



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:

Joe Chan

1. DEFINITIONS

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

AFSL means Australian Financial Services License;

ASIC means the Australian Securities and Investments Commission;

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

Australian Financial Services License means a license under section 913B of the Act, that authorises a person who carries on a financial services business to provide financial services;

Australian Financial Services Licensee mean a person who holds an Australian Financial Services Licence

Mr Chan means Joe Chan, date of birth 24 November 1976;

Business Day means a day on which banks are open for Business in Sydney excluding a Saturday, Sunday or public holiday in that city;

Cessation Period means the two (2) year period commencing from the Commencement Date as extended by clause 6.1;

CFPL means Commonwealth Financial Planning Limited (ACN 003 900 169);

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

Compliance Officer means an employee with a minimum of (5) five years experience in relation to compliance and financial services;

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

Corporations Regulations means the Corporations Regulations 2001 (Cth);

Financial Services has the meaning given to it by section 766A of the *Corporations Act*;

Financial Product has the meaning given to it by section 763A of the *Corporations Act*;

Financial Product Advice has the meaning given by section 766B of the *Corporations Act*;

Relevant Period means 20 December 2006 to 1 October 2010;

Reporting Period means the (6) six month period commencing after the Cessation Period ends.

Statement of Advice (or SOA) has the same meaning as it has in Chapter 7 of the *Corporations Act*.

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

2. BACKGROUND

ASIC's Role

2.1 Under section 1 of the *ASIC Act*, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

Commonwealth Financial Planning Limited

2.2 Commonwealth Financial Planning Limited (CFPL) (formerly known as Colonial Financial Planners Limited) operates a financial services business within the meaning of Chapter 7 of the *Corporations Act*.

2.3 Since 1 October 2003, CFPL has held an Australian Financial Services Licence (No. 231139) (AFSL) which authorises CFPL to carry on a financial services business to provide advice and deal in a range of financial products.

2.4 CFPL has authorised certain persons to provide financial services on its behalf (Representatives). The Representatives are representatives of CFPL within the meaning of section 910A of the *Corporations Act*.

Mr Chan

- 2.5 Mr Chan was a representative of CFPL from 20 December 2006 to 1 October 2010.
- 2.6 Mr Chan's role with CFPL predominately involved the provision of financial advice to the client base allocated to him by CFPL.

ASIC's Investigation

- 2.8 On 8 November 2011 ASIC commenced an investigation pursuant to section 13 of the ASIC Act of suspected contraventions of the Corporations Act by Mr Chan in relation to the services provided by him as a representative of CFPL.
- 2.9 In the course of its investigation ASIC reviewed Mr Chan's client files and found that Mr Chan had not complied with the practices and procedures of CFPL and may have contravened the Corporations Act, in particular, as a result of its investigation, ASIC found that Mr Chan:
- (a) had a practice of falsely classifying client files as "*Defined Scope Advice*", meaning the client had specifically notified the adviser of the financial service that they required, in circumstances whereby most clients had approached Mr Chan in relation to all financial services options potentially available to them;
 - (b) induced clients to purchase insurance by advising clients if they did so that he would waive the adviser service fee; and
 - (c) provided information in Statement of Advice documents which indicated that clients had requested specific insurance when in fact Mr Chan had suggested that the client apply for the insurance.
- 2.10 The conduct outlined in clause 2.9 above had the effect of, and in ASIC's opinion was undertaken by Mr Chan for the dominant purpose of, inflating his sales figures in relation to insurance products.

3. ASIC's VIEWS

- 3.1 As a consequence of the conduct outlined in clause 2.9 above, ASIC is concerned that Mr Chan has failed to comply with his obligations as a representative of CFPL and during the Relevant Period may have:
- (a) engaged in conduct in relation to a financial product or a financial service that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H of the *Corporations Act*; and

(b) made a statement which is false in a material particular or is materially misleading and was intended to induce a person in this jurisdiction to apply for a financial product, in contravention of section 1041E of the *Corporations Act*.

4. Acknowledgement of ASIC's Views

4.1 Mr Chan acknowledges ASIC's views set out in clause 3.1 above, and that they are reasonably held, and has offered the undertaking set out below.

5. Undertakings

5.1 Under section 93AA of the ASIC Act, Mr Chan has offered, and ASIC has agreed to accept as an alternative to exercising its power under section 920A of the Corporations Act to make a banning order against Mr Chan, the following undertakings.

Undertaking to cease providing financial services

5.1.1 Mr Chan undertakes that during the Cessation Period, he will not provide any financial service, on his own behalf, or on behalf of any other person, or as officer of a corporation, or as an officer of an entity that is neither an individual nor a corporation, or as an authorised representative of any individual, corporation or entity, or in any other capacity.

5.1.2 Should Mr Chan fail to comply with clause 5.1.1, Mr Chan will be in default of this undertaking.

Supervision

5.1.3 Mr Chan undertakes:

(a) within ten (10) Business days after the Commencement Date, to notify ASIC of the terms of his employment, including:

- i. the name and address of his employer
- ii. position title; and
- iii. a detailed description of his role, including his responsibilities and duties; and

(b) if his employer is an Australian Financial Services Licensee, every twelve (12) months thereafter, up until the Cessation Period ends, Mr Chan will obtain written confirmation from a senior person within his current workplace confirming that Mr Chan has not provided a financial service within that previous twelve (12) month period.

5.1.4 In the event that:

- (a) it is found that Mr Chan has provided a financial service during the Cessation Period; or
- (b) is unable to obtain written confirmation that he has not provided a financial service during the Cessation period,

Mr Chan will be in default of this undertaking.

Reviews by Compliance Officer

- 5.1.5 Mr Chan undertakes that once the Cessation Period ends, in the event Mr Chan is employed to provide financial services, he will use his best endeavours to obtain the agreement of a compliance officer employed by his AFSL holder employer ("**Reviewer**"), to undertake a review of the financial services provided by Mr Chan to retail clients during the Reporting Period, in accordance with clause 5.1.6. The agreement of the Reviewer shall be effected by signing the document marked annexure A to this enforceable undertaking and Mr Chan providing a copy of it to ASIC within five (5) Business days thereafter.
- 5.1.6 The Reviewer shall undertake the following tasks:
 - (a) audit a sample of a minimum of five (5) clients that received financial services advice by Mr Chan during the Reporting period;
 - (b) for each client file audited, consider:
 - i. whether the advice provided by Mr Chan was appropriate having regard to section 945A of the *Corporations Act*;
 - ii. whether or not the advice provided by Mr Chan was misleading or deceptive having regard to section 1041H of the *Corporations Act*; and
 - iii. whether or not the advice provided by Mr Chan contains false or misleading statements in accordance with section 1041E of the *Corporations Act*.
- 5.1.7 Within five (5) Business days of completion of the audit, or any other reasonable period of time requested by the Reviewer and agreed to in writing by ASIC, the Reviewer will provide Mr Chan with a written statement ("**Reviewer's Statement**") setting out the matters referred to in clause 5.1.6. .
- 5.1.10 Mr Chan shall provide the Reviewer's Statement to ASIC within five (5) Business days of receiving it from the Reviewer.

- 5.1.11 Mr Chan will provide all reasonable assistance to the Reviewer in fulfilling the obligations set out above in clause
- 5.1.12 Should any of the Reviewer's Statements identify non compliance with the matters referred to in clause 5.1.6.
- (a) Mr Chan will consider the reasons for the opinion in the Reviewer's Statement and then provide to ASIC a written plan ("**Remedial Action Plan**") setting out the action he proposes to take to address the issues of non-compliance set out in the Reviewer's Statement and specifying the time in which this action will be taken. Mr Chan will provide the Remedial Action Plan to ASIC within fourteen (14) days of the date of the Reviewer's Statement; and
- (b) Mr Chan must implement the Remedial Action Plan within the time specified in the Remedial Action Plan. If ASIC requests any reasonable modifications to the Remedial Action Plan Mr Chan must implement the Remedial Action Plan as so modified.
- 5.1.13 Should Mr Chan fail to obtain agreement of a Reviewer to undertake the review as contemplated by paragraphs 5.1.5 to 5.1.7 above, Mr Chan will be in default of this undertaking.

6. Consequences of Default

- 6.1 Should Mr Chan be in default of this undertaking, the Cessation Period will continue for a period of three (3) years from the Commencement Date.

7. Costs

- 7.1 Mr Chan undertakes to pay the costs of compliance with this Enforceable Undertaking.

8. Requests for Documents from ASIC

- 8.1 Mr Chan will provide all documents and information requested by ASIC from time to time for the purpose of assessing Mr Chan's compliance with the terms of this Enforceable Undertaking.

9. Acknowledgements

- 9.1 Mr Chan acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this undertaking; and

(c) will make this undertaking available for public inspection.

9.2 Further Mr Chan acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

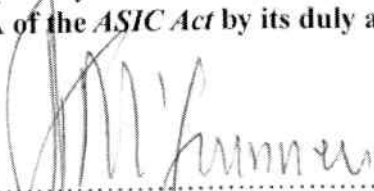
9.3 Mr Chan acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Chan and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

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Mr Chan

Dated: 31/05/12

Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act by its duly authorised delegate:

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David McGuinness

Delegate of Australian Securities and Investments Commission

Dated: 1/6/2012

TERMS OF AGREEMENT WITH REVIEWER

Background

1. Under the enforceable undertaking which Mr Chan made to the Australian Securities and Investments Commission (**ASIC**) on 2011 (**Enforceable Undertaking**), Mr Chan undertook to obtain agreement of a person to conduct a review of financial services advice provided by him (**Reviewer**).

Obligations

2. The Reviewer agrees to conduct the following tasks under the Enforceable Undertaking:
 - 2.1 review the financial services advice provided by Mr Chan six months after the Cessation period specified in the Enforceable Undertaking ends;
 - 2.2 consider whether, in the Reviewer's opinion:
 - 2.2.1 the advice provided by Mr Chan was appropriate having regard to section 945A of the *Corporations Act*;
 - 2.2.2 whether or not the advice provided by Mr Chan was misleading or deceptive having regard to section 1041H of the *Corporations Act*; and
 - 2.2.3 whether or not the advice provided by Mr Chan contains false or misleading statements in accordance with section 1041E of the *Corporations Act* ;and
 - 2.3 provide Mr Chan with a Reviewer's Statement setting out his/her opinion and the reasons for it, within five (5) days or any other period agreed by ASIC after the completion of the review.
3. Mr Chan agrees to provide all reasonable assistance to the Reviewer in fulfilling the obligations set out in clause 2 above.

Reporting

4. The Reviewer's Statement required to be written by the Reviewer will:
 - 4.1 be produced in accordance with the Enforceable Undertaking. If there is any inconsistency between these terms and the Enforceable Undertaking, the Enforceable Undertaking shall prevail;
 - 4.2 set out any limitation or qualifications to it; and

- 4.3 list those documents or extracts of document most relevant (in the view of the Reviewer) in producing the Reviewer's Statement.

Independence

5. The Reviewer warrants that:
- 5.1 The Reviewer will endeavour at all times to exercise objective and impartial judgment.
 - 5.2 The Reviewer will notify Mr Chan and ASIC immediately if the Reviewer forms the view that he/she is no longer capable of exercising objective and impartial judgment in relation to his/her agreement to perform the tasks set out in clause 2.
 - 5.3 Circumstances where the Reviewer will not be capable of exercising objective and impartial judgment in relation to his/her agreement to perform the tasks set out in clause 2., will include, but are not limited to, circumstances where the Reviewer:
 - 5.2.1 could directly or indirectly benefit from any inducement offered by Mr Chan, or from any financial interest offered by any company associated with Mr Chan (including any interest in any equity or other security, debenture, loan or other debt instrument of that company), where the inducement or offer of financial interest might reasonably be construed as a reward or incentive to act in a specific way to benefit Mr Chan:
 - 5.2.2 is connected by any family relationship with Mr Chan or otherwise forms a close relationship with Mr Chan;
or
 - 5.2.4 may otherwise be deterred from acting objectively and/or impartially by the conduct of the AFSL holder's employees.

Reviewer name

Signature

Dated:

Mr Chan

Dated: