

P 913

## 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:

**HALIFAX INVESTMENT SERVICES LTD**  
ACN 096 980 522



## 1. DEFINITIONS

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

**AFS Licence** means Australian Financial Services Licence.

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

**Client** means the holder of any securities, derivatives or other account with Halifax Investment Services Ltd to whom it or its Representatives have provided Financial Services.

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

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

**Counterparty** means any third party which introduces Clients or Financial Services to Halifax.

**Financial Product Advice** has the meaning given to that term by s766B of the *Corporations Act 2001*.

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

**Financial Services Law** has the meaning given to that term by s761A of the Corporations Act.

**Key Persons** means those persons identified in condition 2 of the AFS Licence of Halifax Investment Services Ltd, AFS Licence number 225973.

**Marketing Materials** means any written or electronic medium involved in the promotion or advertising of Financial Services.

**Meetings** mean those meetings attended by Halifax, the Independent Consultant and ASIC referred to in paragraph 3.43.

**Quarterly Review Meetings** means those meetings attended by Halifax, the Independent Consultant and ASIC referred to in paragraph 3.43.1.

**Remediation** means providing Clients with information about their rights and Halifax's obligations in respect of any suspected contraventions of a Financial Services Law.

**Reports** mean those reports prepared by the Independent Consultant and given to Halifax and ASIC, referred to in paragraphs 3.6, 3.14, 3.21 and 3.28.

**Representative** means any person referred to in s910A(a) of the Corporations Act to the extent they provide financial services as a representative of Halifax or a related body corporate of Halifax.

- 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 2 Subdivision B 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.

### **Halifax Investment Services Ltd**

- 2.2. Since 19 February 2003, Halifax Investment Services Ltd ACN 096 980 522 (**Halifax**) has held AFS Licence number 225973 which authorises Halifax to carry on a financial services business to provide advice in relation to, and deal in, amongst other things, securities, derivatives, basic deposit products, foreign exchange contracts and managed investment schemes. Halifax's AFS Licence also authorises Halifax to make a market in foreign exchange contracts and derivatives.
- 2.3. Condition 3 of Halifax's AFS Licence requires it to *"establish and maintain compliance measures that ensure, as far as reasonably practicable, that the licensee complies with the provisions of financial services laws."*
- 2.4. Halifax has authorised certain Representatives to provide Financial Services on its behalf. As at the date of this undertaking Halifax has offices and Representatives in Queensland, New South Wales, Victoria and Western Australia.

## **ASIC's Concerns**

2.5. Between May 2012 and November 2012 ASIC conducted surveillance checks of Halifax. These surveillance checks were conducted by ASIC in respect of all Halifax's offices, pursuant to ASIC's powers under section 912E of the Corporations Act and included reviews of:

- 2.5.1. internal and external supervision and compliance monitoring of Representatives;
- 2.5.2. monitoring of Representative and Client trading volumes and frequencies;
- 2.5.3. maintenance of training and professional standards by Representatives;
- 2.5.4. incidences involving the publication of possibly misleading Marketing Materials;
- 2.5.5. procedures for the review and approval of Marketing Materials;
- 2.5.6. internal risk management and compliance reporting (including frequencies and content);
- 2.5.7. breach recognition and reporting practices;
- 2.5.8. complaints recognition, escalation and handling practices; and
- 2.5.9. assessment and management of Counterparty risks.

2.6. As a result of the surveillance checks referred to in paragraph 2.5, ASIC identified concerns that Halifax may not have in place an adequate risk management framework or adequate compliance arrangements. In particular, ASIC is concerned that Halifax may have:

- 2.6.1. inadequate supervision and monitoring of its Representatives;
- 2.6.2. inadequate technological resources to enable it to adequately supervise and monitor its Representatives;
- 2.6.3. inadequate breach assessment and reporting;
- 2.6.4. deficiencies in its complaints assessment and handling;
- 2.6.5. inadequate processes for the proper authorisation and publication of Marketing Materials;
- 2.6.6. inadequate procedures and practices in assessing Counterparty risks; and
- 2.6.7. inadequate oversight of the training and professional standards of its Representatives.

- 2.7. As a result of these surveillance checks referred to in paragraph 2.5, ASIC is concerned Halifax may not have complied with its obligations under the Financial Services Law, and in particular may have contravened:
- 2.7.1. s911A of the Corporations Act, which requires a person who carries on a financial services business to hold an AFS Licence covering the financial services they provide and prohibits them from providing financial services outside their AFS Licence authorisations;
  - 2.7.2. s912A(1)(a) of the Corporations Act, which 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";
  - 2.7.3. s912A(1)(ca) of the Corporations Act, which requires a financial services licensee to take reasonable steps to ensure that its Representatives comply with the financial services laws;
  - 2.7.4. s912A(1)(d) of the Corporations Act, which requires a financial services licensee 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;
  - 2.7.5. 912A(1)(e) of the Corporations Act, which requires a financial services licensee to maintain the competence to provide financial services;
  - 2.7.6. s912A(1)(f) of the Corporations Act which requires a financial services licensee to ensure that its Representatives are adequately trained and competent to provide financial services;
  - 2.7.7. s912A(1)(h) of the Corporations Act, which requires a financial services licensee to have adequate risk management systems;
  - 2.7.8. s912D(1) of the Corporations Act, which requires a financial services licensee to notify ASIC of certain matters;
  - 2.7.9. s923B of the Corporations Act, which prohibits a person from using a restricted word or expression unless authorised by the AFS Licence under which they operate to do so;
  - 2.7.10. s1041H of the Corporations Act, which prohibits a person from engaging in conduct, in relation to a financial product or service, that is misleading or deceptive or is likely to mislead or deceive; and
  - 2.7.11. s12DA of the ASIC Act, which prohibits a person from engaging in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.
- 2.8. ASIC is also concerned that by reason of the conduct described in paragraphs 2.6 and 2.7, Halifax may not have complied with condition 3 of its AFS Licence requiring it *"to establish and maintain compliance measures that*

*ensure, as far as reasonably practicable, that the licensee complies with financial services laws" and as a result may have contravened s912A(1)(b) of the Corporations Act, which requires a financial services licensee to comply with the conditions on the licence.*

### **Acknowledgement of Concerns**

- 2.9. Halifax acknowledges ASIC's concerns and that they are reasonably held.
- 2.10. Halifax acknowledges that there may be deficiencies in its risk management and compliance frameworks. In particular this is in relation to the supervision and monitoring of its Representatives, which deficiencies may have resulted in Halifax contravening the Financial Services Law and not complying with condition 3 of its AFS Licence.
- 2.11. ASIC notes that Halifax and its directors and Key Persons have fully co-operated with ASIC in the surveillance checks referred to in paragraph 2.5.
- 2.12. Nothing in this undertaking constitutes an admission by Halifax, its directors or Key Persons.

### **3. UNDERTAKINGS**

#### **Acceptance of Enforceable Undertaking**

- 3.1. Under s93AA of the ASIC Act, Halifax has offered the undertakings in paragraphs 3.2 to 3.43 and ASIC has agreed to accept those undertakings as an alternative to commencing civil proceedings or pursuing administrative action against Halifax.

#### **Independent Assessment of Halifax's Risk and Compliance Framework**

- 3.2. Halifax will conduct a framework and compliance review of its business and implement changes identified as a result of that review ("**Review**"), on the basis of this undertaking and terms of reference dated today and approved by ASIC ("**TOR**").
- 3.3. To that end, Halifax has today appointed a consultant, who has been approved by ASIC and has expertise in the area of risk management and compliance and who is independent of Halifax and its related bodies corporate and officers ("**Independent Consultant**"). The Independent Consultant is to conduct the Review and report back to Halifax and ASIC, and to assist with, monitor and report to ASIC concerning the implementation of recommended changes to Halifax's business.

- 3.4. Pursuant to the TOR, Halifax will conduct the Review in three stages, as described in paragraphs 3.5 to 3.29 below. In summary, these are:
- 3.4.1. a Framework Review, to assess Halifax's existing risk and compliance framework and make recommendations for improvement;
  - 3.4.2. a Compliance Review, comprised of the following three interdependent reviews:
    - 3.4.2.1. a Competency Assessment, to assess Representative competency in relation to the provision of Financial Services;
    - 3.4.2.2. a Complaints Review, to determine whether Halifax's client complaints have been adequately handled; and
    - 3.4.2.3. a Representative Conduct Review, to assess Representative conduct in the provision of Financial Services to Clients and which has a focus on the appropriateness of advice, provision of unauthorised Financial Services, distribution of Marketing Materials and trading activity; and
  - 3.4.3. Implementation Review, to assess Halifax's progress over a 12 month period against recommendations arising from the Framework Review and Compliance Review.

#### **Stage 1 Framework Review**

- 3.5. Halifax will take all reasonable steps necessary to enable the Independent Consultant to undertake a review of Halifax's existing risk management and compliance framework to:
- 3.5.1. identify any existing deficiencies; and
  - 3.5.2. determine how adequately Halifax identifies, analyses and controls risks and compliance with Financial Services Law and its AFS Licence,
- (**"Stage 1 Framework Review"**).

#### **Stage 1 Framework Report**

- 3.6. Halifax will take all reasonable steps necessary to enable the Independent Consultant to provide a report (**"Stage 1 Framework Report"**) to ASIC and Halifax by 31 May 2013 (or such other time as agreed to in writing by ASIC) concerning the Stage 1 Framework Review and which:
- 3.6.1. reports on the matters described in paragraph 3.5;

- 3.6.2. makes any recommendations for change necessary to:
  - 3.6.2.1. address ASIC's concerns in paragraphs 2.6 to 2.8, which are relevant to this stage of the Review;
  - 3.6.2.2. ensure that Halifax's risk management and compliance systems are sufficient to enable Halifax to comply with its obligations under the Financial Services Law and its AFS Licence obligations, taking into account the nature, scale and complexity of Halifax's business; and
- 3.6.3. provides Halifax with documented draft policies and procedures concerning the recommendations for risk management and compliance frameworks.

### **Stage 1 Implementation Plan**

- 3.7. Within 4 weeks of delivery of the Stage 1 Framework Report to ASIC and Halifax, or such other time as agreed to by ASIC, Halifax will consider the recommendations made by the Independent Consultant in the Stage 1 Framework Report and develop an implementation plan to address and implement the recommendations it proposes to take, and the policies and procedures it proposes to adopt, to rectify the deficiencies and make the changes identified by the Independent Consultant ("**Stage 1 Implementation Plan**"). The Stage 1 Implementation Plan must specify the reasonable time in which these actions will be taken.
- 3.8. The Stage 1 Implementation Plan will:
  - 3.8.1. identify what steps Halifax has taken, and will take, to address any identified inadequacies and recommendations arising from:
    - 3.8.1.1. ASIC's concerns as stated in paragraphs 2.6 to 2.8; and
    - 3.8.1.2. the Stage 1 Framework Report;
  - 3.8.2. be consistent with accepted risk management standards, including AS3806-2006, ISO 31000 and AS 4360;
  - 3.8.3. provide a detailed explanation of the operational risk and compliance model to be adopted by Halifax, including its related documented policies and procedures and reporting lines;
  - 3.8.4. provide an overview and list of all work streams and commitments arising from the Implementation Plan;
  - 3.8.5. specify individuals or officeholders responsible for each element of the Implementation Plan;

- 3.8.6. clearly define the roles and responsibilities for the key risk management and compliance activities within the risk management and compliance frameworks;
- 3.8.7. clearly define the technological resources that will be relied upon to support its risk management and compliance frameworks;
- 3.8.8. specify performance milestones and monitoring procedures, including agreed dates and formats of progress updates, meetings and written reports;
- 3.8.9. establish procedures for a regular review of the breach register and complaints registers to assess and consider if any of the complaints indicate that an incident (or breach) has occurred; and
- 3.8.10. include, as an addendum, a risk matrix that is structured as a schedule of all risks, risk ratings, control and escalation measures identified in the Stage 1 Framework Report ("the Addendum"). The Addendum is to be:
  - 3.8.10.1. organised into appropriate business risk categories;
  - 3.8.10.2. list all existing or proposed controls and escalation measures against each risk; and
  - 3.8.10.3. regularly reviewed and updated by Halifax to reflect the current status of risks until preparation of the Final Implementation Plan referred to in paragraph 3.28.
- 3.9. Halifax must submit the Stage 1 Implementation Plan to ASIC within one month of the date that the Stage 1 Framework Report was received by ASIC.
- 3.10. Upon receipt of ASIC's approval of the Stage 1 Implementation Plan, Halifax must take all reasonable steps necessary to action the Stage 1 Implementation Plan.
- 3.11. If ASIC requires any reasonable modifications to the Stage 1 Implementation Plan Halifax must implement the Stage 1 Implementation Plan as modified by ASIC.
- 3.12. Save for the Addendum, the Stage 1 Implementation Plan may only be varied upon the written approval of ASIC.

## **Stage 2 Compliance Review**

- 3.13. Halifax will take all reasonable steps necessary to enable the Independent Consultant to undertake:
  - 3.13.1. an assessment of each Representative's competency in relation to the provision of Financial Services ("**Competency Assessment**");



- 3.13.2. a review of complaints from Halifax's complaints register over the 12 months to the Commencement Date ("**Complaints Review**");
- 3.13.3. a review of a sample of Representatives and Clients identified by the Independent Consultant and ASIC, to assess the conduct of the Representatives in providing Financial Services to the Clients ("**Representative Conduct Review**"); and
- 3.13.4. an assessment of the steps taken by Halifax to action the Stage 1 Implementation Plan to determine how Halifax is progressing against that plan and to identify any amendments to that plan arising out of the Stage 2 Compliance Review or otherwise. The assessment will address whether Halifax's risk management and compliance systems are sufficient to enable Halifax to comply with its obligations under the Financial Services Law and its AFS Licence obligations

("Stage 2 Compliance Review").

#### **Stage 2 Compliance Report**

- 3.14. Halifax will take all reasonable steps necessary to enable the Independent Consultant to provide a report (**Stage 2 Compliance Report**) to ASIC and Halifax by 30 August 2013 (or such other time as agreed to in writing by ASIC) concerning the Stage 2 Compliance Review and which:
  - 3.14.1. outlines the scope and methodology of the Stage 2 Compliance Review;
  - 3.14.2. reports on the matters described in paragraph 3.13;
  - 3.14.3. makes any recommendations for change, taking into account the nature, scale and complexity of Halifax's business, necessary to:
    - 3.14.3.1. address ASIC's concerns in paragraphs 2.6 to 2.8 which are relevant to this stage of the Review;
    - 3.14.3.2. ensure to the extent possible that the Representatives appointed by Halifax are competent to provide Financial Services to Clients in compliance with Financial Services Law and their AFS Licence;
    - 3.14.3.3. ensure that Halifax has adequate systems in place to train its Representatives to be competent to provide Financial Services to Clients in compliance with Financial Services Law and their AFS Licence;
    - 3.14.3.4. ensure that Halifax has adequate systems in place to ensure Client complaints are adequately recognised, managed and escalated;

3.14.4. in light of the Stage 2 Compliance Review, identifies instances in which Clients may not have been dealt with in accordance with Financial Services Law and Halifax's AFS Licence obligations, the Independent Consultant will advise ASIC:

3.14.4.1. whether any Remediation has been offered to those Clients; and

3.14.4.2. whether, in the Independent Consultant's opinion, any Remediation offered has been fair and reasonable in all the circumstances and if not, make recommendations for steps to be taken by Halifax to offer appropriate Remediation to those Clients;

3.14.5. provide an opinion on whether the steps taken to date to implement the Stage 1 Implementation Plan are effective and include their reasons for this opinion; and

3.14.6. recommends amendments to the Stage 1 Implementation Plan necessary to ensure Halifax's risk management and compliance systems are sufficient to enable Halifax to comply with its obligations under the Financial Services Law and its AFS Licence.

#### **Stage 2 Implementation Plan**

3.15. Within 4 weeks of delivery of the Stage 2 Compliance Report to ASIC and Halifax, or such other time as agreed to by ASIC in writing, Halifax must:

3.15.1. consider the recommendations made by the Independent Consultant in the Stage 2 Compliance Report and develop a further Implementation Plan ("**Stage 2 Implementation Plan**") by making any reasonable revisions to the Stage 1 Implementation Plan (including updating the Addendum) to address:

3.15.1.1. the additional recommendations identified by the Stage 2 Compliance Report that Halifax proposes to implement;

3.15.1.2. the additional policies and procedures identified by the Stage 2 Compliance Report that Halifax proposes to adopt; and

3.15.1.3. any other steps necessary to ensure that Halifax has systems and procedures in place which are adequate to address, to the extent possible, ASIC's concerns identified in paragraphs 2.6 to 2.8 and avoiding future breaches of the kind outlined in paragraphs 2.7 and 2.8.

3.16. Halifax must submit the Stage 2 Implementation plan to ASIC for review within one month of the date that the Stage 2 Compliance Report was received by ASIC.

- 3.17. Upon receipt of ASIC's approval of the Stage 2 Implementation Plan, Halifax will take all reasonable steps necessary to action the Stage 2 Implementation Plan.
- 3.18. If ASIC requires any reasonable modifications to the Stage 2 Implementation Plan, Halifax must implement the Stage 2 Implementation Plan as modified.
- 3.19. Save for the Addendum and the modifications referred to in paragraph 3.18, the Stage 2 Implementation Plan may only be varied upon the written approval of ASIC.

### **Stage 3 Implementation Review**

- 3.20. For the purposes of preparing the report referred to in paragraph 3.21, Halifax will take all reasonable steps necessary to enable the Independent Consultant to review:
  - 3.20.1. the effectiveness of Halifax's implementation of the Stage 2 Implementation Plan;
  - 3.20.2. the effectiveness of Halifax's implementation of recommendations made by the Stage 1 Framework Report and Stage 2 Compliance Report;
  - 3.20.3. the status of all issues logged in Quarterly Review Meetings as referred to in paragraph 3.43.2 and remedial action completed or outstanding on these issues; and
  - 3.20.4. Halifax's compliance with its obligation under section 912A(1)(h) of the Corporations Act to have adequate risk management systems

**("Stage 3 Implementation Review").**

### **Stage 3 Progress Report**

- 3.21. Halifax will take all reasonable steps necessary to enable the Independent Consultant to provide a report ("**Stage 3 Progress Report**") to ASIC and Halifax by 28 February 2014, (or such other times as agreed to in writing by ASIC), which:
  - 3.21.1. reports on the matters described in paragraph 3.20; and
  - 3.21.2. makes any recommendations for change necessary for Halifax to implement the Stage 2 Implementation Plan or to address ASIC's concerns in paragraphs 2.6 to 2.8, taking into account the nature, scale and complexity of Halifax's business.

## **Updated Stage 2 Implementation Plans**

- 3.22. Within 4 weeks of delivery of the Stage 3 Progress Report to ASIC and Halifax, or such other time as agreed to by ASIC in writing, Halifax must consider the recommendations made by the Independent Consultant in the Stage 3 Progress Report and develop an updated Stage 2 Implementation Plan by making any reasonable revisions to the Stage 2 Implementation Plan (including updating the Addendum) to address:
- 3.22.1. the additional recommendations identified by the Stage 3 Progress Report that Halifax proposes to implement;
  - 3.22.2. the additional policies and procedures identified by the Stage 3 Progress Report that Halifax proposes to adopt; and
  - 3.22.3. any other steps necessary to ensure that Halifax has systems and procedures in place which are adequate to address, to the extent possible, ASIC's concerns identified in paragraphs 2.6 to 2.8 and avoiding future breaches of the kind outlined in paragraphs 2.7 and 2.8.
- 3.23. Halifax must submit the updated Stage 2 Implementation plan to ASIC for review within one month of the date that the Stage 3 Progress Report was received by ASIC.
- 3.24. Upon receipt of ASIC's approval in writing of an updated Stage 2 Implementation Plan, Halifax will take all steps necessary to action the updated Stage 2 Implementation Plan.
- 3.25. If ASIC requires any reasonable modifications to the updated Stage 2 Implementation Plan, Halifax must implement the updated Stage 2 Implementation Plan as modified.
- 3.26. Save for the Addendum and the modifications referred to in paragraph 3.25, the updated Stage 2 Implementation Plan may only be varied upon the written approval of ASIC.

## **Final Review**

- 3.27. Halifax will take all reasonable steps necessary to enable the Independent Consultant to:
- 3.27.1. review the completeness and effectiveness of Halifax's implementation of its Stage 2 Implementation Plan, together with any recommendations made in the Stage 3 Progress Report; and
  - 3.27.2. conduct itemised testing of Halifax's risk management and compliance systems, including the effectiveness of the controls and their sustainability, as well as, whether they are sufficient to enable Halifax to comply with its obligations under the Financial Services Law and its AFS Licence obligations.

### **Final Implementation Report**

3.28. Halifax will take all reasonable steps necessary to enable the Independent Consultant to provide to ASIC and Halifax a report ("**Final Implementation Report**") by 31 July 2014, or such other time as agreed to by ASIC in writing, that:

3.28.1. reports on the matters described in paragraph 3.27 and makes recommendations as to any further steps to be taken to implement the Stage 2 Implementation Plan and recommendations made in the Stage 3 Progress Report;

3.28.2. reviews the updated Addendum and reports on the suitability of it as a risk management tool and makes recommendations for any changes; and

3.28.3. includes a complete process and organisational map of Halifax's risk management and compliance frameworks as they will operate thereafter.

### **Final Implementation Plan**

3.29. Halifax will consider the recommendations made by the Independent Consultant in the Final Implementation Report and take all reasonable steps necessary to implement the:

3.29.1. actions it proposes to take to meet the recommendations made in the Final Implementation Report;

3.29.2. risk management controls and procedures established in the Addendum; and

3.29.3. risk management and compliance framework outlines in the process and organisational map provided in the Final Implementation Report

("Final Implementation Plan").

3.30. Halifax must provide the Final Implementation Plan to ASIC within one month of the date that the Final Implementation Report was received by ASIC.

3.31. Upon receipt of ASIC's approval in writing of an updated Stage 2 Implementation Plan, Halifax will take all steps necessary to action the Final Implementation Plan.

3.32. If ASIC requires any reasonable modifications to the Final Implementation Plan, Halifax must implement the Final Implementation Plan as modified.

### **Identification and Reporting of Breaches**

3.33. Halifax will instruct the Independent Consultant to notify Halifax of any instances identified by the Independent Consultant in the course of the Review in which Halifax has, or may have, breached the Financial Services Law or its

AFS license obligations within 5 days of the Independent Consultant identifying the suspected breach.

3.34. Within 10 days of receiving notification from the Independent Consultant, Halifax will consider whether the suspected breach referred to in paragraph 3.33 needs to be notified to ASIC pursuant to s912D of the Corporations Act and, if so, will:

3.34.1. notify ASIC of the breach or likely breach pursuant to s912D in accordance with ASIC's usual procedures for the reporting of such breach, unless Halifax has already notified the breach to ASIC; and

3.34.2. notify the relevant Clients about Remediation.

3.35. Paragraphs 3.33 and 3.34 do not affect Halifax's obligation to itself identify and report breaches or likely breaches to ASIC in accordance with its obligation under s912D of the Corporations Act and its AFS Licence.

#### **Miscellaneous**

3.36. Halifax will take all reasonable steps necessary to enable the Independent Consultant to conduct the Review in accordance with the TOR and will comply with its obligations set out in this undertaking and the TOR in relation to the Review.

3.37. The TOR may be varied only by written agreement between Halifax, the Independent Consultant and ASIC.

3.38. The TOR, and any amendments to them made in accordance with paragraph 3.37, are enforceable by ASIC against Halifax, as if the terms of the TOR were terms of this undertaking.

3.39. For the purpose of the Review, Halifax will:

3.39.1. permit the Independent Consultant to have access to its books;

3.39.2. permit the Independent Consultant to interview any present employee of Halifax;

3.39.3. give the Independent Consultant any information or explanation reasonably requested by the Independent Consultant, which the Independent Consultant considers necessary to conduct the Review; and

3.39.4. permit the Independent Consultant and ASIC to liaise and exchange information with each other in respect of the Review independently of Halifax.

3.40. Halifax is to take all reasonable steps necessary to have its directors and Key Persons certify:

3.40.1. each of the Stage 1 Framework Report, Stage 2 Compliance Report, the Stage 3 Progress Report and the Final Implementation Report acknowledging its receipt and stating that Halifax will address the recommendations contained therein; and

3.40.2. each of the corresponding Implementation Plans, stating that Halifax will implement the relevant plan.

3.41. Halifax undertakes that it will pay the costs of its compliance with this undertaking.

3.42. Halifax will provide all documents and information requested by ASIC from time to time for the purpose of assessing compliance with this undertaking except to the extent it has a claim for legal professional privilege.

#### **Meetings**

3.43. In addition to the Reviews and Reports recorded above, Halifax will take all reasonable steps necessary to arrange meetings between Halifax, the Independent Consultant and ASIC:

3.43.1. within 7 days of submission of each of the Stage 1 Framework Report, the Stage 2 Compliance Report and the Stage 3 Progress Report;

3.43.2. quarterly in the period between the submission of the Stage 2 Compliance Report and the Final Implementation Report ("**Quarterly Review Meetings**"); and

3.43.3. as subsequently required and agreed by ASIC in writing.

#### **4. ACKNOWLEDGEMENTS**

4.1. Halifax acknowledges 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 Halifax acknowledges 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 undertaking or arising from a breach notified to ASIC in accordance with paragraph 3.34 of this undertaking or future conduct; and

- 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. This undertaking has no operative force until accepted by ASIC, and Halifax and ASIC acknowledge that the date of the undertaking is the date on which it is accepted by ASIC.
- 4.4. The address for providing ASIC with any document, including, but not limited to any TOR or Reports, which this undertaking requires to be provided is:

David De Carli  
Senior Analyst  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
Sydney NSW 2000

- 4.5. ASIC and Halifax acknowledge that this undertaking ends 3 months after receipt by ASIC of the Final Implementation Report, being a time after that Report within which both parties expect Halifax to have taken all reasonable steps necessary to implement the recommendations made in that Report.

**EXECUTED** by HALIFAX INVESTMENT )  
SERVICES LTD )  
ACN 096 980 522 in accordance with the )  
*Corporations Act 2001:*



Jeffrey Worboys, Director



Matthew Barnett, Director

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



Greg Yanco

Delegate of Australian Securities and Investments Commission

3 April 2013



### **Terms of Reference ("TOR")**

- A. This document, and any annexure to this document, are the terms of reference dated on or about 3 April 2013 and approved by ASIC ("TOR") as referred to in paragraph 3.2 of the Enforceable Undertaking entered into by Halifax Investment Services Ltd ACN 096 980 522 on or about on or about 3 April 2013 ("EU").
- B. All terms of any annexure to this TOR are incorporated as if they are terms of the TOR.
- C. All terms defined in the EU have the same meaning given to that term in the TOR.
- D. These TOR, and any amendment to them made in accordance with paragraph 3.37 of the EU are enforceable by ASIC against Halifax, as if the TOR were terms of that undertaking.
- E. To the extent of any inconsistency in the terms of the EU and TOR, the terms of the EU will prevail.

### **Engagement of the Independent Consultant ("Independent Consultant")**

- 1. Halifax is to ensure that its engagement of the Independent Consultant:
  - a) contains in sufficient detail all the tasks, commitments and obligations of the Independent Consultant in respect of undertaking the Reviews;
  - b) includes timetables for each of the Reviews;
  - c) includes timetables for the production and delivery of Reports;
  - d) permits the Independent Consultant to:
    - i. have access to Halifax's books;
    - ii. interview any present employee of Halifax;
    - iii. liaise with ASIC independently of Halifax;
    - iv. disclose to ASIC any information obtained by the Independent Consultant in the course of carrying out the Reviews;
    - v. receive any information and books that ASIC determines is appropriate to be provided to the Independent Consultant; and
    - vi. attend meetings with ASIC as required under the terms of the EU.
  - e) includes a requirement that the Reports will:
    - i. set out any limitation or qualification;

## **Terms of Reference ("TOR")**

- ii. set out the steps that the Independent Consultant has taken to fulfil tasks, commitments and obligations, including, but not limited to:
  - 1) the people that have assisted the Independent Consultant and the nature of the assistance provided;
  - 2) the personnel that have been interviewed;
  - 3) the documents that have been assessed, and those most relevant (in the view of the Independent Consultant) in producing the Reports.
- f) includes a requirement that the Independent Consultant reviews any other potential breach of the Financial Services Law or its AFS Licence obligations identified in the course of implementing the EU that is reportable to ASIC in accordance with s912D and/or s990K of the Corporations Act. The Independent Consultant will notify Halifax of these potential breaches within 5 days of them being identified.

### **Stage 1 Framework Review**

- 2. The Stage 1 Framework Review will assess the adequacy of Halifax's risk management and compliance framework against its obligations under the Financial Services Law and its AFS Licence, and include:
  - a) assessment of Halifax's operating model against generally accepted risk management standards that are appropriate to the nature, size, and complexity of Halifax's business;
  - b) assessment of Halifax's recruitment, induction, training, education and consequence management in relation to Representatives;
  - c) assessment of the technological resources relied upon by Halifax to monitor and supervise its Representatives and meet its AFS Licence obligations;
  - d) procedures for supervision and monitoring of Representatives;
  - e) procedures for branch office reviews and branch manager accountability;
  - f) assessment of compliance resources and responsibilities;
  - g) procedures for issuance, review and approval of Marketing Materials;
  - h) procedures for complaint recognition, management and escalation;
  - i) procedures for breach identification, escalation and reporting;
  - j) assessment of risks and conflicts of interests associated with any existing Counterparty; and
  - k) procedures to identify and prevent unauthorised and discretionary trading.

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The Stage 1 Framework Review will be completed by 30 April 2013 or such other time as agreed to by ASIC in writing.

NB: The Stage 1 Framework Review will not include compliance induction training for Representatives (or training of any other sort of Representatives). The purpose of the Stage 2 Compliance Review (Competency Assessment) is to assess Representatives' knowledge of compliance matters prior to implementing a targeted training program.

### **Stage 1 Framework Report**

3. Upon completion of the Stage 1 Framework Review, the Independent Consultant will collate results and prepare a Report that:
  - a) outlines the scope, methodology, findings and any suggested rectification resulting from the Framework Review;
  - b) makes recommendations to Halifax about its risk management and compliance frameworks that are appropriate to the nature, scale and complexity of Halifax's business;
  - c) makes recommendations to Halifax, where it finds necessary, for improvements;
  - d) provides Halifax with documented draft policies and procedures concerning the recommendations for risk management and compliance frameworks;
  - e) lists all risks, risk ratings, existing or proposed controls and escalation measures; and
  - f) details potential or actual breaches of Financial Services Law (as defined in the EU) where any have been identified.

The Independent Consultant will provide its Report to Halifax and ASIC by 31 May 2013 or such other time as agreed to by ASIC in writing.

### **Stage 2 Compliance Review**

4. The Stage 2 Compliance Review will include:
  - a) Competency Assessment;
  - b) Complaints Review;
  - c) Representative Conduct Review; and
  - d) a review of the Stage 1 Implementation plan.

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### Competency Assessment

5. The Independent Consultant will assess each of Halifax's Representative's competencies in relation to Financial Services Law. This includes testing each Representative's level of knowledge, skills and understanding of:
  - a) the laws and regulatory guidance in relation to the provision of Financial Product Advice;
  - b) the scope, and whether the Representatives contain skills relevant to Halifax's AFS Licence authorisations;
  - c) the laws, regulatory guidance, and Halifax's internal procedures in relation to:
    - i. Marketing Materials and procedures for approval of Marketing Materials;
    - ii. breach identification, escalation and management;
    - iii. complaint recognition, escalation and management; and
    - iv. the provision of Managed Discretionary Account Services (as defined at paragraph 11 of RG 179: *Managed discretionary account services*).
6. The Competency Assessment will form two parts:
  - a) Online Assessment – this will require Representatives to respond to a series of questions via a secure online reporting tool and will be segmented into a number of modules. Each module will target a specific area of the Representative's knowledge and skills. Assessment questions will be in the form of free text and multiple choice responses. The form and content of the Online Assessment will be approved by ASIC prior to implementation; and
  - b) Onsite Visit Assessment – the Independent Consultant will conduct an onsite visit to assess each Representative in each Halifax office taking into account the Online Assessment results. The form and content of the onsite assessment will be approved by ASIC prior to implementation.
7. The Competency Assessment will also:
  - a) determine the extent of Halifax's supervision, monitoring and assessment of its Representatives' compliance with the Financial Services Law; and
  - b) assess and test each Representative's professional training and professional standards, including Halifax's maintenance of appropriate records in relation to such.

NB: The Competency Assessment will not include training of any sort prior to the on-site visit as described at page 6 of Annexure A. The purpose of the Competency Assessment is to assess the competence of each Representative, prior to making any

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recommendations about (or conducting) the future training requirements of the Representatives.

The Stage 2 Compliance Review will be completed by 31 July 2013 or such other time as agreed by ASIC in writing.

### **Competency Assessment Report**

8. Upon completion of the Competency Assessment the Independent Consultant will collate results and incorporate them in the Stage 2 Compliance Review Report. The Stage 2 Compliance Review Report will also include the scope, methodology, findings, recommendations and any suggested rectification resulting from the Competency Assessment.
9. Any instances of potential or actual breaches of Financial Services Law identified during the Competency Assessment will be included in the Stage 2 Compliance Review Report to be provided to Halifax and ASIC.

### **Complaints Review**

10. The Independent Consultant will undertake a review of Halifax's records of complaints including Halifax's complaints register over the 12 months to the Commencement Date, and will include all complaints indicative of, or relating to:
  - a) unauthorised discretionary trading on client accounts;
  - b) the provision of unlicensed Managed Discretionary Account Services; and
  - c) Marketing Materials.
11. The Independent Consultant will submit details of all complaints subject to the Complaints Review to ASIC for approval, prior to undertaking the Complaints Review.
12. The Complaints Review will determine whether complaints have been adequately recognised, managed and escalated. It will also make recommendations to Halifax of Remediation and other actions where it believes that a complaint has not been adequately resolved or where the Client has received inappropriate Financial Product Advice or Financial Services.

### **Complaints Review Report**

13. Upon completion of the Complaints Review, the Independent Consultant will collate results and incorporate them in the Stage 2 Compliance Review Report. The Stage 2 Compliance Review Report will also outline the scope, methodology, findings, recommendations and suggested rectification resulting from the Complaints Review.
14. Any instances of potential or actual breaches of Financial Services Law identified during the Complaints Review will be included in the Report to be provided to Halifax and ASIC.

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### *Regulatory Criteria*

15. The Complaints Review will be benchmarked to the relevant Corporations Act and Regulatory Guide criteria as indicated in the Competency Assessment.

### Representative Conduct Review

16. The Independent Consultant will undertake a review of a sample of Representatives and Clients, as identified by ASIC (refer paragraph 18.), to assess the conduct of the Representatives in providing Financial Services to the Clients.
17. This review will include an assessment of whether these Representatives may have:
  - a) provided unlicensed Managed Discretionary Account Services to a Client(s);
  - b) distributed to a Client(s) Marketing Materials that breached the Financial Services Law;
  - c) provided inappropriate Financial Product Advice; and
  - d) engaged in an inappropriate level of dealing in a Client's account(s).
18. Prior to undertaking the Representative Conduct Review, in addition to any specific Representatives that ASIC has identified as subjects of this review, the Independent Consultant will submit a list of Clients who are proposed to be subjects of the Representative Conduct Review to ASIC for approval.
19. The Independent Consultant's Representative Conduct Review will provide findings and recommendations to Halifax of any Remediation and other action that may be required of Halifax in instances of potential breaches of a Financial Services Law by a Representative.

### Representative Conduct Review Report

20. Upon completion of the Representative Conduct Review, the Independent Consultant will collate results and incorporate them in the Stage 2 Compliance Review Report. The Stage 2 Compliance Review Report will also outline the scope, methodology, findings, recommendations and suggested rectification resulting from the Representative Conduct Review.
21. Any instances of potential or actual breaches of Financial Services Law identified during the Representative Conduct Review will be included in the Stage 2 Compliance Review Report to be provided to Halifax and ASIC.

### *Regulatory Criteria*

22. The Representative Conduct Review will be benchmarked to the relevant Corporations Act and Regulatory Guide criteria as indicated in the Competency Assessment.

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### **Review of the Stage 1 Implementation Plan**

23. The Independent Consultant will undertake a review of Halifax's Stage 1 Implementation Plan to:
- a) identify any deficiencies in it;
  - b) validate the Stage 1 Implementation Plan against generally accepted risk management standards, including ISO 31000 and AS 4360;
  - c) assess the steps taken by Halifax to action the Stage 1 Implementation Plan to determine how Halifax is progressing against that Plan and to identify any amendments to that Plan (arising out of the Stage 2 Compliance Review or otherwise) necessary to ensure Halifax's risk management and compliance systems are sufficient to enable Halifax to comply with its obligations under the Financial Services Law and AFS Licence obligations.

### **Stage 2 Compliance Review Report**

24. The Stage 2 Compliance Review Report to be completed by the Independent Consultant will:
- a) include an outline of the scope, methodology, findings, recommendations and suggested rectification resulting from the Stage 2 Compliance Review;
  - b) advise whether in the Independent Consultant's opinion any Remediation offered by Halifax to any Clients affected by conduct subject to the Reviews is fair and reasonable in all the circumstances and include reasons to substantiate such opinion;
  - c) include an assessment of Halifax's progress against any recommendations made in the Stage 1 Framework Report;
  - d) provide an opinion on whether the Stage 1 Implementation Plan (as defined in the EU) will effectively address ASIC's concerns stated in paragraphs 2.6 to 2.8 of the EU, and include reasons to substantiate such opinion; and
  - e) propose amendments to the Stage 1 Implementation Plan where deficiencies are identified.

The Independent Consultant will provide its Stage 2 Compliance Review Report to Halifax and ASIC by 30 August 2013 or such other time as agreed by ASIC in writing.

### **Stage 3 Implementation Review**

25. The Independent Consultant's Stage 3 Implementation Review will assess whether Halifax has adequately addressed:
- a) ASIC's concerns referred to in paragraphs 2.6 to 2.8 of the EU;

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- b) the suspected contraventions of Financial Services Laws identified in paragraphs 2.7 to 2.8 of the EU;
- c) all relevant aspects of Halifax's processes and ongoing business needs;
- d) the effectiveness of Halifax's implementation of the Stage 2 Implementation Plan;
- e) the effectiveness of Halifax's implementation of recommendations made by Stage 3 Progress Reports in respect of the Stage 2 Implementation Plan; and
- f) all issues logged in Quarterly Review Meetings.

### **Stage 3 Implementation Progress Report**

26. The Independent Consultant will provide a Stage 3 Progress Report to Halifax and ASIC that will report on key milestones, and address the following issues:
- a) status and adequacy of risk management and compliance frameworks;
  - b) status of the Implementation Plan, including, but not limited to, implementation of recommendations made;
  - c) status of all issues logged in Quarterly Review Meetings and remedial action completed or outstanding on these issues; and
  - d) recommendations in respect of the implementation of the Implementation Plan.
27. The Stage 3 Progress Report is to be provided to Halifax and ASIC on 28 February 2014, or such other date agreed by ASIC.

### **Final Implementation Report**

28. The Independent Consultant will provide the Final Implementation Report by 31 July 2014, or as otherwise agreed to by ASIC in writing, that is to address the following:
- a) the completeness of Halifax's implementation of its Stage 2 Implementation Plan (including any updates), including itemisation of risks the Independent Consultant considers were not either identified or sufficiently analysed;
  - b) the itemised testing of Halifax's risk management and compliance frameworks' controls, including the effectiveness of the controls and their sustainability;
  - c) testing the adequacy of monitoring and review procedures in place to identify and control existing and new risks;
  - d) a sample of reviews conducted by the Independent Consultant to determine if the controls are adequately addressing ASIC's concerns noted in paragraphs 2.6 to 2.8 of the EU;




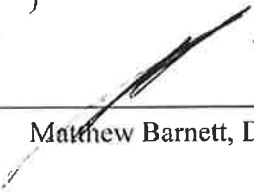
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- e) reports on the updated Addendum as to the suitability of it as a risk management tool, and any recommendations for any changes; and
- f) a complete process and organisational map of Halifax's risk management and compliance frameworks as they will operate thereafter.

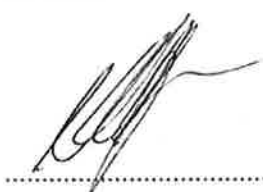
### Other Engagements

29. Halifax may engage the Independent Consultant to undertake additional reviews in relation to its operations and to assist it in the preparation of the implementation plans contemplated in the EU.

**EXECUTED** by HALIFAX INVESTMENT )  
SERVICES LTD ACN 096 980 522 in )  
accordance with the *Corporations Act 2001*: )

  
\_\_\_\_\_  
Jeffrey Worboys, Director  
\_\_\_\_\_  
Matthew Barnett, Director

This TOR is approved by the Australian Securities and Investments Commission pursuant to clause 3.2 of the Enforceable Undertaking under s93AA of the ASIC Act by its duly authorised delegate:

  
\_\_\_\_\_  
Greg Yanco

Delegate of Australian Securities and Investments Commission

3 April 2013