged. Mr Paterniti and Paterniti Financial Services must advise ASIC of the expertise and any prior association of the proposed Reviewer with them at the time ASIC's approval is sought. The terms of engagement may only be varied with the agreement of ASIC.
 - 3.1.8.4 The external review process will involve at least two compliance audits (**Audit Review**) to be conducted by the Reviewer, including the preparation of reports by the Reviewer following those Audit Reviews, as provided by the agreement in Annexure A. The Reviewer must also complete the relevant declarations contained in Annexure B and provide it to ASIC together with the Audit Review.
 - 3.1.8.5 The first Audit Review will be conducted in relation to financial services provided by Mr Paterniti (in any capacity) or Paterniti Financial Services during the period of 6 months after they or either of them recommence providing of

financial services. The first Audit Review must be completed no later than 8 months after the date that Mr Paterniti or Paterniti Financial Services recommence providing financial services.

- 3.1.8.6 The second Audit Review will be conducted in relation to financial services provided by Mr Paterniti (in any capacity) or Paterniti Financial Services during the period of 12 months after they recommence providing financial services. The second Audit Review must be completed no later than 14 months after the date that Mr Paterniti or Paterniti Financial Services recommence the provision of financial services.
- 3.1.8.7 ASIC may in its sole discretion agree to extend the time for completion of any Audit Review.
- 3.1.8.8 Each of the Reviewer's Audit Reviews must be sent to ASIC within 14 days of its completion.
- 3.1.8.9 In the event that at the time the second Audit Review is sent to ASIC Mr Paterniti and/or Paterniti Financial Services has issued less than 20 Statements of Advice to clients a further Audit Review must be prepared and provided to ASIC after 20 Statements of Advice have been issued to clients. The Audit Review referred to in this paragraph must be completed and provided to ASIC within 2 months after the twentieth Statement of Advice has been provided.
- 3.1.9 Mr Paterniti and Paterniti Financial Services will provide all reasonable assistance to the Reviewer in fulfilling the obligations set out in clauses 3.1.8.1 to 3.1.8.9 above.
- 3.1.10 All costs of compliance with this enforceable undertaking including (without limitation) all costs in connection with all review processes required by paragraph 3.1.8 of this undertaking shall be borne by Mr Paterniti.
- 3.1.11 Mr Paterniti and Paterniti Financial Services will provide all documents and information requested by ASIC from time to time for the purpose of assessing compliance with the terms of this enforceable undertaking by Mr Paterniti and Paterniti Financial Services. Without limitation, Mr Paterniti and Paterniti Financial Services will provide all documents as may be required by ASIC from time to time to satisfy ASIC that there is ongoing compliance and/or has been full compliance

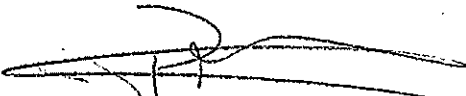
with the internal and external review processes referred to in paragraph 3.1.8.

4. Acknowledgements

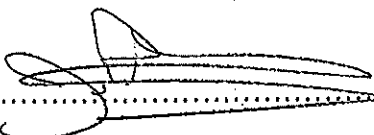
- 4.1 Mr Paterniti and Paterniti Financial Services acknowledge that ASIC:
- 4.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2 may from time to time publicly refer to this undertaking; and
 - 4.1.3 will make this undertaking available for public inspection.
- 4.2 Further Mr Paterniti and Paterniti Financial Services acknowledge that:
- 4.2.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
 - 4.2.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.
- 4.3 Mr Paterniti and Paterniti Financial Services acknowledge that ASIC had reason to be concerned as to the alleged facts and have offered an enforceable undertaking in the terms of paragraph 3 above.
- 4.4 Mr Paterniti and Paterniti Financial Services acknowledge that this undertaking has no operative force until accepted by ASIC, and they and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.
- 4.5 Address for notices, etc.:
- 4.5.1 The address for providing ASIC with any notice or document is as follows:

Australian Securities and Investments Commission
Level 3, 66 St Georges Tce
PERTH WA 6000
Attention: Murray Robertson
 - 4.5.2 The address for providing Mr Paterniti and Paterniti Financial Services with any notice or document is as follows:

C/o Halsey Legal Services
45 Ventnor Avenue
WEST PERTH WA 6005



.....
Joseph Paterniti *FRIDAY*
The *12th* of *AUGUST*, 2011



.....
Joseph Paterniti as director of Paterniti Financial Services Pty Ltd (ACN 130
472 365) *FRIDAY*
The *12th* of *AUGUST*, 2011

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



.....
Bruce Dodd

Delegate of Australian Securities and Investments Commission

The *12th* of *August* 2011

Annexure A

TERMS OF AGREEMENT WITH REVIEWER*Background*

1. Under an enforceable undertaking which Mr Paterniti and Paterniti Financial Services gave to the Australian Securities and Investments Commission (ASIC) on 2011 (Enforceable Undertaking), Mr Paterniti and Paterniti Financial Services undertook to engage the services of an expert as approved by ASIC (Reviewer) to conduct at least two post appointment reviews of the financial services provided by them (Audit Review) and to report in relation to those Reviews.

Obligations

2. The Reviewer will conduct the following tasks:
 - 2.1. review all financial product advice provided by Mr Paterniti (in any capacity) and /or Paterniti Financial Services during the period of 6 months after they or either of them recommence providing financial services, and prepare a report (as provided by paragraphs 2.5, 2.6 and 4 below) in relation to that review (first Audit Review);
 - 2.2. review all financial product advice provided by Mr Paterniti (in any capacity) or Paterniti Financial Services during the period commencing 6 months after they or either of them recommence providing financial services and concluding 12 months after recommencing providing financial services, and prepare a report (as provided by paragraphs 2.5, 2.6 and 4 below) in relation to that review (second Audit Review);
 - 2.3. complete the first Audit Review in relation to that review, and second Audit Review in relation to that review, as soon as practicable, but in any event no later than within the respective periods required to permit Mr Paterniti and Paterniti Financial Services to comply with clauses 3.1.8.2 to 3.1.8.8 of the Enforceable Undertaking;
 - 2.4. in the event a further Audit Review is required as provided in clause 3.1.8.9 of the Enforceable Undertaking, that Audit Review will be completed and provided to ASIC in accordance with the requirements of clause 3.1.8.9 of the Enforceable Undertaking;
 - 2.5. prepare a written report as to whether or not, in the Reviewer's opinion:
 - 2.5.1. the advice provided by Mr Paterniti and/or Paterniti Financial Services complies with the requirements of Chapter 7 of the *Corporations Act* 2001 (Cth) (*Corporations Act*) and, in particular (without limitation) is appropriate having regard to s945A, 947C and 947D of the *Corporations Act*; and

- 2.5.2. the AFSL holder's policies were complied with by Mr Paterniti and /or Paterniti Financial Services;
- 2.6. provide Mr Paterniti and Paterniti Financial Services with each Audit Review, which will include at least a statement (**Reviewer's Statement**) setting out his/her opinion and the reasons for it, within five days (or any longer period agreed to by ASIC in its sole discretion) after completion of the relevant Audit Reviews undertaken; and
- 2.7. to assist Mr Paterniti and Paterniti Financial Services to comply with their obligations under clauses 3.1.8.2 to 3.1.8.9 of the Enforceable Undertaking, the Reviewer is expressly authorised to deliver his Audit Review reports directly to ASIC, to the address for notices as provided in the Enforceable Undertaking.
3. Mr Paterniti and Paterniti Financial Services will provide all reasonable assistance to the Reviewer in fulfilling the obligations set out in clause 2 above.

Further requirements concerning Reports

4. The Reviewer's Statement required to be written by the Reviewer will:
 - 4.1. be produced in accordance with the Enforceable Undertaking. If there is any inconsistency between this agreement and the terms of the Enforceable Undertaking, the Enforceable Undertaking shall prevail;
 - 4.2. set out any limitations or qualifications to it; and
 - 4.3. list those documents or extracts of documents most relevant (in the Reviewer's opinion) to the matters contained in the Reviewer's Statement.

Independence

5. The Reviewer must complete the relevant Expert Reviewer Declaration's as provided in Annexure B.

Annexure B

EXPERT REVIEWER'S INDEPENDENCE DECLARATIONS

This document requires the Expert Reviewer (**Reviewer**) appointed to review Mr Paterniti's and/ or Paterniti Financial Services's client files to make declarations as to:

A. the Reviewer's independence generally;

B. relationships, including

- i. any relationships with Mr Paterniti and Paterniti Financial Services and any of his associates, persons or entities related to Mr Paterniti or Paterniti Financial Services;
- ii. any prior professional services for Mr Paterniti, Paterniti Financial Services or related entities;
- iii. that there are no other relationships to declare.

This declaration is made in respect of myself, my partners, *[firm name]* and *[list any entities covered by the extended definition of firm]*.

A. Independence

I/We, *[name, firm]* have undertaken a proper assessment of the risks to my/our independence prior to accepting the appointment as Reviewer of Mr Paterniti and/or Paterniti Financial Services in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to my/our independence. I am/We are not aware of any reasons that would prevent me/us from accepting this appointment.

B. Declaration of Relationships**i. Relevant Relationships (excluding Professional Services)**

Neither I/of us, nor my/our firm, have, or have had any relationships with Mr Paterniti, an associate of Mr Paterniti, or any person or entity related to Mr Paterniti or Paterniti Financial Services.

or

I/We, or a member of my/our firm, have, or have had a relationship with:

Name, Nature of relationship, Reasons why no conflict of interest or duty

ii. Prior Professional Services

Neither I/we, nor my/our firm, have provided any professional services to Mr Paterniti, an associate or any person or a related entity of Mr Paterniti or Paterniti Financial Services.

or

I/We, or a member of my/our Firm, have provided the following professional services to [person/company] prior to the acceptance of this appointment:

Name, Nature of Professional Service, Reasons why there is no conflict of interest or duty.

iii. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships with Mr Paterniti, an associate or any person or related entity of Mr Paterniti or Paterniti Financial Services.

DECLARATION

.....

(Insert Name)

The of 20.....

Signed as the Audit Reviewer as specified in the Enforceable Undertaking between Joseph Paterniti, Paterniti Financial Services and ASIC.

By signing this Expert Reviewers Independence Declaration I/We warrant that neither I/ us nor any person assisting me/us during my/our engagement have any conflict of interest in relation to my/our engagement other than those disclosed in this Expert Reviewer Independence Declaration.