

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001*

### Section 93AA

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

Darren Andrew Pawski  
Suite 1, 28 Southside Drive  
HILLARYS WA 6025

#### 1. DEFINITIONS

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

**AFSL** means Australian Financial Services Licence

**ASIC** means the Australian Securities and Investments Commission

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

**Australian Credit Licence** means a licence issued under the *National Consumer Credit Protection Act 2009 (Cth)* which authorises the licensee to engage in particular credit activities

**Associate** has the meaning given in section 318 of the *Income Tax Assessment Act 1936*, as amended or replaced from time to time

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

**Credit Activity** has the meaning given to that term by section 6 of the *National Consumer Credit Protection Act 2009 (Cth)*

**Financial Product** has the meaning given to that term by Chapter 7 of the Corporations Act

**Financial Product Advice** has the meaning given to that term by 766B of the Corporations Act

**Financial Services** has the meaning given to that term by Division 4 of Part 7.1 of Chapter 7 of the Corporations Act

**Financial Services Law** has the meaning given to that term by section 761A of the Corporations Act

**NCCP Act** means the *National Consumer Credit Protection Act 2009 (Cth)*

**Pawski** means Darren Andrew Pawski, date of birth 25 June 1969

**Representative** means a representative within the meaning of section 910A of the Corporations Act

**Senior Executive** means the person principally responsible for the activities of a company, whose main responsibilities include: developing and implementing high-level strategies, making major corporate decisions, managing the overall operations and resources of a company

**WealthSure** means WealthSure Pty Ltd ACN 097 405 108

**WFS** means WealthSure Financial Services Pty Ltd ACN 130 288 578

**WealthSure Financial Services** means WealthSure Financial Services ABN 096 661 531, the Western Australian registered business trading name for WealthSure

**WealthSure Group** means, collectively, WealthSure and WFS

**WealthSure Business** means the Australian Financial Product advice and related dealing business within the meaning of Chapter 7 of the Corporations Act, or any Credit Activity within the meaning of Part 1-2 of the NCCP Act carried on by WealthSure Group within the meaning of Chapter 7 of the Corporations Act and/or section 47 of the NCCP Act.

## 2. ASIC's ROLE

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

## 3. BACKGROUND

### 3.1 WealthSure Group

3.1.1 WealthSure was incorporated on 5 July 2001.

3.1.2 Pawski became the WealthSure Senior Executive on 5 July 2001.

3.1.3 Pawski has been the sole director of WealthSure since 26 August 2009.

3.1.4 Pawski was the most senior member of WealthSure's compliance committee from 26 August 2009.

- 3.1.5 Pawski is an Associate of the Pawski Family Trust, which owns two thirds of WealthSure's and WFS's issued capital.
- 3.1.6 WealthSure has held AFSL 238030 since 15 January 2004.
- 3.1.7 WealthSure has held Australian credit licence 238030 since 11 February 2011.
- 3.1.8 WFS was incorporated on 25 March 2008.
- 3.1.9 WFS has held AFSL 326450 since 5 January 2009.
- 3.1.10 The respective WealthSure and WFS AFSLs authorise them to operate a Financial Services business within the meaning of Chapter 7 of the Corporations Act to provide Financial Product Advice and deal in Financial Products to retail and wholesale clients.
- 3.1.11 The primary business of WealthSure is the provision of Financial Services.
- 3.1.12 In practical terms, Pawski has controlling interests in WealthSure and WFS. Pawski is also the managing director of WealthSure and is a Responsible Manager, within the meaning of ASIC Regulatory Guide RG 105, of WealthSure.

### **3.2 ASIC's investigation**

- 3.2.1 ASIC commenced its investigation into the conduct of WealthSure on 16 December 2011.

### **3.3 ASIC's view**

- 3.3.1 As a result of its investigation, ASIC has formed the view that Pawski, as the WealthSure Senior Executive, failed to:
  - 3.3.1.1 employ an appropriate monitoring and supervision program, that:
    - 3.3.1.1.1 regularly and consistently reviewed WealthSure's Representatives' Financial Product Advice;
    - 3.3.1.1.2 conducted robust investigations into non-compliant behavior;
    - 3.3.1.1.3 subjected WealthSure Representatives with a higher probability of compliance breaches, given their compliance history, associations or business model, to more regular random audits;

- 3.3.1.1.4 provided appropriate assessment of potential breaches, considered remediation options for breaches, and whether those breaches should have been reported to ASIC;
  - 3.3.1.1.5 provided WealthSure's Representatives with robust documented policies and procedures; and
  - 3.3.1.1.6 ensured appropriate remedial action, including having robust consequences for non-compliant behavior and rectifying clients' positions, when issues were identified.
- 3.3.1.2 employ an appropriate compliance risk management program framework, policies, procedures and controls having regard to the nature, size, and complexity of the WealthSure Business;
- 3.3.1.3 ensure that WealthSure adequately identified and addressed the competence and training needs of its Representatives, to ensure that they complied with Financial Services Laws; and
- 3.3.1.4 foster and maintain a proper commitment to, and culture of, risk and compliance management within the WealthSure Business by failing to:
- 3.3.1.4.1 ensure ASIC's concerns about WealthSure's compliance risk management practices were adequately resolved;
  - 3.3.1.4.2 provide adequate resources and support to the compliance functions to achieve effective compliance.
- 3.3.1.5 ASIC acknowledges that Pawski has fully cooperated with ASIC during its surveillance and investigation and further notes WealthSure Group has been proactive in its dealings with ASIC in proposing solutions to address ASIC's concerns.

#### **3.4 Acknowledgement of ASIC's views**

- 3.4.1 Pawski acknowledges ASIC's views as set out in paragraph 3.3.1 above and that they are reasonably held.
- 3.4.2 In particular, Pawski acknowledges the deficiencies referred to in paragraph 3.3.1 above may have resulted in WealthSure failing to satisfy the following Corporations Act obligations:
  - 3.4.2.1 s.912A(1)(a) – the obligation to do all things necessary to ensure Financial Services are provided efficiently, honestly, and fairly;

- 3.4.2.2 s.912A(1)(c) – the obligation to comply with the Financial Services Laws;
- 3.4.2.3 s.912(1)(ca) – the obligation to take reasonable steps to ensure WealthSure's authorized representatives comply with the Financial Services Laws;
- 3.4.2.4 s.912(1)(d) – the obligation to have available adequate resources to provide the Financial Services being provided;
- 3.4.2.5 s.912(1)(e) – the obligation to maintain the competence to provide the Financial Services being provided;
- 3.4.2.6 s.912(1)(f) – the obligation to ensure WealthSure's authorized representatives are adequately trained and competent to provide the Financial Services being provided; and
- 3.4.2.7 s.912(1)(h) – the obligation to maintain adequate risk management systems.

#### **4. UNDERTAKINGS**

- 4.1 Under section 93AA of the *ASIC Act*, Pawski has offered the undertakings set out in clauses 4.2 to 4.8, and ASIC has agreed to accept those undertakings as an alternative to ASIC exercising its powers under s.920A of the Corporations Act, or pursuing court action seeking, among other things, declarations, injunctions, and disqualifications.
- 4.2 Pawski undertakes not to exercise or attempt to exercise any influence in any manner whatsoever over any current or future shareholder or Senior Executive of the WealthSure Group in respect of any aspect of the Wealthsure Business.
- 4.3 Pawski undertakes not to provide any Financial Services from the date of acceptance of this undertaking by ASIC, including, but not limited to:
  - 4.3.1 doing any act or engaging in any conduct as a Representative of an Australian Financial Services Licensee;
  - 4.3.2 holding out he is in any way authorised to provide a particular Financial Service or Services, or that he is in any way authorised to provide Financial Services generally; and
  - 4.3.3 holding himself out as a Representative of an Australian Financial Services Licensee.
- 4.4 Pawski undertakes not to have any involvement in or exercise any influence in any decision-making by any Australian Financial Services licensee regarding:

- 4.4.1 recruitment, management, supervision or training of staff or Representatives;
  - 4.4.2 compliance with any Australian Financial Services Licensee obligations; and
  - 4.4.3 any operational committees of any Australian Financial Services Licensee, including but not limited to any audit committee, investment committee (including selection of approved product lists) or compliance committee.
- 4.5 Pawski undertakes not to have any involvement or exercise any influence in any decision-making by WealthSure Group, as it relates to Credit Activity, regarding:
- 4.5.1 recruitment, management supervision or training of staff or Representatives;
  - 4.5.2 compliance with any Australian Credit Licence obligations; and
  - 4.5.3 any operational committees, including but not limited to any audit committee or compliance committee.
- 4.6 Pawski undertakes not to take part in any capacity in the management of any Australian Financial Services Licensee from the date of acceptance of this undertaking by ASIC, including, but not limited to:
- 4.6.1 carrying on a business in relation to Financial Products or Financial Services either directly or indirectly as a director, partner, manager, servant or agent; and
  - 4.6.2 applying to ASIC under section 913A of the Corporations Act for an AFSL or 914A of the Corporations Act for variation of AFSL conditions, either on his behalf, the behalf of another person, or the behalf of any entity
- 4.7 Pawski undertakes not to take part in any capacity in the management of WealthSure Group, as it relates to Credit Activity, from the date of acceptance of this undertaking by ASIC, either directly or indirectly as a director, partner, manager, servant or agent.
- 4.8 Pawski undertakes to provide all documents and information as requested by ASIC from time to time, for the purpose of assessing Pawski's compliance with the terms of this undertaking.

## **5. ACKNOWLEDGEMENTS**

- 5.1 Pawski acknowledges ASIC:

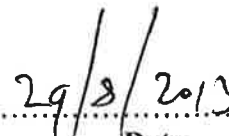
- 5.1.1 may issue a media release on execution of this undertaking referring to its terms and to the views of ASIC which led to its execution;
- 5.1.2 may from time to time publically refer to this undertaking; and
- 5.1.3 will make this undertaking available for public inspection.

5.2 Further, Pawski acknowledges:

- 5.2.1 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 views in this undertaking, or arising from future conduct;
- 5.2.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from conduct described in this undertaking or arising from future conduct;
- 5.2.3 Pawski acknowledges ASIC's views as to the facts are reasonably held, and has offered this undertaking in terms of section 4 above;
- 5.2.4 nothing contained in this undertaking constitutes an admission by Pawski as to any of the material facts in relation to ASIC's concerns;
- 5.2.5 this undertaking has no operative force until accepted by ASIC, and Pawski and ASIC acknowledge the date of this Enforceable Undertaking is the date on which it is accepted by ASIC.

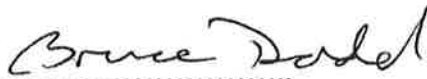


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**Darren Andrew Pawski**

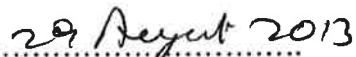


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**Date**

Accepted by the Australian Securities and Investments Commission under s.93AA of the ASIC Act by its duly authorized delegate:



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**Bruce Dodd**



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**Date**

Delegate of Australian Securities and Investments Commission

