

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 by:

Manish Babulal Jani
8 Salerwong Place, Ryde NSW 2112

1. Definitions

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

Act means the *Corporations Act 2001* (Cth) and includes any predecessor legislation.

AFSL means Australian Financial Services Licence.

AIE means AIE Fiduciary Services Pty Ltd ACN 103 552 683

AMH means Australian Mutual Holdings Limited ACN 115 182 137

ASIC means the Australian Securities and Investments Commission.

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

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

Commencement Date means the date of the acceptance of this enforceable undertaking by ASIC

Director has the meaning given to it by s9 of the Corporations Act

Financial Product has the meaning given to it by s9 of the Corporations Act

Financial Service has the meaning given to it by s9 of the Corporations Act

Financial Services Cessation Period means the two (2) year period commencing from the Commencement Date

Jani means Manish Babulal Jani, of 8 Salerwong Place, Ryde, New South Wales 2112, date of birth 26 April 1988.

Relevant Period means the period between 18 April 2013 and 8 November 2013.

Reporting Period means the one (1) year period commencing after the Cessation Period ends.

2. ASIC's 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. AIE is a company incorporated on 30 January 2003 and is registered under the Act.
- 3.2. Between 17 June 2003 and 16 December 2013, AIE was the holder of AFSL number 227544.
- 3.3. During the period 18 April 2013 and 8 November 2013, Jani was a director of AIE.
- 3.4. AMH, was incorporated in 2005 and is registered as an unlisted public company. AMH has held an AFSL since February 2006.
- 3.5. During 2010, Jani became a member of the Compliance Committee of AMH.

4. Details of conduct

- 4.1. During the Relevant Period, Jani:
- (a) did not attend the offices of AIE in Bundall Road, Bundall, Queensland, the place at which AIE carried on its business;
 - (b) did not attend the registered office of AIE in Melbourne, Victoria;
 - (c) did not review, examine or inspect the books of AIE; and
 - (d) did not discuss any compliance issues with any of the compliance staff or Key Persons (within the meaning of *Regulatory Guide 105: Licensing: Organisational competence*) of AIE.

5. ASIC's investigation and concerns

- 5.1. In mid 2013, ASIC commenced an investigation pursuant to section 13 of the ASIC Act. This investigation included the conduct of AIE as a licensee and possible contraventions of s912A(1)(a), 912(1)(c) and 912(1)(f) of the Act (**Investigation**).
- 5.2. As a result of the Investigation, ASIC is concerned that during the Relevant Period Jani failed to:
- (a) make any enquires as to the business of AIE;

- (b) ensure that AIE met its statutory obligations;
- (c) ensure that AIE maintained proper books of account;
- (d) ensure that AIE was solvent when company debts were incurred;
- (e) ensure that AIE carried out its obligations as an AFSL holder as contained in Division 3, Part 7.6 of Part 7 of the Act;
- (f) ensure that AIE did all things necessary to ensure that it provided financial services efficiently, honestly and fairly;
- (g) ensure that AIE carried out its financial services business in accordance with the Schedule of Conditions contained in the AFSL with which it was issued;
- (h) ensure that AIE met the Base Level Financial Requirements in accordance with the Schedule of Conditions contained in the AFSL with which it was issued;
- (i) ensure that AIE adequately supervised its authorized representatives;
- (j) ascertain whether the authorised representatives of AIE were adequately trained and competent to provide financial services;
- (k) ensure that AIE maintained the competence to provide financial services as authorized by the AFSL;
- (l) ascertain whether AIE held and retained a dispute resolution system; and
- (m) ensure that AIE established and maintained adequate risk management systems.

5.3. ASIC is concerned that the conduct outlined in clause 4 and paragraph 5.2 above, may constitute a breach by Jani of:

- (a) section 912A(1) of the Corporations Act – General obligations of a financial services licensee;
- (b) section 180(1) of the Act, which states that a director must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:-
 - (i) were a director or officer of a corporation in the corporations' circumstances; and
 - (ii) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer; and
- (c) section 181 of the Act, which states that a director of a corporation must exercise their powers and discharge their duties;
 - (a) in good faith in the best interests of the corporation; and

- (b) for a proper purpose; and
- (d) section 588G of the Act, which requires a person to prevent insolvent trading by a company of which that person is appointed a director. The section applies to a director if the company is insolvent at the time of incurring a debt, or becomes insolvent by incurring that debt, or by incurring at a particular time, debts including the debt in question.

6. Acknowledgement of concerns

- 6.1 Jani acknowledges that ASIC holds the concerns as set out in clause 5 above, and that ASIC's concerns are reasonably held.

7. Undertakings

- 7.1 Under section 93AA of the ASIC Act, Jani has offered, and ASIC has agreed to accept the undertakings set out at paragraphs 7.2 to 7.5 below.
- 7.2 For a period of five years from the Commencement Date, Jani undertakes not to take part in the management of any corporation. This includes but is not limited to:
- (a) consenting to being appointed as a director or secretary of any company;
 - (b) making or participating in making, decisions that affect the whole, or a substantial part, of the business of any corporation;
 - (c) exercise the capacity to affect significantly a corporation's financial standing; or
 - (d) communicate instructions or wishes to the directors of a corporation:
 - (i) knowing that the directors are accustomed to act in accordance with those instructions or wishes; or
 - (ii) intending that the directors will act in accordance with those instructions or wishes.
- 7.3 For a period of five years from the Commencement Date, Jani undertakes not act in any compliance role in respect of any corporation which carries on a financial services business within the meaning of Part 7.1 Division 2 of the Act, including but not limited to:
- (a) a member of a compliance committee within the meaning of Part 5C 5 of the Act;
 - (b) a Key Person within the meaning of *Regulatory Guide 105: Licensing: Organisational competence*; or
 - (c) a Responsible Manager within the meaning of *Regulatory Guide 105: Licensing: Organisational competence*.

7.4. For a period of two years from the Commencement Date, Jani undertakes not to:

- (a) carry on a financial services business as defined in Part 7.1 Division 2 of the Act;
- (b) provide any financial services as defined in section 766A of the Act;
- (c) be an officer, employee, servant or agent of a corporation which carries on a financial services business within the meaning of Part 7.1 Division 2 of the Act, including but not limited to a corporation which holds an AFSL or acts as an authorised representative of an AFSL holder;
- (d) hold himself out as:
 - (i) the holder of an AFSL;
 - (ii) an authorised representative of an AFSL holder; or
 - (iii) being in any way authorised to provide a financial service as defined in section 766A of the Act; or
- (e) apply to ASIC for an AFSL under section 913A of the Act or to become an authorised representative of an AFSL holder pursuant to section 916A of the Act.

7.5.1 Jani undertakes, in the event that he is employed to provide financial services during the Reporting Period, that he will within five (5) Business days notify ASIC of:-

- (a) the name and address of his employer;
- (b) his position and title; and
- (c) the date of commencement of employment.

7.6.1 Jani further undertakes that in the event that he is employed to provide financial services during the Reporting Period, Jani 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 Jani to retail clients during that portion of the Reporting Period during which he is employed, in accordance with clause 7.6.2. The agreement of the Reviewer shall be effected by signing the document marked annexure "A" to this enforceable undertaking and Jani providing a copy of it to ASIC within five (5) Business days thereafter.

7.6.2 The Reviewer shall undertake an audit of a sample of a minimum of five (5) clients that received financial services advice by Jani during the Reporting Period and for each client file audited consider whether the advice provided by Jani was in accordance with section 961G of the Act. The Reviewer shall undertake the audit within thirty (30) days of the completion of the Reporting Period.

7.6.3 Within ten (10) Business Days of completion of the audit, or any other reasonable period of time requested by the Reviewer, the Reviewer will provide Jani with a written statement ("**Reviewer's Statement**") setting out the matters referred to in clause 7.6.2.

7.6.4 Jani shall provide the Reviewer's Statement to ASIC within five (5) Business Days of receiving it from the Reviewer.

7.6.5 Jani will provide all reasonable assistance to the Reviewer in fulfilling the obligations set out above in clause 7.6.2.

7.6.6 Should any part of the Reviewer's Statement identify non-compliance with the matters referred to in clause 7.6.2:

(a) Jani will consider the reasons for the opinion in the Reviewer's Statement and then provide 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. Jani will provide the Remedial Action Plan to ASIC within fourteen (14) days of the date of the Reviewer's Statement.

(b) Jani 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, Jani must implement the Remedial Action Plan as so modified.

7.6.7 Should Jani fail to obtain agreement of a Reviewer to undertake the review as contemplated by paragraphs 7.6.2 to 7.6.4 above, Jani will be in default of this undertaking.

7.7 Prior to commencing any role within the financial services industry Jani will:

(a) ensure that he is compliant with the requirements of *ASIC Regulatory Guide 146 Licensing: Training of financial product advisors*;

(b) participate in an ethics and conduct course relevant to the financial services industry offered by a tertiary institute, registered training organisation or accredited industry body (collectively, "the 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 relevant aspect of the Continuing Professional Education ("Documentary Confirmation"); and

(d) provide ASIC with a statutory declaration within 14 days of successfully completing the Continuing Professional Education, that is signed by him and attaches certified copies of the Documentary Confirmation and evidence that he has otherwise complied with the requirements of subclauses (a) and (b) above.

8. Acknowledgements

8.1 Jani 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, although such release shall be consistent with the terms of this undertaking;

- (b) may from time to time publicly refer to this undertaking; and
- (c) will make this undertaking available for public inspection.

8.2. Further, Jani 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 undertaking or arising from future conduct; and
- (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.

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

M. B. Jani
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Mehdi Babatol Jani

Date: *10/2/2014*
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Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:

David McGuinness
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David McGuinness
Delegate of Australian Securities and Investments Commission

Date: *18 February 2014*
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