



713A

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

COMMONWEALTH SECURITIES LTD

ABN 60 067 254 399

AFSL 238814

AND

AUSTRALIAN INVESTMENT EXCHANGE LTD

ABN 71 076 515 930

AFSL 241400

1. DEFINITIONS

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

AFSL means Australian financial services licence.

ASIC means the Australian Securities and Investments Commission.

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

ASIC's Concerns means the concerns set out in paragraph 3.1.

AUSIEX means Australian Investment Exchange Limited ABN 71 076 515 930.

CommSec means Commonwealth Securities Limited ABN 60 067 254 399.

Commonwealth Securities Group means each of AUSIEX and CommSec.

CBA means Commonwealth Bank of Australia ABN 48 123 123 124.

Client Money means money to which Subdivision A of Division 2 of Part 7.8 of the Corporations Act applies.

Client Money Requirements means the requirements in respect of Client Money set out in Subdivision A of Division 2 of Part 7.8 of the Corporations Act.

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

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

Independent Expert means the expert required to be appointed pursuant to paragraphs 5.2 and 5.3.

Independent Expert Report means the report referred to in paragraphs 5.5(c) and 5.11.

Remediation Plan means the plan, or modified plan, referred to in paragraphs 5.12 to 5.17.

Review means the review referred to in paragraph 5.10.

- 1.2 Except so far as the contrary intention appears in this Enforceable Undertaking, the interpretation provisions in Part 1.2 of the Corporations Act and Part 1 Division 4 of the ASIC Act apply for the purposes of this Enforceable Undertaking as if the provisions of those Acts were provisions of this Enforceable Undertaking.

2. BACKGROUND

ASIC's role

- 2.1 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.
- 2.2 ASIC's responsibilities include the administration and enforcement of the financial services provisions of the Corporations Act.

CommSec

- 2.3 CommSec is a member of the Commonwealth Bank of Australia group, which comprises CBA and its subsidiaries.
- 2.4 Since 1 December 2003, CommSec has held an AFSL pursuant to Division 4 of Part 7.6 of the Corporations Act to:
 - (a) provide financial product advice pursuant to section 766B of the Corporations Act;
 - (b) deal in financial products pursuant to section 766C of the Corporations Act;
 - (c) make a market for financial products pursuant to section 766D of the Corporations Act; and
 - (d) provide a custodial or depository service pursuant to section 766E of the Corporations Act.

AUSIEX

- 2.5 AUSIEX is a member of the Commonwealth Bank of Australia group, which comprises CBA and its wholly owned subsidiaries.
- 2.6 Since 10 March 2004, AUSIEX has held an AFSL pursuant to Division 4 of Part 7.6 of the Corporations Act to:
 - (a) provide financial product advice pursuant to section 766B of the Corporations Act;
 - (b) deal in financial products pursuant to section 766C of the Corporations Act; and
 - (c) provide a custodial or depository service pursuant to section 766E of the Corporations Act.

Details of Conduct

- 2.7 As the holder of AFSLs, Commonwealth Securities Group is required to comply with the Client Money Requirements.
- 2.8 Between 15 July 2010 and 11 October 2013 (inclusive), the Commonwealth Securities Group reported to ASIC matters related to the handling of Client Money by Commonwealth Securities Group (**Compliance Incidents**).

- 2.9 The Compliance Incidents, which arose out of processing Client Money inconsistently with the Client Money Requirements, occurred between 3 October 2005 and 3 September 2013, and related to:
- (a) withdrawals of Client Money from trust accounts for daily client cash settlement purposes, without the required written authorisations;
 - (b) paying Client Money into accounts that were not designated as trust accounts as part of carrying out transactions for clients; and
 - (c) paying Commonwealth Securities Group's money into client trust accounts.
- 2.10 The Compliance Incidents were identified by Commonwealth Securities Group's internal procedures and were reported to ASIC as part of Commonwealth Securities Group's usual compliance processes.
- 2.11 Commonwealth Securities Group has confirmed that no client suffered any financial loss as a result of the Compliance Incidents and that it is not aware of any complaint made by a customer in respect of these matters.
- 2.12 ASIC has reviewed the material submitted to it by the Commonwealth Securities Group in relation to the Compliance Incidents.
- 2.13 Commonwealth Securities Group has co-operated with ASIC in relation to its review of the Compliance Incidents and has already taken steps to rectify its systems and processes in order to address the causes of the Compliance Incidents, including implementing and completing a Trust Account Remediation Program (**TARP**) between February 2012 and December 2012 in respect of its trust accounting systems and processes.
- 2.14 The Commonwealth Securities Group considers that it has addressed the weaknesses related to the handling of Client Money that gave rise to the Compliance Incidents, but recognises that it is reasonable for ASIC to seek the view of an independent expert to evaluate the controls and processes the Commonwealth Securities Group currently has in relation to the handling of Client Money.

3. ASIC'S CONCERNS

- 3.1 ASIC is concerned that Commonwealth Securities Group may not have complied with obligations under the financial services laws in relation to the Compliance Incidents referred to in paragraph 2.9 and in particular may have:
- (a) contravened sections 981B and 981C of the Corporations Act;
 - (b) weaknesses in its Client Money handling arrangements and controls to ensure Client Money is handled in accordance with the Corporations Act, and accordingly:
 - (i) may have breached AFSL condition 3 (in the case of CommSec) and 4 (in the case of AUSIEX);
 - (ii) may also have contravened sections 912A(1)(b) and (c) of the Corporations Act which requires an AFSL holder to 'comply with the conditions on the licence' and 'comply with the financial services laws' respectively;
 - (c) may have contravened section 912A(1)(h) of the Corporations Act which requires an AFSL to 'have adequate risk management systems'.

4. ACKNOWLEDGEMENTS

- 4.1 The Commonwealth Securities Group acknowledges:

- (a) ASIC's Concerns;
 - (b) that those concerns are reasonably held; and
 - (c) that the steps set out in this Enforceable Undertaking are necessary to address ASIC's Concerns regarding compliance with the Client Money Requirements.
- 4.2 Nothing in this undertaking constitutes an admission by Commonwealth Securities Group or its directors or officers.
- 4.3 ASIC acknowledges that:
- (a) the Commonwealth Securities Group has already undertaken and completed the TARP to address and rectify weaknesses in its trust accounting systems and procedures and its arrangements for handling Client Money;
 - (b) the Commonwealth Securities Group reported the Compliance Incidents to ASIC; and
 - (c) the Commonwealth Securities Group has co-operated and worked constructively with ASIC in agreeing to the terms of this Enforceable Undertaking.

5. UNDERTAKINGS

Acceptance of Enforceable Undertaking

- 5.1 Under section 93AA of the ASIC Act Commonwealth Securities Group has offered the undertakings in clauses 5.2 to 6.1 and ASIC has agreed to accept those undertakings as an alternative to commencing civil proceedings or pursuing administrative action in relation to the Compliance Incidents.

Review of the Commonwealth Securities Group's controls

Appointment of Independent Expert

- 5.2 Commonwealth Securities Group must engage an Independent Expert by no later than 28 February 2014, or such later date as agreed between ASIC and Commonwealth Securities Group, to conduct the Review and prepare the Independent Expert Report.
- 5.3 Prior to engaging the Independent Expert, Commonwealth Securities Group must advise ASIC in writing of:
- (a) the expertise of the Independent Expert, and;
 - (b) any association within two years of the date of this Enforceable Undertaking of the proposed Independent Expert with Commonwealth Securities Group, and its related bodies corporate and officers.
- 5.4 Commonwealth Securities Group must not appoint an Independent Expert unless:
- (a) the appointment has been approved by ASIC, in writing, prior to engagement by the Commonwealth Securities Group;
 - (b) the Independent Expert has expertise in the Client Money Requirements, compliance, corporate governance, regulatory audit and financial services; and
 - (c) the Independent Expert and the Independent Expert's staff:
 - (i) at the time of appointment and at all material times are independent of Commonwealth Securities Group and its related bodies corporate and officers. For the purposes of this subparagraph, 'independence' means capable of exercising objective and impartial judgement; and

- (ii) have not previously been a director, officer or employee of Commonwealth Securities Group or its related bodies corporate.
- 5.5 Commonwealth Securities Group must ensure that the terms of engagement of the Independent Expert:
 - (a) are approved by ASIC, in writing, prior to agreeing those terms with the Independent Expert;
 - (b) include a timetable for the production and delivery of the Independent Expert Report taking into account the terms of this Enforceable Undertaking;
 - (c) include terms requiring the Independent Expert Report to comply with the provisions of paragraph 5.11;
 - (d) include a term that enables ASIC to meet with the Independent Expert independently of Commonwealth Securities Group and obtain information from, and share information with, the Independent Expert;
 - (e) include a term that the Independent Expert shall notify Commonwealth Securities Group and ASIC immediately if the Independent Expert or the Independent Expert's staff become aware of information that adversely affects their ability to exercise objective and impartial judgment in relation to the engagement. This includes, but is not limited to, circumstances where the Independent Expert or the Independent Expert's staff:
 - (i) become aware of any conduct of Commonwealth Securities Group, or its past or present directors, officers or employees involving action to exert undue influence on the Independent Expert or staff of the Independent Expert; or
 - (ii) become aware of past or current circumstances, the existence of which places the Independent Expert in breach, or potential breach, of the independence requirements in paragraph 5.4(c);
 - (f) require the Independent Expert to inform Commonwealth Securities Group (and ASIC simultaneously) within 14 days of receiving the Remediation Plan, whether in the opinion of the Independent Expert, the Remediation Plan requires any modification to ensure the Remediation Plan addresses the causes of the Compliance Incidents and the recommendations.
- 5.6 Commonwealth Securities Group must:
 - (a) permit the Independent Expert, to the extent that is reasonable having regard to the requirements of this Enforceable Undertaking, to have access to their books, to interview employees, contractors, agents and/or consultants and to consult with ASIC and disclose to ASIC any further information obtained by the Independent Expert, related to this Enforceable Undertaking in the course of carrying out the Review;
 - (b) give the Independent Expert any information, document or explanation reasonably requested by the Independent Expert in relation to any matter in any way connected with the work of the Independent Expert under this Enforceable Undertaking; and
 - (c) otherwise reasonably assist the Independent Expert in conducting the Review and producing the Independent Expert Report.
- 5.7 The terms of engagement of the Independent Expert may only be varied by Commonwealth Securities Group with the prior written agreement of ASIC.
- 5.8 All remuneration and costs associated with the Independent Expert, the Independent Expert Report and the Remediation Plan must be borne by Commonwealth Securities Group.

- 5.9 Paragraphs 5.2 to 5.8 apply to every appointment of an Independent Expert by Commonwealth Securities Group required pursuant to this Enforceable Undertaking.

Independent Expert Review

- 5.10 Commonwealth Securities Group must engage the Independent Expert to carry out a review, and prepare a report, which:
- (a) covers an assessment of the effectiveness of the controls, systems and processes designed and implemented under the TARP to address the causes of the Compliance Incidents;
 - (b) tests the effectiveness of the implementation of the controls, systems and processes designed and implemented under the TARP, including by appropriate testing or examination, as appropriate, against the specific requirements of the TARP;
 - (c) identifies deficiencies (if any) in controls, systems and processes applicable to the handling of Client Money by Commonwealth Securities Group, and makes recommendations about whether controls, systems and processes for handling Client Money, in addition to controls systems and processes designed and implemented under the TARP, are necessary to prevent breaches of the Client Money Requirements;
 - (d) takes into account Commonwealth Securities Group's analysis of the causes of the Compliance Incidents through discussions with the relevant staff and review of available documentation, and considers the documented causes and any potential additional causes of the Compliance Incidents; and
 - (e) considers the effectiveness of the controls, systems and processes in place between Commonwealth Bank of Australia and Commonwealth Securities Group to the extent they relate to the Client Money Requirements and, if necessary to ensure compliance with the Client Money Requirements, provides recommendations to improve those controls, systems and processes.

Independent Expert Report

- 5.11 For the purposes of paragraph 5.5(c) the Independent Expert Report must:
- (a) be delivered to Commonwealth Securities Group and ASIC by 2 June 2014, or such later date as agreed between ASIC and Commonwealth Securities Group;
 - (b) provide details of deficiencies (if any) identified under the Review including an assessment of the materiality of such deficiencies;
 - (c) make recommendations on how to rectify the deficiencies, if any, identified in the Review taking into account their materiality and cause;
 - (d) provide a reasonable timeframe, which must not be longer than 12 months or such later date as agreed between ASIC and Commonwealth Securities Group, for implementation by Commonwealth Securities Group of the recommendations made in the Independent Expert Report (subject to clauses 5.14 and 5.15);
 - (e) explain any limitations or qualifications to the Independent Expert Report;
 - (f) provide details of the Independent Expert's qualifications and identify the material relied upon for the Independent Expert Report;
 - (g) clearly and fully state all assumptions of fact made by the Independent Expert;

- (h) provide reasons for each conclusion made in the Independent Expert Report;
- (i) include a declaration that the Independent Expert has made all the inquiries which the Independent Expert believes are desirable and appropriate taking into account the scope of clause 5.10;
- (j) include an opinion about whether any material information which the Independent Expert regards as relevant has been withheld from the Independent Expert;
- (k) include:
 - (i) the factual premises upon which the Independent Expert Report proceeds; and
 - (ii) details of the documents and other materials which the Independent Expert took into account in conducting the Review and preparing the Independent Expert Report;
- (l) detail any qualifications on the opinions expressed, and the reasons for those qualifications.

Remediation Plan

- 5.12 Within 60 days (or such later date as agreed between ASIC and Commonwealth Securities Group) of receipt of the Independent Expert Report, Commonwealth Securities Group must provide ASIC, and the Independent Expert with a plan to implement the recommendations contained in the Independent Expert Report.
- 5.13 Commonwealth Securities Group must ensure that the Remediation Plan:
 - (a) sets out the actions Commonwealth Securities Group proposes to take to implement recommendations identified in the Independent Expert Report; and
 - (b) specifies the date by which each action will be taken.
- 5.14 The Commonwealth Securities Group and ASIC may agree that one or more of the recommendations in the Independent Expert Report are outside the control of the Commonwealth Securities Group, or are disproportionately burdensome given existing controls, systems or processes (provided such existing controls, systems or processes are effective to deliver compliance with the Client Money Requirements).
- 5.15 If ASIC and Commonwealth Securities Group agree as set out in paragraph 5.14, then the recommendation or recommendations the subject of that agreement do not need to be addressed in the Remediation Plan.
- 5.16 Commonwealth Securities Group must implement the Remediation Plan in full (subject to clauses 5.14 and 5.15), and within the timeframes specified in the Remediation Plan, or such varied timeframes as are agreed between Commonwealth Securities Group and ASIC.
- 5.17 Within seven days of Commonwealth Securities Group's full implementation of the Remediation Plan Commonwealth Securities Group must write to ASIC to inform ASIC that the Remediation Plan is fully implemented. Commonwealth Securities Group shall provide such evidence as is reasonably requested by ASIC to enable it or the Independent Expert to assess that the Remediation Plan has been fully implemented.

Non-Compliance

- 5.18 Commonwealth Securities Group must notify ASIC within three business days of becoming aware of a failure by Commonwealth Securities Group to comply with a term of this Enforceable Undertaking.

- 5.19 The notification referred to in paragraph 5.18 must include an explanation of the reasons for non-compliance with a term of this Enforceable Undertaking. ASIC may, after considering any correspondence from Commonwealth Securities Group and any other factors it considers appropriate, in its absolute discretion waive its right to seek enforcement of this Enforceable Undertaking or the applicable term, for a particular period.
- 5.20 ASIC will notify Commonwealth Securities Group in writing of its decision in relation to notification received from Commonwealth Securities Group under clause 5.18 within seven days of receiving a notification.

6. EXECUTIVE OVERSIGHT

- 6.1 Commonwealth Securities Group must table each of the Independent Expert Report and Remediation Plan at the next occurring board meeting after receipt of the Independent Expert and Remediation Plan respectively.

7. ACKNOWLEDGEMENTS

- 7.1 Commonwealth Securities Group 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; and
 - (b) may from time to time publicly refer to this Enforceable Undertaking; and
 - (c) will make this Enforceable Undertaking available for public inspection.
- 7.2 Further, Commonwealth Securities Group 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 which arises 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; and
 - (c) this Enforceable Undertaking in no way derogates from Commonwealth Securities Group's obligation to report significant breaches in accordance with section 912D of the Corporations Act and the AFSLs as the Commonwealth Securities Group become aware of any such breaches, whether or not they are identified by the Independent Expert and irrespective of the date of the breaches.
- 7.3 Commonwealth Securities Group undertakes that it will pay the costs of its compliance with this Enforceable Undertaking.
- 7.4 Commonwealth Securities Group will, within a reasonable period after receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing compliance with this Enforceable Undertaking, including any correspondence with the Independent Expert. Commonwealth Securities Group acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.

8. PROVISION OF DOCUMENTS TO ASIC

- 8.1 The address for providing ASIC with any document, including but not limited to any plan or report, which this Enforceable Undertaking requires to be provided to ASIC is:

Nathan Bourne
Senior Manager, Market and Participant Supervision
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

- 8.2 The address for providing Commonwealth Securities Group with any document or response, including but not limited to any plan or report, which this Enforceable Undertaking requires to be provided to Commonwealth Securities Group is:

Campbell Smith
Head of Compliance Markets Securities & Institutional
Commonwealth Bank of Australia
Ground Floor Tower 1
201 Sussex Street
Sydney NSW 2000

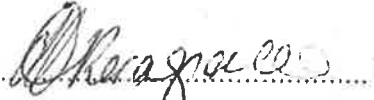
Executed by COMMONWEALTH SECURITIES LTD (ABN 60 067 254 399) in accordance with section 127(1) of the Corporations Act:



Signature of Director

GRAHAME PETERSEN

Print name



Signature of Company Secretary

MARIA KARAGIANNIS

Print name

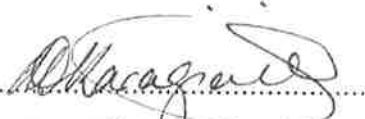
Executed by AUSTRALIAN INVESTMENT EXCHANGE LTD (ABN 71 076 515 930) in accordance with section 127(1) of the Corporations Act:



Signature of Director

GRAHAME PETERSEN

Print name



Signature of Company Secretary

MARIA KARAGIANNIS

Print name

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



Signature ASIC Delegate

Delegate of Australian Securities and Investments Commission

AREG 9AN CO

Print name

17/12/13.

Date