

## Infringement notice

Day of issue: 3 March 2014

Unique identification code: B735727

TO: Wealth Within Ltd  
ACN 088 389 913  
Level 1  
270 Auburn Road  
HAWTHORN VIC 3122

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*.
2. ASIC has reasonable grounds to believe that Wealth Within Ltd ("WWL") contravened an infringement notice provision as follows:

Between 5 March 2013 and 17 October 2013, WWL contravened s12DB(1)(e) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services, making a false or misleading representation (in the same form or substantially the same form as **Annexure A – Advertisement 2**) on its website at [www.wealthwithin.com.au](http://www.wealthwithin.com.au) as to the performance characteristics and benefits of the Direct Equity Managed Account Service (**DEMAS**) (ARSN 134 092 201).

### Particulars

Advertisement 2 contained a representation that an investor would achieve returns on their individual account the same as or similar to those of the "Growth Mandate" set out in Advertisement 2. Advertisement 2 sought to qualify the representation with the words, "As Wealth Within operates IMA's, the performance of each client's account may differ" (**qualifying statement**).

The representation contained in Advertisement 2, and the qualifying statement itself, were false or misleading as it was certain or highly likely that the performance of an investor's account would differ from the performance of the Growth Mandate because:

- (i) the timing of the opening of an investor's account; and/or
- (ii) the ability of an investor to nominate stocks they did not wish to hold in their account; and/or
- (iii) the ability of an investor to transact on their account,

would result in an investor holding:

- (a) different stocks to the those held in the Growth Mandate from time to time; and/or
- (b) different proportions of particular stocks to the proportions held in the Growth Mandate from time to time; and/or

- (c) a different proportion of their individual account in cash to that held in the Growth Mandate from time to time.

**Penalty under this notice**

- 3. The penalty payable under this notice in relation to the alleged contravention is \$10,200.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

**Consequences of complying with this notice**

- 4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
  - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
  - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

**Consequences of failing to comply with this notice**

- 5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the *ASIC Act* (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
- 6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1,700,000.

**Time for payment**

- 7. The time for payment is:
  - (a) within 28 days after the day on which the notice is issued to you; or
  - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

**Applying for more time to pay the penalty under this notice**

- 8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
- 9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

**Applying to have this notice withdrawn**

- 10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.

11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

**Withdrawal of this notice**

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

**Requirements for applications**

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
  - (a) must be in writing; and
  - (b) must include the unique identification code set out at the top of this notice; and
  - (c) must include your reasons for making the application; and
  - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:

**Catherine Iles**

**Australian Securities and Investments Commission**

**GPO Box 9827**

**MELBOURNE VIC 3000**

**or by facsimile: (03) 9280 3444**

**or by email: [ACLInfringementNotices@asic.gov.au](mailto:ACLInfringementNotices@asic.gov.au)**

*Signature of delegate issuing the notice*



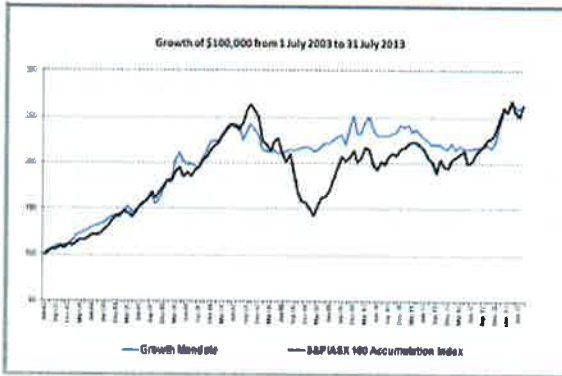
Peter Kell

as a delegate of the Australian Securities and Investments Commission

## Annexure A - Advertisement 2

### Historical performance

Delivering returns that outperform the Australian market is what sets Wealth Within apart.



Growth Mandate	Investment Value	Annual Return
5 Years 1 Aug 08 - 31 Jul 13	\$123,592*	4.33% p.a. <sup>^</sup>
Since Inception 1 Jul 03 - 31 Jul 13	\$262,564*	10.04% p.a. <sup>^</sup>

<sup>^</sup>Growth based on an investment of \$100,000

<sup>^</sup>Past performance is no indication of future performance

- Returns are inclusive of all fees and charges
- Assumes distributions are reinvested
- Does not take into account any taxes payable by the investor
- As Wealth Within operates IMA's, the performance of each client's account may differ