

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:

LCL Capital Pty Ltd
ACN 144 973 786

Suite S223, 3 Oracle Boulevard
Broadbeach QLD 4218

DEFINITIONS

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

AFS Licence means Australian Financial Services Licence.

Audit means an audit conducted by the Independent Reviewer in accordance with the terms of clause 27.1 below.

Authorised Representative has the meaning given to it by section 916A of the Corporations Act and includes current Authorised Representatives, together with those who are subsequently authorised by LCL Capital during the Review Period.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth) and includes the regulations made under that Act.

Bryce means Timothy Daniel Bryce, date of birth 28 September 1984.

Business day means a day on which banks are open for business in Brisbane, excluding a Saturday, Sunday or public holiday in that city.

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

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

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.

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

Financial Services Law has the meaning given to it by section 761A of the Corporations Act.

Independent Reviewer means a Senior Financial Planner appointed in accordance with the terms of clauses 18 to 24 below.

Independent Reviewer Engagement Date means the date upon which the Independent Reviewer enters into the agreement as prescribed by clause 22 of this Enforceable Undertaking.

Independent Reviewer's Statement means the written statement provided by the Independent Reviewer in accordance with the terms of clause 27.5 below.

LCL Capital means LCL Capital Pty Ltd ACN 144 973 786.

Relevant Period means 10 July 2012 to the date of this Enforceable Undertaking.

Remedial Action Plan means the written plan provided by LCL Capital to ASIC in accordance with the terms of clause 29.1 below.

Review Period means from the date of this Enforceable Undertaking to 30 June 2015, or such further period as may be caused by any extension as required by clause 29.4 of this Enforceable Undertaking.

Senior Financial Planner means an individual who has at least ten years experience in the provision of financial planning advice or financial planning advice compliance, and, present or former CFP designation by the Financial Planning Association of Australia, or, a company that employs such individuals for the purpose of conducting its advisory compliance role.

BACKGROUND

ASIC's role

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.

LCL Capital

2. LCL Capital was incorporated on 1 July 2010 and was granted an AFS Licence (370951) on 5 October 2010. LCL Capital also holds an Australian Credit Licence under the same number.
3. Under its AFS Licence, LCL Capital is authorised to operate a financial services business within the meaning of Chapter 7 of the Corporations Act, to provide

Financial Product Advice and to deal in a range of Financial Products, further details of which are set out in its AFS Licence.

4. LCL Capital has appointed a number of Authorised Representatives. As at the date of this Enforceable Undertaking, LCL Capital has ten Authorised Representatives under its AFS Licence.

ASIC's investigation

5. On 4 June 2013, ASIC commenced an investigation into the conduct of Bryce as an Authorised Representative of LCL Capital and former Authorised Representative of Sherwin Financial Planning Pty Ltd ACN 010 675 260 (AFS Licence 230149), for suspected contraventions of the Corporations Act.
6. The investigation was subsequently widened to consider whether LCL Capital had complied with its obligations under section 912A of the Corporations Act as well as under its AFS Licensee.
7. Based on the information and documents obtained during the abovementioned investigation, ASIC has found instances where Bryce may have:
 - 7.1 failed to demonstrate a reasonable basis for the advice provided (in contravention of section 945A (as it then was) of the Corporations Act);
 - 7.2 failed to adequately provide replacement advice to clients (in contravention of sections 945A and 947D of the Corporations Act);
 - 7.3 failed to adequately disclose commissions payable to clients and/or failed to provide updated disclosure or additional advice documentation to clients upon a change in the clients' circumstances or advice needs (in contravention of sections 946A and 947C(e) of the Corporations Act); and
 - 7.4 by relying on generic cost and benefit comparison tables in Statements of Advice to clients, may have contravened sections 947B, 947C and 947D of the Corporations Act and/or engaged in misleading and deceptive conduct under section 1041H of the Corporations Act.
8. As a result of the conduct referred to at clause 7 above, ASIC has further found that as AFS Licensee, LCL Capital may have:
 - 8.1 failed to ensure that its Authorised Representatives complied with Financial Services Laws;
 - 8.2 failed to ensure that its Authorised Representatives received adequate compliance training and education; and
 - 8.3 failed to respond to compliance failures of its Authorised Representatives.

ASIC'S CONCERNS

9. As a result of the matters referred to at clauses 7 and 8 above, ASIC is concerned that during the Relevant Period, LCL Capital failed to comply with its obligations under the Corporations Act, by:
 - 9.1 failing, in accordance with section 912A(1)(a) of the Corporations Act, to do all things necessary to ensure that the financial services covered by its AFS Licence are provided efficiently, honestly and fairly;
 - 9.2 failing, in accordance with section 912A(1)(ca) of the Corporations Act, to take reasonable steps to ensure its Authorised Representatives comply with the Financial Services Laws;
 - 9.3 failing, in accordance with section 912A(1)(d) of the Corporations Act, to have available adequate resources (including financial, technological and human resources) to provide the Financial Services covered by its AFS Licence and to carry out supervisory arrangements; and
 - 9.4 failing, in accordance with section 912A(1)(f) of the Corporations Act, to ensure that its Authorised Representatives are adequately trained and competent to provide the Financial Services covered by its AFS Licence.
10. In particular, ASIC is concerned that during the Relevant Period, LCL Capital has had deficiencies in its compliance measures, including:
 - 10.1 insufficient monitoring and supervision of Authorised Representative's activities; and
 - 10.2 insufficient training processes and education of Authorised Representatives in relation to compliance obligations.

ACKNOWLEDGMENT OF CONCERNS

11. LCL Capital acknowledges ASIC's concerns and believes that they are reasonably held.
12. ASIC acknowledges that LCL Capital has co-operated with ASIC during the course of its investigation.

UNDERTAKINGS

13. Under s93AA of the ASIC Act, LCL Capital has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action under the Corporations Act, the undertakings set out in clauses 14 to 32 below.

Costs

14. LCL Capital undertakes that it will pay the costs of its compliance with this Enforceable Undertaking, including the remuneration and costs associated with the engagement of the Independent Reviewer.
15. LCL Capital undertakes that it will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on its costs of compliance with this Enforceable Undertaking, to any third party (including its clients).

Requests for documents by ASIC

16. LCL Capital will provide all documents and information requested by ASIC, where the request is for the purpose of assessing LCL Capital's compliance with the terms of this Enforceable Undertaking, within fourteen (14) business days of the request being made.

Supervision

17. LCL Capital undertakes that it will notify ASIC within three (3) business days of any change in the status of its Authorised Representatives, by providing written notification of:
 - a) the relevant representative's change of position and/or title;
 - b) the name of the relevant representative's new employer or AFS Licensee (if applicable); and
 - c) the date of commencement of the relevant representative with their new employer or AFS Licensee (if applicable).

Independent Reviewer

18. Within 30 business days of the date of this Enforceable Undertaking, LCL Capital must obtain the agreement of a Senior Financial Planner who has particular expertise in the area of compliance, and who is independent of:
 - a) LCL Capital and its Authorised Representatives;
 - b) any service provider engaged by LCL Capital in the Relevant Period (including but not limited to DH Flinders Pty Ltd); and
 - c) any other company where LCL Capital Authorised Representatives have worked in an advisory role in the past;to be LCL Capital's Independent Reviewer for the purposes of this Enforceable Undertaking.
19. The Independent Reviewer must be approved by ASIC before the Independent Reviewer is formally engaged by LCL Capital.

20. At the time the approval is sought from ASIC, LCL Capital must provide the following information to ASIC in writing:
 - a) the Independent Reviewer's name, position and summary of their relevant qualifications and experience; and
 - b) confirm the Independent Reviewer's independence with reference to clause 18 above.
21. The Independent Reviewer is to undertake an assessment of the financial services provided by LCL Capital in accordance with clauses 26 and 27 below.
22. The agreement of the Independent Reviewer shall be effected by signing the document marked Annexure A to this Enforceable Undertaking and LCL Capital providing a copy of it to ASIC within three (3) business days thereafter.
23. The terms of engagement of the Independent Reviewer may only be varied with the express agreement of ASIC.
24. Upon the engagement of the Independent Reviewer, LCL Capital must provide the Independent Reviewer with a copy of its compliance policies and procedures.
25. In the event that:
 - a) LCL Capital is unable to obtain the agreement of a Senior Financial Planner to be its Independent Reviewer; or
 - b) ASIC fails to approve the Independent Reviewer proposed by LCL Capital; or
 - c) the Independent Reviewer becomes unable, for any reason, to comply with the matters specified in clauses 26 and 27 below;

another person must, within five (5) business days of the event in clause 25 (a) to (c) occurring, be nominated by LCL Capital to be the Independent Reviewer subject to:

- i) LCL Capital providing ASIC with details in writing of the alternative Independent Reviewer as otherwise required by clause 18 above;
- ii) ASIC providing LCL Capital with its agreement in writing to engage the alternative Independent Reviewer; and
- iii) Within seven (7) business days of receiving ASIC's written agreement to engage the alternative Independent Reviewer, LCL Capital will undertake to procure the alternative Independent Reviewer to the terms of the agreement attached in Annexure A, and provide a signed copy of that document to ASIC.

Audits

26. The Independent Reviewer will undertake a minimum of three (3) reviews across the Review Period as follows:

- a) the first review will be undertaken within three (3) months of the Independent Reviewer Engagement Date (**First Audit**).
- b) subsequent reviews will occur every six (6) months after the First Review (**Subsequent Audits**).
- c) notwithstanding the terms of subparagraph (b) above, the final review will be undertaken at the expiry of the Review Period (**Final Audit**).

27. The Independent Reviewer shall undertake the following tasks:

27.1 audit a random sample of a minimum of three (3) clients that received financial services advice from each of its Authorised Representatives during the following periods:

- a) in the First Audit, for the preceding three (3) months; and
- b) in the Subsequent Audits and Final Audit, for the preceding six (6) month period.

27.2 for each client file the subject of the Audit, the Independent Reviewer shall consider:

- a) whether or not the advice provided was in the best interests of the client, having regard to section 961B of the Corporations Act;
- b) whether or not the advice provided was appropriate to the client, having regard to section 961G of the Corporations Act and also to the duty contained in section 961B of the Corporations Act;
- c) whether or not appropriate warnings were given in accordance with section 961H of the Corporations Act, where the advice provided was based on incomplete or inaccurate information;
- d) whether or not priority was given to the client's interests in accordance with section 961J of the Corporations Act;
- e) whether or not LCL Capital's AFS Licence policies were complied with by the relevant Authorised Representative; and
- f) whether or not the disclosure provided by the Authorised Representative, in relation to any advice given, complied with the requirements of section 947C and/or section 947D of the Corporations Act.

27.3 should the Independent Reviewer identify any deficiencies with respect to the matters referred to in clause 27.2 above, the Independent Reviewer is to set out the deficiencies identified and make recommendations on how these deficiencies should be rectified;

- 27.4 where a Remedial Action Plan is implemented in accordance with clauses 29.1 and 29.2 of the Enforceable Undertaking, the Independent Reviewer is to include in their next Independent Reviewer's Statement, a review of the implementation and effectiveness of that Remedial Action Plan; and
- 27.5 within five (5) business days of completion of each Audit, or other reasonable period of time as requested by the Independent Reviewer, and agreed to in writing by ASIC, the Independent Reviewer will provide LCL Capital and ASIC with a written statement which sets out the matters referred to between 27.1 and 27.4 above.
28. LCL Capital will provide all reasonable assistance to the Independent Reviewer in fulfilling the obligations set out in clauses 26 and 27 and Annexure A to this Enforceable Undertaking.

Non Compliance

29. Should the Independent Reviewer's Statement identify non-compliance with any part of clause 27.2:
- 29.1 LCL Capital will consider the reasons for the opinion in the Independent Reviewer's Statement and provide ASIC with a written plan setting out the action it 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. LCL Capital will provide the Remedial Action Plan to ASIC within fourteen (14) days of the date of the Independent Reviewer's Statement;
- 29.2 LCL Capital 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, LCL Capital must implement the Remedial Action Plan as so modified;
- 29.3 Where the Independent Reviewer is of the opinion that clients did not receive advice that complied with the provisions set out in clauses 27.2a) to 27.2d) and 27.f) above, and in addition to any remedial action proposed for these clients as set out in the Remedial Action Plan in clause 29.2, any further advice provided to those clients shall be further audited by the Independent Reviewer (in addition to any remaining review(s)), each time the relevant Authorised Representative provides further financial advice to such clients, until the expiration of the Review Period; and
- 29.4 Should the Independent Reviewer identify non-compliance with any part of clause 27.2 in its Final Audit, the Review Period is to be extended in six (6) monthly periods until such time as non-compliance is resolved satisfactorily.

30. For the avoidance of doubt, ASIC reserves its rights to take enforcement action with respect to the concerns raised throughout this Enforceable Undertaking should the Review Period extend beyond 30 June 2015.
31. Should LCL Capital fail to comply with clause 29 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), LCL Capital acknowledges and accepts that it will be in default of this Enforceable Undertaking.
32. LCL Capital undertakes that should it be in default of this Enforceable Undertaking, LCL Capital undertakes that for a period of two (2) years from the date of default, it will not:
 - (a) do any act or engage in any conduct as an AFS Licensee;
 - (b) hold itself out as a representative of an AFS Licensee;
 - (c) provide a Financial Service whether on its own behalf or on behalf of another person who carries on a financial services business;
 - (d) carry on a business, either directly or indirectly, in relation to Financial Products or Financial Services;
 - (e) hold out that it is in any way authorised to provide particular Financial Services or that it is in any way authorised to provide Financial Services generally; or
 - (f) apply to ASIC under section 913A of the Corporations Act for another AFS Licence.

ACKNOWLEDGMENTS

33. LCL Capital acknowledges that ASIC:
 - 33.1 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;
 - 33.2 may from time to time publicly refer to this Enforceable Undertaking; and
 - 33.3 will make this Enforceable Undertaking available for public inspection.
34. Further, LCL Capital acknowledges that:
 - 34.1 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;

- 34.2 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;
- 34.3 LCL Capital acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an enforceable undertaking in the terms of clauses 14 to 32 above; and
- 34.4 LCL Capital acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and LCL Capital and ASIC acknowledge that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

PROVISION OF DOCUMENTS

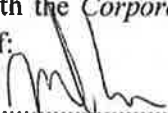
35. The address for providing ASIC with any notice, document, including but not limited to the Independent Reviewer's Statement is:

Australian Securities and Investments Commission
 Level 20, 240 Queen Street
 Brisbane QLD 4001
 Attention: Senior Manager – Financial Advisers

36. The address for providing LCL Capital with any notice or document is:

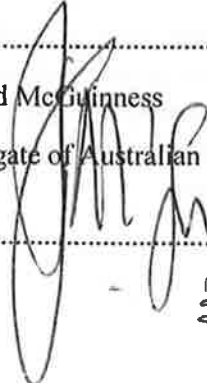
LCL Capital Pty Ltd
 Suite S223, 3 Oracle Boulevard
 Broadbeach QLD 4218
 Attention: Sam Lythgo

THE COMMON SEAL of LCL CAPITAL)
 PTY LTD ACN 144 973 786 was affixed in)
 accordance with the *Corporations Act 2001* in
 the presence of:

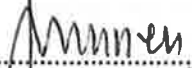

 Director


 Director/Company Secretary

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



 David McGuinness
 Delegate of Australian Securities and Investments Commission



 Date - 30/4/2014