



913R,

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:

Andrew Mark Perkin

Address known to ASIC

1. Definitions

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

AFSL means Australian financial services licence and has the same meaning as given to it in Chapter 7 of the Corporations Act;

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

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

Corporations Regulations means the *Corporations Regulations 2001* (Cth);

Crusader means Crusader Trading Limited a company purported by Mr Perkin to be incorporated in the British Virgin Islands;

Financial product has the same meaning as given to it in Chapter 7 of the Corporations Act;

Financial service has the same meaning as given to it in Chapter 7 of the Corporations Act;

Financial services law has the same meaning as given to it in Chapter 7 of the Corporations Act;

Mr Perkin means Andrew Mark Perkin (address known to ASIC);

Representative has the same meaning as given to it in Chapter 7 of the Corporations Act; and

Retail client has the same meaning as given to it in Chapter 7 of the Corporations Act.

2. Background

2.1 ASIC's role

- 2.1.1 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.

2.2 Details of Conduct

- 2.2.1 In September 2008 Mr Perkin purported to establish a British Virgin Islands registered company, Crusader.
- 2.2.2 During the period September 2008 to December 2010 Mr Perkin purported to be the sole director of Crusader.
- 2.2.3 In fact, at no time was Crusader incorporated in the British Virgin Islands or in any other jurisdiction.
- 2.2.4 During the period Mr Perkin purported to operate Crusader he engaged in providing financial products to retail clients.
- 2.2.5 The financial products primarily offered by Crusader during the period referred to at paragraph 2.2.2 were a foreign exchange trading managed fund or foreign exchange trading private accounts.
- 2.2.6 Crusader purported to use automated algorithms on a variety of currency pairs in the spot foreign exchange market in order to provide a return on behalf of its clients.
- 2.2.7 Crusader represented to potential clients that the investment strategy it would use, as outlined at paragraph 2.2.6, would provide a return in excess of 10% per month.
- 2.2.8 Mr Perkin gave presentations to Australian retail clients who were considering investing with Crusader in foreign exchange trading.
- 2.2.9 As a result of the presentations referred to in paragraph 2.2.8 several retail clients provided monies to Mr Perkin that were to be invested in the foreign exchange trading managed fund or the foreign exchange trading private accounts.
- 2.2.10 Mr Perkin has identified seven (7) Australian based retail clients who paid monies to him with the intention that they be pooled and managed jointly. The total invested by these retail clients was approximately US\$68,292.
- 2.2.11 Mr Perkin has also identified three (3) Australian based retail clients who deposited monies with him with the intention that they be managed

individually. The amounts were for 3,000 Swiss francs, US\$10,000 and US\$2,000 respectively.

- 2.2.12 Several clients invested monies by way of electronic transfer to an account nominated by Mr Perkin. The account nominated by Mr Perkin was a Hong Kong based HSBC foreign currency account.
- 2.2.13 At no time did Mr Perkin differentiate between personal funds and client funds held in the HSBC account referred to at paragraph 2.1.12.
- 2.2.14 While undertaking foreign exchange trading under the name Crusader Mr Perkin incurred substantial losses on the monies of retail clients who had invested in the jointly managed trading account.
- 2.2.15 Mr Perkin has advised ASIC that he no longer retains access to the individually managed accounts. Mr Perkin has advised that those clients have always been able to, and retain the ability to, access those accounts.
- 2.2.16 The conduct of Mr Perkin was reported to ASIC by one of the retail clients who had invested his money in the jointly managed account.
- 2.2.17 As a result of the conduct of Mr Perkin the retail clients who invested in the jointly managed accounts have lost all monies that were invested in foreign exchange trading.
- 2.2.18 Mr Perkin has failed provide monthly statements, as contractually agreed, to his clients who invested in the jointly managed account. Subsequently the retail clients of Mr Perkin are unaware of the status of their investments.
- 2.2.19 Crusader operated by referral only and did not accept applications from members of the general public.
- 2.2.20 At no time did Mr Perkin or Crusader hold an AFSL nor were they representatives of an AFSL holder.

3. ASIC's investigation

- 3.1 ASIC has conducted an investigation into the conduct of Mr Perkin during the period of September 2008 to December 2010 and, in particular, whether he contravened Chapter 7 of the Corporations Act and Part 2 Division 2 of the ASIC Act with respect to financial services and financial products provided by him during this period.

4. ASIC's concerns

- 4.1 As a result of its investigation, ASIC is concerned that Mr Perkin:

- 4.1.1 from September 2008 to December 2010 provided financial products to retail clients;
 - 4.1.2 did not at any time hold an AFSL nor was he a representative of an AFSL holder;
 - 4.1.3 did not take sufficient steps to ensure that client money was separated from his own when operating bank accounts;
 - 4.1.4 did not sufficiently communicate to retail clients the status of their investments on a regular basis;
 - 4.1.5 undertook foreign exchange trading on behalf of retail clients that resulted in those retail clients losing all their monies; and
 - 4.1.6 has purported to be the director of a company incorporated in the British Virgin Islands when in fact there was no such company.
- 4.2 ASIC is concerned that Mr Perkin's conduct as outlined above resulted in retail clients with Crusader suffering a financial loss.
- 4.3 ASIC is concerned that as a consequence of the conduct outlined above, Mr Perkin has not complied with a financial services law or laws.

5. Acknowledgement of concerns

- 5.1 Mr Perkin acknowledges ASIC's concerns set out in paragraph 4 above.
- 5.2 ASIC has agreed to accept enforceable undertakings in the terms of paragraph 6 below as an alternative to commencing proceedings in relation to the concerns set out in paragraph 4 above.
- 5.3 Mr Perkin acknowledges that should ASIC form the view that he has failed to comply with this undertaking, ASIC may take additional action including (without limitation) seeking court orders under section 93AA of the ASIC Act requiring him to comply with the terms of this undertaking.

6. Undertakings

- 6.1 Under section 93AA of the ASIC Act, Mr Perkin has offered, and ASIC has agreed to accept as an alternative to ASIC exercising its power under the Corporations Act and/or the ASIC Act:
 - 6.1.1 Mr Perkin undertakes not to provide financial services or financial products for a period of four (4) years from the date of acceptance of this undertaking by ASIC.
 - 6.1.2 Without in any way limiting the undertaking in paragraph 6.1.1 above, Mr Perkin undertakes, for a period of four (4) years from the time of acceptance of this undertaking by ASIC not to:

- 6.1.2.1 do any act or engage in any conduct as a representative of an AFSL;
 - 6.1.2.2 hold himself out as a representative of an AFSL;
 - 6.1.2.3 carry on a business in relation to financial products or financial services, within the meaning of section 716A of the Corporations Act, either directly or indirectly as a director, partner, manager, servant or agent;
 - 6.1.2.4 hold out that he is in any way authorised to provide a particular financial service or services or that he is in any way authorised to provide financial services generally; and
 - 6.1.2.5 apply to ASIC under section 913A of the Corporations Act for an AFSL.
- 6.1.3 Mr Perkin undertakes not to promote Crusader or any other company that has not been incorporated according to the law of the relevant jurisdiction.
 - 6.1.4 Mr Perkin agrees to send to each Australian retail client obtained by him during the course of purporting to operate Crusader correspondence that explains the status of their investment. This correspondence is to be in a form approved by ASIC.
 - 6.1.5 Mr Perkin undertakes to pay the costs of compliance with this enforceable undertaking.
 - 6.1.6 Mr Perkin will provide all documents and information requested by ASIC from time to time for the purpose of assessing Mr Perkin's compliance with the terms of this enforceable undertaking.

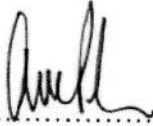
7. Acknowledgements

- 7.1 Mr Perkin acknowledges that ASIC:
 - 7.1.1 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;
 - 7.1.2 may from time to time publicly refer to this undertaking; and
 - 7.1.3 will make this undertaking available for public inspection.
- 7.2 Further Mr Perkin acknowledges that:
 - 7.2.1 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; and

7.2.2 this undertaking in no way derogates from the rights and remedies available to any person or entity arising from any conduct described in this undertaking or arising from future conduct.

7.3 Mr Perkin acknowledges that ASIC has reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of paragraph 6 above.

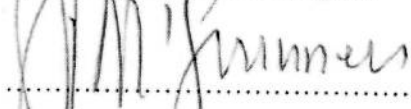
7.4 Mr Perkin acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Perkin and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.



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Andrew Mark Perkin

Dated: 17.3.2011.....

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



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David John McGuinness

Delegate of Australian Securities and Investments Commission

Date: 22 March 2011