

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

Section 93AA

The commitments in this Enforceable Undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

**CITY INDEX AUSTRALIA PTY LTD**

**ABN 50 141 774 727**

**AFSL 345646**

### 1 DEFINITIONS

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

**AFSL** means the Australian financial services licence issued to CIA on 31 May 2010, which has number 345646.

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

**ASLF** means adjusted surplus liquid funds as referred to in condition 11 of the AFSL.

**ASLF Requirement** means the adjusted surplus liquid funds requirement in condition 11 of the AFSL.

**CIA** means City Index Australia Pty Ltd ABN 50 141 774 727.

**CIH** means City Index (Holdings) Limited, a company incorporated in England and Wales with company number 022 94980.

**Client Money** means money to which Subdivision A of Division 2 of Part 7.8 of the Corporations Act applies.

**Client Money Account** means an account held for the purposes of s981B of the Corporations Act.

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

**Due Date** means any of the Due Dates imposed by clauses 5.2, 5.9, 5.15, 5.16, 5.19, 5.25 and 5.26.

**First Remedial Action Plan** has the meaning given in clause 5.9.

**First Report** has the meaning given in clause 5.6(b).

**First Review** has the meaning given in clause 5.6(a).

**Independent Expert** is the person, firm or company referred to in clause

5.2.

**Obligation** means any obligation imposed on CIA by this Enforceable Undertaking and includes the Due Dates and any obligations arising from the First Remedial Action Plan and/or the Second Remedial Action Plan.

**On Notice** has the meaning given in clause 5.33.

**Second Remedial Action Plan** has the meaning given in clause 5.19.

**Second Report** has the meaning given in clause 5.6(d).

**Second Review** has the meaning given in clause 5.6(c).

**Terms of Engagement** means the terms on which CIA engages the Independent Expert for the purposes of this Enforceable Undertaking.

- 1.2 Except so far as the contrary intention appears in this Enforceable 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 Enforceable Undertaking as if the provisions of those acts were provisions of this Enforceable Undertaking.

## 2 BACKGROUND

### ASIC's role

- 2.1 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 ASIC's responsibilities include the administration and enforcement of the financial services provisions of the Corporations Act.

### Details of Conduct

- 2.3 CIA is a member of the City Index Group (**CIG**) which comprises CIH and its subsidiaries.
- 2.4 CIA operates a financial services business within the meaning of Chapter 7 of the Corporations Act. CIA holds the AFSL.
- 2.5 Under the AFSL, CIA is authorised to provide general financial product advice, make a market and deal in derivatives such as contracts for difference (**CFDs**) and foreign exchange contracts, for retail and wholesale investors.
- 2.6 As holder of the AFSL, CIA is required to meet certain obligations including:
- (a) the requirement that CIA hold Client Money and property pursuant to Division 2 of Part 7.8 of the Corporations Act (**Client Money Requirements**); and

- (b) the adjusted surplus liquid funds requirement as defined in condition 11 of the AFSL (**ASLF Requirement**).

2.7 The conduct of CIA that forms the basis of ASIC's concerns is that:

- (a) between 8 November 2010 to 18 May 2011, CIA breached the Client Money Requirements. CIA withdrew excess Client Money from its Client Money Account and transferred it to its own accounts. CIA self-reported this breach to ASIC;
- (b) between 3 September 2010 and 10 June 2011, CIA breached the ASLF Requirement. CIA did not exclude receivables from associates, as it was required to do by the ASLF Requirement. CIA self-reported this breach to ASIC;
- (c) the Client Money Requirement breach at clause 2.7(a) and ASLF Requirement breach at clause 2.7(b) were identified by CIA's external auditors. CIA's internal audit function had conducted an audit of CIA's compliance with the Client Money Requirements and ASLF requirement shortly before CIA's external auditors identified this breach;
- (d) despite engaging an independent specialist in audit and assurance services to conduct a review of the causes of the breaches at 2.7(b) to (c), and receiving a report containing recommendations in relation to the ASLF Requirement and associated change management processes (**February 2012 Report**), CIA did not fully implement the recommendations of the February 2012 Report until about 31 January 2013;
- (e) between 2 November 2011 and 20 February 2012, CIA published on its website ([www.cityindex.com.au](http://www.cityindex.com.au)) representations that were inconsistent with the risks to, and possible uses of, client monies described in City Index's Product Disclosure Statement and Customer Agreement and liable to mislead the public;
- (f) between about 13 and 15 February 2012, CIA made a false or misleading representation in its electronic newsletter in relation to client money that was inconsistent with the risks to, and possible uses of, client monies described in City Index's Product Disclosure Statement and Customer Agreement;
- (g) between 21 December 2011 and 18 April 2012 CIA breached the Client Money Requirements. CIA withdrew excess Client Money from its Client Money Account and transferred it to its own accounts. CIA self-reported this breach to ASIC;
- (h) between 18 April 2012 and 3 July 2012 CIA breached the Client Money Requirements by erroneously facilitating payments of Client Money by certain clients into accounts held by a member of CIG, when the Client Money should have been paid into CIA's Client Money Account. CIA self-reported this breach to ASIC;

- (i) CIA self-reported to ASIC that between 9 and 10 September 2012 CIA breached the ASLF Requirement, but subsequently, CIA informed ASIC that on further investigation it had formed the view that it had not breached the ASLF Requirement. ASIC is of the view that this miscalculation nonetheless highlighted weaknesses in CIA's arrangements to ensure compliance with the ASLF Requirement;
- (j) between 16 August 2012 and 21 August 2012 CIA breached the Client Money Requirements by facilitating further payments of Client Money by certain clients into an account held by a CIH subsidiary when the Client Money should have been paid into CIA's Client Money Account. CIA self-reported this breach to ASIC.

### **ASIC's Investigation**

- 2.8 CIA, as part of its compliance programme and in compliance with its statutory obligations, self-reported to ASIC in respect of the conduct at clauses 2.7(a), 2.7(b) and 2.7(g) to 2.7(j).
- 2.9 ASIC has met with CIA, engaged in correspondence with CIA and reviewed material provided by CIA.
- 2.10 ASIC engaged with CIA in briefing the independent specialist in audit and assurance services referred to in clause 2.7(d).
- 2.11 On 12 September 2012, ASIC issued two separate infringement notices under section 12GXA of the ASIC Act to CIA (**the Infringement Notices**), with penalties of \$6,600 each, in relation to the representations referred to in clauses 2.7(e) and 2.7(f). CIA paid the penalties in relation to each of the Infringement Notices in full.
- 2.12 As at the date of this Enforceable Undertaking, CIA has advised that it has:
  - (a) rectified the weaknesses giving rise to the breach notifications to ASIC referred to in clauses 2.7(a), 2.7(b) and 2.7(g) to 2.7(j) above;
  - (b) rectified the weaknesses giving rise to the Infringement Notices; and
  - (c) completed implementation actions in response to the recommendations of the February 2012 report.

### **3 ASIC'S CONCERNS**

- 3.1 ASIC is concerned that the breaches in clause 2.7 demonstrate that CIA had, and may still have,:
  - (a) weaknesses in its Client Money handling arrangements in contravention of s981C Corporations Act;
  - (b) weaknesses in its controls to ensure compliance with the ASLF Requirements in contravention of s912A(1)(b) and (c) of the Corporations Act;

- (c) weaknesses in change management in contravention of s912A(1)(b) and (c) of the Corporations Act;
- (d) inadequate oversight of outsourced functions in contravention of 912A(1)(h);
- (e) an insufficiently effective internal audit function in contravention of s912A(1)(h) of the Corporations Act;
- (f) weaknesses in its controls around its public statements in contravention of ss12DB(1)(i) and s12DF(1) of the ASIC Act;
- (g) inadequate training and education of staff in contravention of s912A(1)(f) of the Corporations Act; and
- (h) a lack of effective internal reporting procedures in place to ensure timely escalation of issues to senior management in contravention of s912A(1)(b) and (c) of the Corporations Act.

#### **4 ACKNOWLEDGEMENTS**

##### **4.1 CIA acknowledges:**

- (a) ASIC's concerns;
- (b) that those concerns are reasonably held;
- (c) that to ensure its compliance with its obligations under the Corporations Act, it must take steps to address those views;
- (d) that the remedial steps set out in this Enforceable Undertaking are necessary to address ASIC's concerns and to ensure compliance with the Corporations Act; and
- (e) it is committed to fully complying with obligations that arise from holding its AFSL.

##### **4.2 ASIC acknowledges that CIA:**

- (a) self-reported these matters, save for the matters being the subject of the infringement notices;
- (b) took action to remediate the conduct the subject of the breach and infringement notices;
- (c) has co-operated and worked constructively with ASIC in agreeing the terms of the engagement of an Independent Expert (see clauses 5.2 to 5.31, below);
- (d) appointed a new "Country Manager – Australia" to, among other things, improve its compliance with its obligations under the Corporations Act; and
- (e) in addition to the Independent Expert, has appointed additional external consultants to assist it in its compliance with its obligations

under the Corporations Act beyond those issues examined by the Independent Expert.

## **5 UNDERTAKINGS**

### **Acceptance of Enforceable Undertaking**

- 5.1 Under s93AA of the ASIC Act CIA has offered the undertakings in clauses 5.2 to 5.405.39 and ASIC has agreed to accept those undertakings as an alternative to commencing civil proceedings or pursuing administrative action.

### **Review of CIA controls**

#### Appointing the Independent Expert

- 5.2 Within 10 business days of the date of this Enforceable Undertaking CIA must engage a person who has the necessary expertise, experience and operational capacity in the areas of corporate governance, regulatory audit and financial services and who is independent of CIA and its officers to be the Independent Expert for the purposes of this Enforceable Undertaking.
- 5.3 CIA must ensure that, before CIA engages the Independent Expert, ASIC approves:
- (a) the choice of Independent Expert; and
  - (b) the Terms of Engagement.
- 5.4 CIA must advise ASIC of the expertise and prior association of the proposed Independent Expert with CIA and CIA's related bodies corporate and officers at the time approval is sought from ASIC.
- 5.5 ASIC will not unreasonably object to CIA's choice of Independent Expert or the Terms of Engagement.

#### Role of Independent Expert

- 5.6 CIA must ensure that the Terms of Engagement require the Independent Expert to:
- (a) conduct the First Review, being a review of CIA in accordance with Annexure 1 and otherwise in accordance with the requirements of this Enforceable Undertaking;
  - (b) deliver to CIA and ASIC by 30 June 2013 the First Report, being a report in relation to the First Review addressing each of the points outlined in Annexure 1 and otherwise in accordance with the requirements of this Enforceable Undertaking;
  - (c) conduct the Second Review, being a review of CIA in accordance with Annexure 2 and otherwise in accordance with the requirements of this Enforceable Undertaking;

- (d) deliver to CIA and ASIC by 30 March 2014 the Second Report, being a report in relation to the Second Review addressing each of the points outlined in Annexure 2 and otherwise in accordance with the requirements of this Enforceable Undertaking;
  - (e) prepare the First Report and Second Report in accordance with the guidelines in Annexure 3.
- 5.7 All remuneration and costs associated with the Independent Expert must be borne by CIA.

#### The First Report

- 5.8 CIA must ensure that under the Terms of Engagement, if the Independent Expert identifies deficiencies in the First Review, the Independent Expert must set out in the First Report:
- (a) details of any deficiencies identified in the First Review;
  - (b) recommendations on how to rectify the deficiencies, if any, identified in the First Review; and
  - (c) a reasonable time as determined by the Independent Expert for the commencement and full implementation of a rectification program that addresses the deficiencies, if any, identified in the First Review.

#### The First Remedial Action Plan

- 5.9 CIA must consider any deficiencies identified and the recommendations to rectify those deficiencies made by the Independent Expert in the First Report and then provide to ASIC and the Independent Expert a plan to rectify those deficiencies (**First Remedial Action Plan**) within such time as the Independent Expert determines is reasonable after receipt of the First Report
- 5.10 CIA must ensure that the First Remedial Action Plan:
- (a) sets out the action CIA proposes to take to rectify any deficiencies identified in the First Report; and
  - (b) specifies the time, not being later than that time in clause 5.8(c), in which this action will be taken.
- 5.11 CIA must include in the Terms of Engagement the requirement that the Independent Expert inform CIA (and ASIC simultaneously) whether it requests any modifications to the First Remedial Action Plan within fourteen days of receiving the First Remedial Action Plan.
- 5.12 ASIC must inform CIA (and the Independent Expert simultaneously) whether it requests any modifications to the First Remedial Action Plan within twenty one days of receiving the First Remedial Action Plan.

- 5.13 CIA must make any reasonable modifications to the First Remedial Action Plan requested by the Independent Expert and/or ASIC within fourteen days of receiving notification from ASIC pursuant to clause 5.12.
- 5.14 CIA must provide ASIC and the Independent Expert with a copy of the First Remedial Action Plan within two business days of the Due Date created by clause 5.13.
- 5.15 CIA must implement the First Remedial Action Plan, modified in accordance with clauses 5.13 (if applicable), within the time frame set out in the First Remedial Action Plan.
- 5.16 Within seven days of CIA forming the view that the First Remedial Action Plan is fully implemented, CIA must write to ASIC to inform ASIC that the First Remedial Action Plan is fully implemented.

#### The Second Report

- 5.17 CIA must ensure that the Terms of Engagement require the Independent Expert to complete the Second Report by 30 March 2014.
- 5.18 CIA must ensure that under the Terms of Engagement, if the Independent Expert identifies deficiencies in the Second Review, the Independent Expert sets out in the Second Report:
  - (a) details of any deficiencies identified in the Second Review;
  - (b) recommendations on how to rectify the deficiencies, if any, identified in the Second Review; and
  - (c) a reasonable time as determined by the Independent Expert for the commencement and full implementation of a rectification program that addresses the deficiencies, if any, identified in the Second Review.

#### The Second Remedial Action Plan

- 5.19 CIA must consider any deficiencies identified and the recommendations to rectify those deficiencies made by the Independent Expert in the Second Report and then provide to ASIC and the Independent Expert a plan to rectify those deficiencies (**Second Remedial Action Plan**) within such time as the Independent Expert determines is reasonable after receipt of the Second Report.
- 5.20 CIA must ensure that the Second Remedial Action Plan:
  - (a) sets out the action CIA proposes to take to rectify any deficiencies identified in the Second Report; and
  - (b) specifies the time, not being later than that time in clause 5.18(c), in which this action will be taken.
- 5.21 CIA must include in the Terms of Engagement the requirement that the Independent Expert inform CIA (and ASIC simultaneously) whether it



requests any modifications to the Second Remedial Action Plan within fourteen days of receiving Second Remedial Action Plan.

- 5.22 ASIC must inform CIA (and the Independent Expert simultaneously) whether it requests any modifications to the Second Remedial Action Plan within twenty one days of receiving the Second Remedial Action Plan.
- 5.23 CIA must make any reasonable modifications to the Second Remedial Action Plan requested by the Independent Expert and/or ASIC within fourteen days of receiving notification from ASIC pursuant to clause 5.22.
- 5.24 CIA must provide ASIC and the Independent Expert with a copy of the Second Remedial Action Plan within two business days of the Due Date created by clause 5.23.
- 5.25 CIA must implement the Second Remedial Action Plan, modified in accordance with clause 5.23 (if applicable), within the time frame set out in the Second Remedial Action Plan.
- 5.26 Within seven days of CIA forming the view that the Second Remedial Action Plan is fully implemented, CIA must write to ASIC to inform ASIC that the Second Remedial Action Plan is fully implemented.

#### Miscellaneous Clauses

- 5.27 CIA must ensure that the Terms of Engagement:
  - (a) engage the Independent Expert to perform the tasks necessary to fulfil the Obligations;
  - (b) permit the Independent Expert, subject to any claim of legal professional privilege, and to the extent that it is reasonable having regard to the requirements of this Enforceable Undertaking, to have access to its books, to interview past and/or present employees, contractors, agents and/or consultants and to consult with ASIC and disclose to ASIC any further information obtained by the Independent Expert in the course of carrying out their assessment;
  - (c) require CIA to give the Independent Expert any information, document or explanation reasonably requested by the Independent Expert in relation to any matter in any way connected with the reports required to be prepared by the independent expert under this Enforceable Undertaking; and
  - (d) otherwise reasonably assist the Independent Expert in conducting the assessments and producing the reports.
- 5.28 CIA will ensure that the Terms of Engagement of the Independent Expert will include a requirement that the First Report and Second Report will set out the steps that the Independent Expert has taken to fulfil their task, including but not limited to:

- (a) the people that have assisted the Independent Expert and in what way;
  - (b) the personnel that have been interviewed;
  - (c) the documents that have been assessed;
  - (d) any limitations or qualifications to the reports; and
  - (e) list those documents or extracts of documents most relevant, in the view of the Independent Expert, in producing the report.
- 5.29 CIA must require the Terms of Engagement to require the Independent Expert to provide ASIC with a copy of the finalised versions of each of the First Report and Second Report, at the same time as each version is provided to CIA.
- 5.30 Once ASIC has approved the Terms of Engagement, they may only be varied with the agreement of ASIC.
- 5.31 ASIC will not object to reasonable requests in writing by CIA to change the Due Dates contained in this Enforceable Undertaking.

#### **Non-Compliance**

- 5.32 CIA must notify ASIC within one business day of any failure by CIA to comply with an Obligation imposed by this Enforceable Undertaking.
- 5.33 If CIA fails to meet a Due Date, ASIC may write to CIA putting CIA On Notice that ASIC considers that CIA has failed to meet a Due Date. If CIA notifies ASIC pursuant to clause 5.32 and that notification concerns a failure to meet a Due Date, CIA is deemed to be On Notice that ASIC considered that CIA has failed to meet a Due Date from the date of the notification.
- 5.34 Should CIA be On Notice in respect of a Due Date, and where CIA remains in default of the Obligation that is required to be completed by that Due Date for a period of ten consecutive business days, CIA undertakes to cease carrying on a financial services business while it remains in default of the Due Date.
- 5.35 The Due Date in respect of clause 5.15 is the latest date by which any of the remedial actions to be undertaken pursuant to the First Remedial Action Plan are to be completed. If more than one remedial action remains to be completed as at this date, CIA will only be in breach of clause 5.15 once, and not once for each outstanding remedial action required to be undertaken pursuant to the First Remedial Action Plan.
- 5.36 The Due Date in respect of clause 5.25 is the latest date by which any of the remedial actions to be undertaken pursuant to the Second Remedial Action Plan are to be completed. If more than one remedial action remains to be completed as at this date, CIA will only be in breach of clause 5.25

once, and not once for each outstanding remedial action required to be undertaken pursuant to the Second Remedial Action Plan.

- 5.37 Should CIA be On Notice in respect of more than one Due Date, clause 5.34 is to operate separately in respect of each Due Date.
- 5.38 CIA may write to ASIC in relation to the reasons for it failing to comply with a Due Date imposed upon it by this Enforceable Undertaking. ASIC may, after considering any correspondence from CIA and any other factors it considers appropriate, in its absolute discretion waive its right to seek enforcement of clause 5.34, for a particular period or contingently.
- 5.39 ASIC will notify CIA in writing of its decision in relation to correspondence received pursuant to clause 5.38 of this Enforceable Undertaking within seven days of receiving the correspondence.
- 5.40 If CIA is in default of this Enforceable Undertaking and ASIC incurs legal costs in attempting to enforce this Enforceable Undertaking and CIA ceases to be in default of this Enforceable Undertaking before ASIC obtains court orders in relation to that default, CIA undertakes to pay all of ASIC's legal costs on a solicitor/client basis.

## **6 ACKNOWLEDGEMENTS AS TO THE OPERATION OF THE ENFORCEABLE UNDERTAKING**

- 6.1 CIA acknowledges that ASIC:
- (a) may issue a media release on execution of this Enforceable 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 Enforceable Undertaking; and
  - (c) will make this Enforceable Undertaking available for public inspection.
- 6.2 Further CIA acknowledges that:
- (a) ASIC's acceptance of this Enforceable 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
  - (b) this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking or arising from future conduct.
- 6.3 CIA undertakes that it will pay the costs of its compliance with this Enforceable Undertaking.

- 6.4 CIA 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 Enforceable Undertaking, including any correspondence with the Independent Expert, subject to legal professional privilege.
- 6.5 CIA acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and CIA and ASIC acknowledge that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

## **7 EXECUTIVE OVERSIGHT**

- 7.1 CIA will, after their receipt, table at its next scheduled board meeting each of the First Report, First Remedial Action Plan, Second Report and Second Remedial Action Plan. If no such board meeting is scheduled as at the date of each of these reports, CIA must schedule such a board meeting within one month of the date of the report.
- 7.2 CIA will ensure that its Country Manager:
- (a) acknowledges the receipt of the First Report and Second Report;
  - (b) records in writing:
    - (i) the approval by CIA of the First Remedial Action Plan and Second Remedial Action Plan;
    - (ii) that CIA is satisfied that it has complied, or will comply, with any recommendation contained in the First Remedial Action Plan and Second Remedial Action Plan or provide reasons why CIA is of the view that it will not comply with a recommendation;
    - (iii) the implementation of each recommendation contained in the First Remedial Action Plan and Second Remedial Action Plan.

## **8 PROVISION OF DOCUMENTS TO ASIC**

- 8.1 The address for providing ASIC with any document, including but not limited to any plan or report, which this Enforceable Undertaking requires to be provided to ASIC is:

Senior Manager  
Investment Banks  
Australian Securities and Investments Commission  
GPO Box 9827  
MELBOURNE VIC 3001


- 8.2 The address for providing CIA with any document or response, including but not limited to any plan or report, which this Enforceable Undertaking requires to be provided to CIA is:

Ben Smoker  
Country Head – Australia  
City Index Australia Pty Ltd  
Level 15, Chifley Tower  
2 Chifley Square  
Sydney NSW 2000

Executed by **CITY INDEX AUSTRALIA PTY LTD** (ABN 50 141 774 727) in accordance with section 127(1) of the Corporations Act:

  
.....  
Signature of Director


NIGEL ROSE  
.....  
Print name

  
.....  
Signature of Witness

MICHAEL HERSON  
.....  
Print name

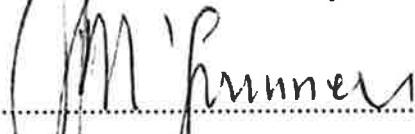
  
.....  
Signature of Director

BEN SMOKER  
.....  
Print name

  
.....  
Signature of Witness

BILL CHENG  
.....  
Print name

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

  
.....  
Signature of ASIC Delegate

Delegate of Australian Securities and Investments Commission

David J McGuinness 8 APRIL 2013  
.....  
Print name Date

## ANNEXURE 1

The Independent Expert will:

1. Undertake the First Review by;
  - 1.1. Obtaining the February 2012 Report and:
    - (a) Considering the effectiveness of the recommendations arising from the February 2012 Report;
    - (b) Testing the effectiveness of the implementation of the recommendations of the February 2012 Report; and
    - (c) Considering potential remaining gaps in internal control areas as they relate to Client Money Requirements and provide recommendations as appropriate.
  - 1.2. Obtaining CIA's analysis of the causes of its breaches of the Client Money Requirements and the ASLF Requirement and through discussions with the relevant staff and review of available documentation, consider documented causes and any potential additional causes of all breaches of the Client Money Requirements and the ASLF Requirement set out in clauses 2.7(a), 2.7(b), 2.7(g), 2.7(h) and 2.7(j) of this Enforceable Undertaking.
  - 1.3. Obtain the CIA Breach Remediation Plan and perform procedures to:
    - (a) Consider whether the planned remedial steps are designed to address the cause(s) of the relevant breaches; and
    - (b) Observe whether the remedial steps have been implemented as planned through the walkthrough of relevant processes and testing of relevant controls, on a sample basis, as appropriate, against the specific requirements of the remediation plan.
  - 1.4. Where the cause(s) identified in clause 1.2 of Annexure 1 is (are) not addressed by CIA:
    - (a) Identify and test the design of compensating controls identified by CIA as potentially addressing the cause(s);
    - (b) Test on a sample basis that those controls operate as designed; and
    - (c) Consider potential remaining gaps in internal controls and provide recommendations as appropriate.
  - 1.5. In respect of all public statements, including advertising and marketing and other relevant disclosures on CIAs website, including those being the subject of ASIC's infringement notices of 12 September 2012:

- (a) Testing the adequacy and effectiveness of controls for the preparation, review and approval of all public statements;
  - (b) Identifying the cause(s) for breaches noted by ASIC in relation to such marketing and other relevant disclosures, consider whether there are indicators of any control failures or lack of controls that caused the errors, and consider potentially compensating controls; and
  - (c) Identifying any remediation plan put in place, if any, and consider whether these plans address the cause identified. Additionally, consider whether the remediation plans put in place are operating effectively and provide any recommendations as appropriate.
- 1.6. Obtain the Service Level Agreement between Finance, Treasury and Operations functions within CIG and consider the effectiveness of these functions to the extent they relate to CIA's obligations as the AFSL holder and provide recommendations as appropriate.
- 1.7. Identify and consider potential gaps and opportunities for improvement in CIA's oversight of the Finance, Treasury and Operations functions carried out by CIG entities and provide recommendations as appropriate.
- 1.8. In relation to CIG's internal audit function and how that relates to CIA:
- (a) Consider the appropriateness of the process in which management addresses issues raised by Internal Audit, and Internal Audit's processes for assessing the resolution and closure of issues (including the quality of management's response and the performance follow up reviews (as necessary)); and
  - (b) Consider the effectiveness of oversight by CIA management in ensuring Internal Audit's planning cycle appropriately covers CIA's operations.

## ANNEXURE 2

The Independent Expert will undertake the Second Review to assess remedial actions implemented by CIA following the implementation of the First Remedial Action Plan. The Second Review will be completed by 30 March 2014 and will:

- 1.1. test the effectiveness of the implementation of the recommendations and actions arising from the First Report;
- 1.2. consider potential remaining gaps in internal control areas as they relate to Client Money Requirements and provide further recommendations as appropriate; and
- 1.3. review any matters set out in Annexure 1 that were not addressed in the First Review.



### ANNEXURE 3: Guidelines for Preparation of the First Report and the Second Report

1. The Independent Expert's First Report and Second Report must give details of the expert's qualifications, and of the literature or other material used in making the report.
2. All assumptions of fact made by the Independent Expert should be clearly and fully stated.
3. Where several opinions are provided in the report, the Independent Expert should summarise them.
4. The Independent Expert should give reasons for each opinion.
5. At the end of the First Report and Second Report the Independent Expert should declare that '[the Independent Expert] has made all the inquiries which [the Independent Expert] believes are desirable and appropriate and that no matters of significance which [the Independent Expert] regards as relevant have, to [the Independent Expert's] knowledge, been withheld from the Court.'
6. There should be included in or attached to the First Report and Second Report:
  - (i) a statement of the questions or issues that the Independent Expert was asked to address;
  - (ii) the factual premises upon which the report proceeds; and
  - (iii) the documents and other materials which the Independent Expert has been instructed to consider.
7. If, after providing CIA and/or ASIC with the First Report or Second Report, or at any other stage, the Independent Expert changes a material opinion, for any reason, the change should be communicated in a timely manner to each party to whom the First Report and Second Report have been provided.
8. If the Independent Expert's opinion is not fully researched because the Independent Expert considers that insufficient data are available, or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where the Independent Expert who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in whichever of the First Report or Second Report that qualification applies to.