

ENFORCEABLE UNDERTAKING

Australian Securities and Investment Commission Act 2001

Section 93 AA

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

James Anthony Mousa
66/1-15 Robson Street, Mooroolbool, Cairns, Queensland 4870

1. Definitions

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

AFSL means Australian Financial Services License and defined in section 13B of the *Corporations Act*;

ASIC Act means the *Australian Secretaries and Investment Commission Act 2001*(Cth);

ASX means Australian Securities Exchange Limited ACN 008 624 691;

BDO means BDO Private Wealth (NTH QLD) Pty Ltd (ACN 083 045 096) corporate authorised representative (AR number 301 023) of Australian Financial Service Limited who is the holder of an AFSL (AFSL number 297 239).

Business Day means day on which the banks are open for business in Cairns;

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

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

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

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

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

Mr Mousa means James Anthony Mousa, date of birth 20 February 1981;

Relevant Period means from 10 August 2007 until 30 August 2012;

Review Period means the two (2) year period from the date of this Enforceable Undertaking, or such further period as may be caused by any cessation in accordance with clause 7.3(b) of this Enforceable Undertaking;

2. ASIC Role

- 2.1. Pursuant to 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.

3. Background

- 3.1. Mr Mousa has worked as a financial advisor for seven (7) years.
- 3.2. Mr Mousa has a Diploma of Financial Planning from Kaplan Professional.
- 3.3. Mr Mousa commenced working as a financial advisor with BDO in August 2007 and remains a financial advisor with BDO.

4. ASIC Investigation/Surveillance and Analysis

- 4.1. ASIC has conducted an investigation into the conduct of Mr Mousa during the Relevant Period and in particular, into whether he contravened provisions of Chapter 7 of the Corporations Act with respect to financial advice he has provided.

5. ASIC Concerns

- 5.1. ASIC is concerned that during the Relevant Period Mr Mousa:
- (a) failed to adequately demonstrate that he had a reasonable basis for advice provided to some clients in that Mr Mousa:
 - i. failed to adequately demonstrate that he had determined the risk tolerance of clients;
 - ii. failed to adequately demonstrate that he had determined the goals and objectives of clients;
 - (b) failed to adequately consider and investigate the existing and recommended superannuation funds of clients before providing "switching advice"¹;
 - (c) provided deficient personal advice to clients when advising them to switch from one particular financial product to another particular financial product;
 - (d) prior to providing personal advice to clients, failed to complete or adequately complete documentation pertinent to that advice.
- 5.2. As a consequence of the conduct outlined above at clause 5.1 ASIC has further concerns that, during the relevant period:

¹ The term "switching advice" refers to the term as defined in ASIC Regulatory Guide 84 – Super switching advice: Questions and answers.

- (e) Mr Mousa may not have had an understanding of the nature and risks of the financial product advice provided by him, in so far as that advice concerned the absence of diversification of investment funds.
- (f) Mr Mousa may not have complied with s945A(1) of the Corporations Act in providing personal advice to clients;
- (g) Mr Mousa may not have complied with s947D of the Corporations Act in providing switching advice to clients;
- (h) Mr Mousa may not have complied with s946A of the Corporations Act in providing personal advice to clients;
- (i) Mr Mousa may not have discharged the duties of and imposed on a providing entity of financial services; and
- (j) the above concerns suggest that Mr Mousa may not comply with a financial services law in the future.

6. Acknowledgement of Concerns

- 6.1. Mr Mousa acknowledges ASIC's concerns outlined in clause 5.

7. Undertakings

- 7.1. Under section 93AA of the ASIC Act, Mr Mousa has offered, and ASIC has agreed to accept, the following undertakings as an alternative to ASIC taking administrative action:

Continuing professional education

- 7.2. Mr Mousa undertakes to:

- (a) enrol in Diploma of Financial Planning subjects 7 (Investment Planning) and 8 (Financial Plan Construction) through Kaplan for the purpose of receiving further education; or
- (b) undertake either individual assessment pursuant to paragraphs RG146.75 to 146.76 of Regulatory Guide 146 (Licensing Training of Financial Product Advisers) ("**RG146**") or a registered training course pursuant to RG146.63 in the following areas:
 - (i) pursuant to paragraph 146.141, Table A2.1 financial planning knowledge in:
 - (A) theories of investment, portfolio management and management of investment and risk; and
 - (B) advisory functions.

- (ii) pursuant to paragraph RG146.145 Table A2.5 superannuation knowledge in “legal environment – disclosure and compliance”; and
- (iii) pursuant to 146.154 Table B skills in:
 - (A) identify client objectives, needs, and financial situation;
 - (B) analyse client objectives, needs, financial situation and risk profile; and
 - (C) develop appropriate strategies and solutions.

(collectively **Continuing Professional Education**).

- (c) Obtain documentary evidence from the providers of the Continuing Professional Education that he has attended and successfully completed (or been assessed in respect of) the Continuing Professional Education (**Documentary Confirmation**);
- (d) Provide ASIC with a statutory declaration stating that he has complied with the requirements of clause 7.2(a) and attaching certified copies of the Documentary Confirmation within 14 days of successfully completing the Continuing Professional Education.

7.3. Should Mr Mousa fail to comply with clause 7.2(a) within six (6) months of the date of this Enforceable Undertaking, Mr Mousa agrees:

- (a) To cease providing financial services of any kind whatsoever until such time as clause 7.2 has been complied with; and
- (b) That the Review Period will be extended by the duration of any such cessation.

Supervision

7.4. Mr Mousa undertakes that he will notify ASIC in writing of any change in his employment within three (3) business days of any change including:

- (a) The name of his new employer;
- (b) His position and title with his new employer; and
- (c) The date of commencement of his new employment.

Independent Reviewer

7.5. Within 30 business days of the date of this Enforceable Undertaking Mr Mousa must obtain the agreement of a senior financial planner who has particular expertise in the area of compliance, and who is independent of:

- (a) Mr Mousa; and
- (b) BDO; or
- (c) Any other company where Mr Mousa has worked as a financial advisor;

to be Mr Mousa's independent reviewer for the purposes of this Enforceable Undertaking (**Independent Reviewer**).

- 7.6. Mr Mousa must provide ASIC with written details of the Independent Reviewer, including his/her name, position and a summary of his/her qualifications and experience in the financial services industry before the Independent Reviewer is formally engaged by Mr Mousa.
- 7.7. The Independent Reviewer must be approved by ASIC before he/she is formally engaged by Mr Mousa.
- 7.8. The Independent Reviewer is to undertake six (6) monthly reviews of the financial services provided by Mr Mousa to retail clients, in accordance with clauses 7.12 and 7.13 below (with a final review at the expiry of the Relevant Period). The agreement of the Independent Reviewer shall be affected by signing the document marked Annexure A to this Enforceable Undertaking and Mr Mousa providing a copy of it to ASIC within three (3) business days thereafter.
- 7.9. The terms of engagement of the Independent Reviewer may only be varied with the agreement of ASIC.
- 7.10. Mr Mousa must provide the Independent Reviewer with a copy of the relevant compliance policies of any AFSL Holder that he is working for, once the Independent Reviewer has signed the agreement in Annexure A of this Enforceable Undertaking. In doing so, Mr Mousa acknowledges that he has obtained the consent of such AFSL holder to provide such policies to the Independent Reviewer.
- 7.11. In the event that:
 - (a) Mr Mousa is unable to obtain the agreement of a senior financial planner to be his Independent Reviewer;
 - (b) ASIC fails to approve the independent reviewer proposed by Mr Mousa; or
 - (c) The Independent Reviewer becomes unable, for any reason, to comply with the matters specified in clauses 7.12 and 7.13.

another person must, within five (5) business days of the event in clause 7.11(a) to (c) occurring, be nominated by Mr Mousa to be the Independent Reviewer subject to:

- (i) Mr Mousa providing ASIC with details in writing of the alternative Independent Reviewer; and
- (ii) ASIC providing Mr Mousa with its agreement in writing to engage the alternative Independent Reviewer; and
- (iii) Within seven (7) business days of receiving ASIC's agreement in writing to engage the alternative Independent Reviewer, Mr Mousa will undertake to procure the agreement of the alternative Independent Reviewer to the terms of the agreement in Annexure A to this Enforceable Undertaking, and provide a signed copy of that document to ASIC.

- 7.12. The Independent Reviewer will undertake a minimum of four (4) reviews across the Review Period. The first review will be undertaken within three (3) months of commencement of the Review Period, with subsequent reviews occurring every six (6) months thereafter, with the exception of the final review which will be undertaken at the expiry of the Review Period.
- 7.13. The Independent Reviewer shall undertake the following tasks:
- (a) audit a random sample of a minimum of five (5) clients that received financial services advice by Mr Mousa during the relevant preceding three (3) or six (6) monthly period as the case may be (**the Audit**);
 - (b) for each client file the subject of the Audit the Independent Reviewer shall consider:
 - (i) whether or not any advice provided by Mr Mousa was appropriate, having a regard to section 945A(1)(b) and (c) of the Corporations Act;
 - (ii) whether or not the AFSL holders' policies were complied with by Mr Mousa; and
 - (iii) whether or not the disclosure provided by Mr Mousa, in relation to any advice, complied with the requirements of section 947C(2)(b) and/or section 947D of the Corporations Act.
- 7.14. Within five (5) business days of completion of each Audit, or other reasonable period of time requested by the Independent Reviewer and agreed to in writing by ASIC, the Independent Reviewer will provide Mr Mousa and ASIC with a written statement (**Independent Reviewer's Statement**) setting out the matters referred to in clause 7.13.
- 7.15. Mr Mousa will provide all reasonable assistance to the Independent Reviewer in fulfilling the obligations set out above in clause 7.12 to clause 7.13 and Annexure A to this Enforceable Undertaking.

Non Compliance

- 7.16. Should the Independent Reviewer's Statement identify non compliance with any part of clause 7.13(b):
- (a) Mr Mousa will consider the reasons for the opinion in the Independent Reviewers Statement and provide ASIC with 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 Independent Reviewer's Statement and specifying the time within which this action will be taken. Mr Mousa will provide the Remedial Action Plan to ASIC within fourteen (14) days of the date of the Independent Reviewer's Statement;
 - (b) Mr Mousa must implement the Remedial Action Plan within the time specified in the Remedial Action Plan. If ASIC requests any reasonable modification to the Remedial Action Plan, Mr Mousa must implement the Remedial Action Plan as so modified; and

- (c) Where the Independent Reviewer is of the opinion that clients did not receive appropriate advice (in accordance with clause 7.13(b)(i)) or did not receive appropriate disclosure (in accordance with clause 7.13(b)(iii)), any further advice provided Mr Mousa to those clients shall be further audited by the Independent Reviewer (in addition to any remaining review(s)), each time Mr Mousa provides further financial advice to such clients until the expiration of this Enforceable Undertaking.
- 7.17. Should Mr Mousa fail to comply with clause 7.16 in any way (including but not limited to, failing to take Remedial Action within the time frame specified in the Remedial Action Plan, or at all) Mr Mousa will be in default of this undertaking.
- 7.18. Mr Mousa undertakes that should he be in default of this undertaking Mr Mousa undertakes, for a period of two (2) years from the date of default, that he will not:
- (a) Do any act or engage in any conduct as a representative of an Australian Financial Services Licensee;
 - (b) Hold himself out as a representative of an Australian Financial Services Licensee;
 - (c) Provide a financial service or services whether on his own behalf or on behalf of the person who carries on a financial services business whether as an employee of that person or otherwise;
 - (d) Carry on a business in relation a financial products or financial services within the meaning of section 761A of the Corporations Act, either directly or indirectly as a director, partner, manager, servant or agent;
 - (e) Hold out that he is in any way authorised to provide particular financial service or services or that he is in any way authorised to provide financial services generally; or
 - (f) Apply to ASIC under section 913A of the Corporations Act for an AFSL.

Costs

8. Mr Mousa undertakes to pay his own costs of compliance with this Enforceable Undertaking.

Request for Documents from ASIC

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

10. Acknowledgments

- 10.1. Mr Mousa 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;
- (b) may from time to time public refer to this Enforceable Undertaking; and

(c) will make this Enforceable Undertaking available for public inspection

10.2. Mr Mousa 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 known to ASIC at the date of this Enforceable Undertaking, or arising from future conduct;

(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.

10.3. Mr Mousa acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and Mr Mousa and ASIC acknowledge that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

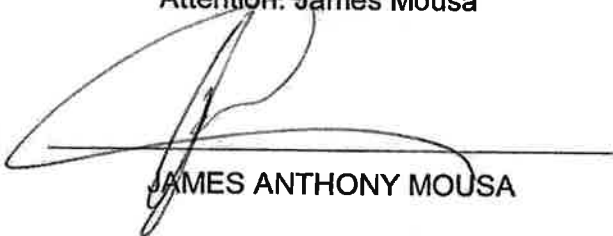
11. Provision of Documents

11.1. The address for providing ASIC with any notice, document, including but not limited to the Independent Reviewer's Statement is:

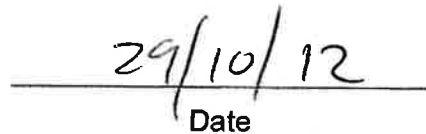
ASIC
Level 20, 240 Queen Street
Brisbane QLD 4001
Attention: Regional Commissioner

11.2. The address for providing Mr Mousa with any notice or document is:

BDO Private Wealth (Nth Qld) Pty Ltd
25 -27 Aplin Street
Cairns QLD 4870
Attention: James Mousa

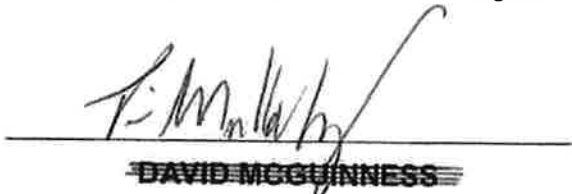


JAMES ANTHONY MOUSA

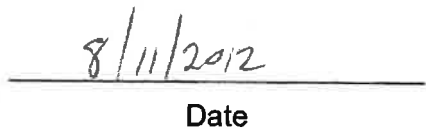


Date

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



~~DAVID MCGUINNESS~~



Date

Delegate of Australian Securities and
Investments Commission

TIMOTHY MULLALY

Annexure A

TERMS OF AGREEMENT WITH INDEPENDENT REVIEWER

Background

1. Under the Enforceable Undertaking which Mr Mousa made to the Australian Securities and Investment Commission (ASIC) on **(date)** Mr Mousa undertook to obtain the agreement of an independent person who is independent of:
 - (a) Mr Mousa;
 - (b) BDO Private wealth (NTH QLD) Pty Ltd; and
 - (c) any other company where Mr Mousa has worked as a financial advisor;to be Mr Mousa's Independent Reviewer for the purposes of the Enforceable Undertaking (**Independent Reviewer**).
2. The Independent Reviewer must be approved by ASIC before the Independent Reviewer is engaged. Mr Mousa must provide ASIC with written details of the proposed Independent Reviewer, including the Independent Reviewer's name, position and a summary of their qualifications and expertise in the financial services industry at the time approval is sought from ASIC.
3. Upon engagement Mr Mousa must provide the Independent Reviewer with a copy of the relevant compliance policies of any AFSL holder that he is working for.
4. The terms of engagement of the Independent Reviewer may only be varied with the agreement of ASIC.

Obligations

5. The Independent Review will conduct the following tasks under the Enforceable Undertaking:
 - (a) Review the financial services advice provided by Mr Mousa, a minimum of four (4) times on a six (6) monthly basis for a period of two (2) years from the date of this Enforceable Undertaking, with a final review upon the expiry of the Review Period;
 - (b) Consider whether, in the Independent Reviewer's opinion:
 - (i) any advice provided by Mr Mousa was appropriate, having a regard to section 945A(1)(b) and (c) of the Corporations Act;
 - (ii) the AFSL holders' policies were complied with by Mr Mousa; and
 - (iii) the disclosure provided by Mr Mousa, in relation to any advice, complied with the requirements of section 947C(2)(b) and/or section 947D of the Corporations Act.
 - (c) Provide Mr Mousa and ASIC with a statement (**Independent Reviewer's Statement**) setting out his/her opinion and the reasons for it, within five (5)

business days, or other reasonable period agreed to by ASIC after completion of the relevant Audits undertaken.

6. Mr Mousa will provide all reasonable assistance to the Independent Reviewer in fulfilling the obligations set out in clause 5 above.

Reporting

7. The Independent Reviewer's Statement, required to be written by the Independent Reviewer, will:
- (a) Be produced in accordance with the Enforceable Undertaking. If there is any inconsistencies between these terms and the Enforceable Undertaking, the Enforceable Undertaking will prevail;
 - (b) Set out any limitation or qualifications to it; and
 - (c) List those documents or extracts of documents most relevant (in the view of the Independent Reviewer) in producing the Independent Reviewer's Statement.

Independence

8. The Independent Reviewer warrants that:
- (a) He/she is independent of Mr Mousa, and will at all time be capable of exercising objective and impartial judgment;
 - (b) The Independent Reviewer will notify Mr Mousa and ASIC immediately if he is no longer capable of exercising objective and impartial judgment in relation to this engagement. This includes, but is not limited, circumstances where the Independent Reviewer:
 - (i) could directly or indirectly benefit from a financial interest in any company in which Mr Mousa also has an interest. (where "financial interest" refers to an interest in equity of other security, debenture, loan or other debt instrument of a company);
 - (ii) is promoting, or may be perceived to promote, Mr Mousa's position or opinion to the point that objectivity and/or impartiality is/are compromised;
 - (iii) begins to have a close relationship with Mr Mousa;
 - (iv) may be deferred from acting objectively and/or impartially by the conduct of the AFSL holder's employees;
 - (v) becomes aware of past or current circumstances the existence of which places the Independent Reviewer in breach of any of the warranties contained in this Agreement.

Reviewer Name

Signature

Dated

