

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:

James Thomas Banfield

813 Highbury Road, Vermont South, Victoria 3133

1. Definitions

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

AFS representative means Australian Financial Services Authorised representative

AFSL means Australian Financial Services Licence

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

Banfield means James Thomas Banfield

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

financial services has the meaning given by Division 4 of Part 7.1 of Chapter 7 of the Corporations Act

Guy means Robert John Guy

Lotus Securities means Lotus Securities Limited (ACN 121 418 317)

Netwealth means Netwealth Investments Limited (ACN 133 790 146)

Wealthsure means Wealthsure Pty Ltd (ACN 097 405 105)

2. Background

2.1 ASIC's role

2.1.1 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 Details of conduct

- 2.2.1 Banfield has been a director of Lotus Securities since 12 August 2009.
- 2.2.2 Banfield is currently an AFS representative of Lotus Securities, the holder of AFSL numbered 306812, having been appointed 26 July 2012.
- 2.2.3 Banfield is one of the responsible managers under the terms of Lotus Securities' AFSL.
- 2.2.4 Banfield's AFS representative Number is 282587.
- 2.2.5 Guy was a financial adviser and an AFS representative of Wealthsure before becoming an AFS representative of Lotus Securities on 26 July 2012.
- 2.2.6 During August to September 2012, Netwealth received Change of Adviser forms for Guy's Wealthsure client accounts, that had purportedly been completed and signed by each client authorising the transfer from Wealthsure to Lotus Securities.
- 2.2.7 While completing the signature verification checks for the Change of Adviser forms, Netwealth's staff found several anomalies between the customer signatures that it held on file and signatures on the Change of Adviser forms.

2.3 ASIC's investigation/surveillance and analysis

- 2.3.1 ASIC commenced its investigation in relation to the Change of Adviser forms submitted to Netwealth on 8 January 2013.

2.4 ASIC's concerns

- 2.4.1 As a result of the investigation, ASIC is concerned that between August and September 2012, Banfield submitted approximately 10-15 Change of Adviser forms to Netwealth on behalf of clients of Guy, consenting to the transfer from Wealthsure to Lotus Securities in circumstances where these clients had not consented to the transfer.
- 2.4.2 ASIC is concerned that as a consequence of Banfield engaging in the above alleged conduct, Banfield may not have complied with s1041H of the Corporations Act by engaging in conduct in relation to a financial product or a financial service that is misleading or deceptive or is likely to mislead or deceive.

2.5 Acknowledgement of ASIC's concerns

- 2.5.1 Banfield acknowledges ASIC's concerns as set out in paragraph 2.4 above and that they are reasonably held.

3. Undertakings

- 3.1 Under s93AA of the ASIC Act, Banfield has offered the undertakings set out in clauses 3.2 to 3.7 and ASIC has agreed to accept the undertakings as an alternative to ASIC exercising its powers under s920A of the Corporations Act.
- 3.2 For a period of 4 years from the date of acceptance of this undertaking by ASIC, Banfield undertakes not to:
- 3.2.1 provide any financial services or do any act or engage in any conduct as a representative of an Australian Financial Services Licensee;
 - 3.2.2 deal with, communicate with or interact with any clients of any Australian Financial Services Licensee or authorised representative insofar as that dealing, communication or interaction is connected directly or indirectly with the provision of financial services to any client;
 - 3.2.3 take part in the management of Lotus Securities as a director;
 - 3.2.4 act as responsible manager of Lotus Securities;
 - 3.2.5 hold himself out as:
 - 3.2.5.1 the holder of an AFSL;
 - 3.2.5.2 an authorised representative of an AFSL holder; or
 - 3.2.5.3 being in any way authorised to provide financial services;
 - 3.2.6 carry on a financial services business as defined in Part 7.1 Division 2 of the Corporations Act;
 - 3.2.7 apply to ASIC under s913A of the Corporations Act for an AFSL.
- 3.3 For the avoidance of doubt, the undertakings in paragraph 3.2 do not preclude or prevent Mr Banfield from seeking employment in the financial services industry in an administrative or clerical role provided that:
- 3.3.1 he provides any employer with a copy of this undertaking and, if his employer is an authorised representative of one or more

Australian Financial Services Licensee, provides a copy to any such licensee; and

3.3.2 he does not have any dealing with clients of any Australian Financial Services Licensee or authorised representative for whom he is employed and otherwise does not provide in that role any financial services; and

3.3.3 he does not complete, submit or lodge client documentation which involves client authority, client money, powers of attorney and application forms.

3.4 Within five (5) days of acceptance of this undertaking by ASIC, Banfield will:

3.4.1 resign as a director of Lotus Securities;

3.4.2 lodge a Form FS30 with ASIC notifying ASIC that Banfield ceases to be an authorised representative of Lotus Securities;

3.4.3 lodge a Form FS20 with ASIC notifying ASIC that Banfield ceases to be a responsible manager of Lotus Securities.

3.5 Banfield undertakes to complete an 'Ethics' course conducted by Kaplan Education Pty Ltd within 12 months of the acceptance of the enforceable undertaking by ASIC. Banfield will:

3.5.1 obtain documentary evidence from the provider of the Continuing Professional Education that he has attended and successfully completed the Ethics course (Documentary Confirmation);

3.5.2 within 14 days of successfully completing the Continuing Professional Education provide ASIC with the Documentary Confirmation.

3.6 Banfield undertakes that he will pay the costs of compliance with this enforceable undertaking.

3.7 Banfield undertakes to provide all documents and information requested by ASIC from time to time for the purposes of assessing Banfield's compliance with the terms of this enforceable undertaking.

4. Acknowledgements

4.1 Banfield 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, Banfield 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 or damages in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;

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 Banfield acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of clauses 3.2 to 3.7 above.

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

5. Notifications to ASIC

5.1 The address for providing ASIC with any notice or document is:

ASIC
Level 24, 120 Collins Street
MELBOURNE VIC 3000
Attention: Chris Kotsopoulos


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James Thomas Banfield

Dated: ... *20 September 2013.*

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


.....
Tim Mullaly

Dated: ... *20/09/2013*

Delegate of Australian Securities and Investments Commission