



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:

COMMONWEALTH FINANCIAL PLANNING LIMITED

ACN 003 900 169

1 DEFINITIONS

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

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

ASIC's Concerns means the matters set out in paragraphs 2.10 – 2.12.

Commencement Date means the date this undertaking is accepted by ASIC.

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

Draft Implementation Plan is the draft plan referred to in paragraph 3.8.

Expert Report means any report required to be prepared by the Independent Expert pursuant to this undertaking including the Preliminary Report, the Interim Reports and the Final Report.

Final Report is the report referred to at paragraph 3.16(b).

Implementation Plan is the plan referred to in paragraph 3.5.

Independent Expert means any person appointed as an independent expert pursuant to paragraph 3.18 of this undertaking.

Interim Report is a report referred to at paragraph 3.16(a).

Monthly Review Meeting is the meeting referred to in paragraph 3.15.

Preliminary Report is the report referred to at paragraph 3.9(c).

- 1.2 Except so far as the contrary intention appears in this undertaking the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act apply for the purposes of this undertaking as if the provisions of those acts were provisions of this undertaking.

2 BACKGROUND

ASIC's role

- 2.1 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.

Commonwealth Financial Planning Limited

- 2.2 Commonwealth Financial Planning Limited (CFP) operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.3 Since 1 October 2003, CFP has held an Australian Financial Services Licence (No. 231139) (AFSL) which authorises CFP to carry on a financial services business to provide advice and deal in a range of financial products.
- 2.4 Condition 2 of the AFSL requires CFP to *"establish and maintain compliance measures that ensure, as far as reasonably practicable, that the licensee complies with the provisions of financial services laws."*
- 2.5 CFP has authorised certain persons to provide financial services on its behalf (**Representatives**). The Representatives are representatives of CFP within the meaning of section 910A of the Corporations Act.

ASIC surveillance and investigation

- 2.6 From time to time since 1 June 2008 CFP has, as part of its compliance program and complaint handling process and in compliance with its statutory obligation to notify ASIC of certain matters, lodged with ASIC breach notices pursuant to section 912D of the Corporations Act.
- 2.7 ASIC has conducted surveillance checks of CFP and investigated the breaches referred to in paragraph 2.6. CFP has co-operated with ASIC in relation to those investigations.
- 2.8 On 3 November 2010 it was announced that CFP had agreed to compensate affected clients in relation to one former CFP Representative who had provided financial advice to them.
- 2.9 CFP has voluntarily commenced:
- (a) a review of its Risk Management Framework including the operating model by which it delivers personal financial advice; and
 - (b) an improvement program to enhance the effectiveness of its operating model.

ASIC'S Concerns

- 2.10 ASIC is concerned that there may have been underlying weaknesses in CFP's Risk Management Framework. In particular, ASIC is concerned whether:

- (a) there have been adequate processes and controls in place to deal with ongoing risks of non-compliance;
- (b) Representative misconduct has been dealt with in a consistent manner;
- (c) recurring themes have been appropriately identified;
- (d) data analysis processes and reporting capabilities allow for early detection of advice process irregularities;
- (e) there have been adequate controls over client records; and
- (f) there has been consistent application of CFP's complaints handling and internal dispute resolution processes.

2.11 As a result, ASIC considers that on occasion CFP may not have complied with certain of its obligations under the Corporations Act and may have contravened:

- (a) s912A(1)(a) of the Corporations Act that requires a financial services licensee to "do all things necessary to ensure that the financial services covered by the licence are provided efficiently honestly and fairly";
- (b) s912A(1)(ca) of the Corporations Act that requires a financial services licensee to take reasonable steps to ensure that certain of its representatives comply with the financial services laws;
- (c) s912A(1)(d) of the Corporations Act that requires a financial services licensee - unless the licensee is a body regulated by APRA- to have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements; and/or
- (d) s912A(1)(h) of the Corporations Act that requires a financial services licensee - unless the licensee is a body regulated by APRA- to have adequate risk management systems.

2.12 ASIC is also concerned that CFP may not have complied with condition 2 of its AFSL requiring it "*to establish and maintain compliance measures that ensure, as far as reasonably practicable, that the licensee complies with financial services laws*" and may have contravened section 912A(1)(b) of the Corporations Act that requires a financial services licensee to comply with the conditions on the licence.

Acknowledgement of Concerns

2.13 CFP acknowledges ASIC's Concerns.

2.14 ASIC notes that the intended outcome of CFP's initiatives referred to in paragraph 2.9 is to address ASIC's Concerns and notes CFP's commitment to strengthen its:

- (a) arrangements for the supervision and monitoring of its Representatives to ensure compliance with their obligations under the Corporations Act; and
 - (b) processes for testing the effectiveness of those arrangements.
- 2.15 ASIC further notes that CFP:
- (a) self-reported the matters referred to in paragraph 2.6 in accordance with statutory obligations;
 - (b) has fully co-operated and worked constructively with ASIC in its surveillance and investigation;
 - (c) has instigated a process to compensate affected clients as set out in paragraph 2.8; and
 - (d) has commenced the risk initiatives set out in paragraph 2.9 on a voluntary basis.
- 2.16 Nevertheless it appears to ASIC that CFP's voluntary initiatives should be incorporated in an enforceable undertaking with agreed time frames and independent assessment.
- 2.17 Subject to CFP's compliance with this undertaking and ASIC agreeing to the terms of the Implementation Plan, ASIC will not take or cause to be taken any other action against CFP in relation to the subject matter of ASIC's Concerns.

3 UNDERTAKINGS

Acceptance of Enforceable Undertaking

- 3.1 Under s93AA of the ASIC Act CFP has offered the undertakings in paragraphs 3.2 to 3.25 and ASIC has agreed to accept those undertakings as an alternative to commencing civil proceedings or pursuing administrative action.

Assessment of Risk Management Framework

- 3.2 CFP will conduct an assessment of its Risk Management Framework against generally accepted risk management standards appropriate to the nature, size and complexity of CFP's business.
- 3.3 The assessment of the Risk Management Framework should:
- (a) address each of ASIC's Concerns by way of specific risk management controls and accompanying compliance systems and procedures;
 - (b) consider a detailed risk management framework that is appropriate to the nature, size and complexity of all relevant aspects of CFP's business and processes and is not to be restricted to strategic risks only; and
 - (c) include a review of CFP's:

- (i) legal and regulatory obligations with specific emphasis on provision of financial services, financial advice and the monitoring and supervision of Representatives;
 - (ii) operating model;
 - (iii) individual operational procedures; and
 - (iv) external risk environment.
- 3.4 The assessment should include and consolidate the voluntary initiatives undertaken to date, referred to in paragraph 2.9, and specifically analyse CFP's operating model against the generally accepted risk management standards referred to in paragraph 3.2 to determine how adequately it identifies, analyses and controls risks. This would include but not be limited to business risk appetite, consequence management, data analytics, monitoring, professional development, recruitment and induction, remuneration and reward, structure and accountabilities and supervision.
- 3.5 CFP is to develop an implementation plan for addressing any unresolved deficiencies that the assessment identifies in the Risk Management Framework, which should include appropriate project management, governance and independent assessment to facilitate ongoing compliance with CFP's obligation to have adequate risk management systems pursuant to section 912A(1)(h) of the Corporations Act (**Implementation Plan**).

Implementation Plan

- 3.6 The Implementation Plan is required to:
- (a) provide a detailed explanation of the approach taken, including methodologies and reporting lines. This includes clearly defining the corporate risk appetite used by CFP and its application to CFP's Risk Management Framework;
 - (b) provide an overview and list of all current work streams and commitments arising from this undertaking;
 - (c) specify all operational stakeholders and business owners of each element of the Implementation Plan;
 - (d) specify performance milestones and monitoring procedures, including agreed dates and formats of progress updates, meetings and written reports;
 - (e) specify the certification process to be undertaken to meet the terms of paragraph 3.17;
 - (f) provide a schedule of all material risks that the assessment referred to in paragraph 3.2 identifies, organised into appropriate categories and listing all existing or proposed controls against each risk; and
 - (g) provide that where an individual is found to have been adversely affected due to the failings of a Representative, CFP will consider the

circumstances and appropriately remediate the client, and specify the review process to be undertaken.

- 3.7 Recognising the cyclical and cumulative nature of risk management, the Implementation Plan is intended to be a flexible working document.
- 3.8 The first draft of the Implementation Plan is to be prepared by CFP (**Draft Implementation Plan**) and is to be submitted to an Independent Expert for review within 60 days of the Commencement Date or within such further time as is agreed with ASIC.

Independent Assessment of the Draft Implementation Plan

- 3.9 The Independent Expert will:
 - (a) validate CFP's assessment of the Risk Management Framework against the generally accepted risk management standards;
 - (b) assess the Draft Implementation Plan; and
 - (c) prepare a written report as to whether the Draft Implementation Plan will effectively address ASIC's Concerns (**Preliminary Report**).
- 3.10 The Preliminary Report will identify what steps should be taken to address any identified deficiency in the Risk Management Framework and, if necessary, will propose amendments to the Draft Implementation Plan. A copy of the Preliminary Report is to be provided to CFP and ASIC within 90 days of the Commencement Date or within such further time as is agreed with ASIC.
- 3.11 Within two weeks of delivery of the Preliminary Report CFP will make reasonable revisions to the Draft Implementation Plan and submit a copy of any revised Draft Implementation Plan to ASIC.
- 3.12 Once the terms of the Draft Implementation Plan are agreed with ASIC in writing the Draft Implementation Plan will become the Implementation Plan.
- 3.13 The Implementation Plan may be amended to take into account changes in the Risk Management Framework. Proposed changes to the Implementation Plan will first be reviewed and reported upon by the Independent Expert and will not take effect until agreed with ASIC in writing. Once the terms of any amendment to the Implementation Plan are agreed with ASIC, the amendment will become part of the Implementation Plan.

Implementation

- 3.14 CFP will design and implement the enhancements to the Risk Management Framework in accordance with the Implementation Plan.
- 3.15 CFP will meet with ASIC once each month or at times otherwise agreed with ASIC (**Monthly Review Meeting**). The purpose of the Monthly Review Meeting is to provide an opportunity for regular updates and reporting by the Independent Expert and CFP on the progress of the Implementation Plan. The agenda and attendees at the meeting are to be set out in the Implementation Plan. The agenda will include the following items:

- (a) a report on progress against the Implementation Plan; and
- (b) any requests for amendments to the Implementation Plan.

The Independent Expert is required to attend each Monthly Review Meeting.

Independent Assessment of the Effectiveness of Implementation

- 3.16 The implementation of the enhancements to the Risk Management Framework will be assessed by the Independent Expert who will be required to provide the following reports within the timeframes specified in the Implementation Plan.
- (a) **Interim Reports.** Three Interim Reports are to be provided, being within six months, 12 months and 18 months from the Commencement Date or within such further time as is agreed with ASIC. The Interim Reports will address the following issues:
 - (i) independent testing that the initiatives in the Implementation Plan have been implemented;
 - (ii) assessment of the operational effectiveness of completed Implementation Plan initiatives with a particular focus on key controls testing;
 - (iii) confirmation that new and improved business systems, policies, procedures and controls are an accurate reflection of the designs from the Implementation Plan;
 - (iv) comments on any matters identified that may require CFP to amend the Implementation Plan; and
 - (v) status of all issues logged in Monthly Review Meetings and remedial action completed or outstanding on these issues.
 - (b) **Final Report.** The Final Report is to be provided within 24 months from the Commencement Date, or within such further time as is agreed with ASIC, and is to address the following issues:
 - (i) an assessment of the completeness of CFP's assessment of its Risk Management Framework including itemisation of risks the Independent Expert considers were either not identified or not sufficiently analysed;
 - (ii) testing of CFP's Risk Management Framework's controls including their effectiveness;
 - (iii) testing the adequacy of monitoring and review procedures in place to identify and control new risks; and
 - (iv) validation of CFP's Risk Management Framework as it will operate thereafter.
- 3.17 The General Manager, Commonwealth Financial Planning is to certify each Expert Report, acknowledging its receipt and stating that CFP is satisfied that it has complied, or will comply, with any recommendation contained

therein or providing reasons why a recommendation is not supported. CFP will ensure the internal risk management functions that govern CFP's Risk Management Framework are involved in this certification process.

Independent Expert

- 3.18 Within 30 days of the Commencement Date, or within such further time as is agreed with ASIC, CFP will appoint an Independent Expert, who has expertise in the area of compliance, and who is independent of CFP and its related bodies corporate and officers, to assess the implementation of enhancements to the Risk Management Framework, introduced in accordance with the requirements of this undertaking, and to prepare the Expert Reports and perform the tasks identified in this undertaking that are required to be undertaken by an Independent Expert.
- 3.19 The Independent Expert and the terms of the Independent Expert's engagement are subject to approval by ASIC. The Independent Expert is not to be engaged until such time that ASIC has agreed to and approved the Independent Expert and terms of the Individual Expert's engagement. CFP is to advise ASIC of the expertise and prior association of the proposed Independent Expert with CFP and its related bodies corporate and officers at the time approval is sought from ASIC.
- 3.20 The terms of engagement of the Independent Expert may only be varied with the agreement of ASIC.
- 3.21 All remuneration and costs associated with the Independent Expert must be borne by CFP.
- 3.22 CFP is to permit the Independent Expert, to the extent that is reasonable having regard to the requirements of this undertaking and subject to legal professional privilege, to have access to its books, to interview any present employee and to consult with ASIC and disclose to ASIC any information obtained by the Independent Expert in the course of carrying out its review and permit the Independent Expert to receive any information and books that ASIC determines is appropriate to be provided to the Independent Expert.
- 3.23 CFP is to give the Independent Expert subject to legal professional privilege any information or explanation reasonably requested by the Independent Expert regarding any matter in any way connected with the Expert Reports.
- 3.24 CFP is to ensure that the terms of engagement of the Independent Expert:
- (a) include a timetable for the production and delivery of the Expert Reports;
 - (b) include a requirement that the Expert Reports will note:
 - (i) the people that have assisted the Independent Expert and the nature of the assistance provided;
 - (ii) the personnel that have been interviewed; and
 - (iii) the documents that have been assessed;


- (c) list those documents or extracts of documents most relevant (in the view of the Independent Expert) in producing the Expert Report; and
 - (d) otherwise comply (to the extent applicable) with the requirements for the form of expert evidence set out in the 'Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia' (Practice Note CM 7).
- 3.25 CFP is to provide reasonable access and assistance and take all reasonable steps to allow the Independent Expert to be able to fulfil the terms of their appointment.

4 ACKNOWLEDGEMENTS

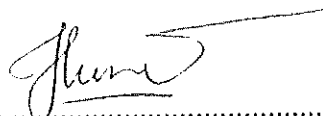
- 4.1 CFP acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution; and
 - (b) may from time to time publicly refer to this undertaking; and
 - (c) will make this undertaking available for public inspection.
- 4.2 Further CFP acknowledges that:
- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's Concerns in this undertaking or arising from future conduct;
 - (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct; and
 - (c) this undertaking in no way derogates from CFP's obligation to report significant breaches in accordance with s912D of the Corporations Act and its AFSL as it becomes aware of any such breach, whether or not they are identified by the Independent Expert and whether or not such breach occurred prior to the Commencement Date.
- 4.3 The address for providing ASIC with any document, including but not limited to any plan or report, which this undertaking requires to be provided is:
- Adrian Borchok
Senior Manager
Financial Services (Deterrence)
Australian Securities and Investments Commission
GPO Box 9827 SYDNEY NSW 2001
- 4.4 Nothing contained in this undertaking constitutes an admission by CFP.

- 4.5 ASIC and CFP acknowledge that this undertaking ends on acceptance by ASIC of the Final Report.
- 4.6 CFP undertakes that it will pay the costs of its compliance with this undertaking.
- 4.7 CFP will, within a reasonable period after receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing compliance with this undertaking subject to legal professional privilege.

Executed by **COMMONWEALTH FINANCIAL PLANNING LIMITED**
(ACN 003 900 169) in accordance with section 127 of the Corporations Act 2001 (Cth):

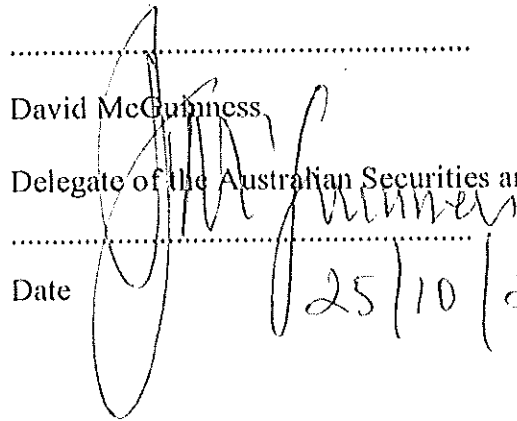


Marianne Perkovic
Director



Hung Phan
Director/ Company Secretary

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



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David McGuinness

Delegate of the Australian Securities and Investments Commission

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Date

25/10/2011