

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:

Equanimity Concepts Pty Ltd ACN 134 439 704
Ashmore Plaza, Level 1, 160 Cotlew Street
ASHMORE, QLD, 4214 (Equanimity)

1. DEFINITIONS

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

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

ASIC Concerns means the concerns set out in paragraph 3.13

ACL means an Australian Credit Licence as defined in section 35 of the National Credit Act

AFSL means an Australian Financial Services Licence

Business Day means a day which is not Saturday, Sunday or a public holiday in Brisbane in the State of Queensland.

Credit Legislation has the meaning given to it by section 5 of the National Credit Act

Equanimity means Equanimity Concepts Pty Ltd (ACN 134 439 704)

Mr J Knights means Mr Jordan Keith Knights

Mr K Knights means Mr Keith Knights

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

Relevant Period means 1 January 2012 to 10 July 2014

Undertakings means the undertakings contained in part 4 of this Enforceable Undertaking

Website means the website <http://equanimityconcepts.com.au> which is owned and maintained by Equanimity

2. ASIC'S ROLE, THE ASIC INVESTIGATION & RELEVANT LAW

- 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.

JK 

- 2.2. Pursuant to section 13 of the ASIC Act, ASIC commenced an investigation on 30 October 2013 which related to suspected contraventions by Equanimity of section 12DB(1)(e) of the ASIC Act (**the ASIC Investigation**).
- 2.3. Section 12DB(1)(e) Subdivision D of the ASIC Act provides that *"a person must not...in connection with the supply of financial services...make a false or misleading misrepresentation that services have sponsorship approval, performance characteristics, uses or benefits."*

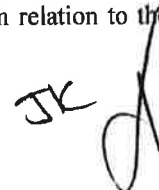
3. BACKGROUND

- 3.1. Equanimity was incorporated on 2 December 2008.
- 3.2. Equanimity has been the holder of ACL 388752 since 21 March 2012 and is authorised to engage in credit activities other than as a credit provider.
- 3.3. Equanimity was an authorised representative of AFSL holder Sentry Financial Planning Pty Ltd (ACN 033 029 526) (AFSL 247105) from 18 March 2009 to 7 March 2014.
- 3.4. Equanimity's place of business is located at Level 1, Ashmore Plaza, 160 Cotlew Street, Ashmore, Queensland.
- 3.5. During the Relevant Period the directors of Equanimity included:
- 3.5.1. Mr J Knights from 21 March 2012 to the date of this enforceable undertaking;
- 3.5.2. Mr K Knights from:
- 3.5.2.1. 2 December 2008 to 5 July 2011; and
- 3.5.2.2. 28 June 2013 to the date of this enforceable undertaking
- (together **the Knights**).
- 3.6. The services provided by Equanimity to its clients in connection with the supply of financial services, namely credit facilities for the provision of mortgages during the Relevant Period have included:
- 3.6.1. providing advice on investing in property;
- 3.6.2. mortgage broking; and
- 3.6.3. selling general insurance products
- (collectively referred to as **the Equanimity Services**).

Details of the Conduct during the Relevant Period

- 3.7. From time to time during the Relevant Period Equanimity represented to consumers that, by using the Equanimity Services, consumers could:
- 3.7.1. use the available equity in their existing home to obtain finance (**Investment Loan**) to fund the purchase of an investment property (**Investment Property**);
- 3.7.2. direct all and any rent and negative gearing tax benefits received in relation to the Investment Property into their existing home loan;

JK



- 3.7.3. obtain an additional separate funding facility (secured over the Investment Property) (**Line of Credit**) to fund the ongoing costs of the Investment Property; and
- 3.7.4. as a result, discharge their 25 year home loan in a significantly reduced timeframe (collectively referred to as **the Representations**).
- 3.8. Equanimity published the Representations as follows:
- 3.8.1. on the Website;
- 3.8.2. on <http://www.youtube.com> (**YouTube**);
- 3.8.3. in the Jetstar in-flight magazine called "Jetstar Magazine";
- 3.8.4. in the Virgin in-flight magazine called "Virgin Australia Voyeur";
- 3.8.5. in the Qantas in-flight magazine called "The Australian Way";
- 3.8.6. in the Australian Women's Weekly;
- 3.8.7. in the SA Police News; and
- 3.8.8. in the NSW Police News (collectively referred to as **the Contravening Advertisements**).
- 3.9. The Representations consist, in each case, of the words particularised by reference to each of the Contravening Advertisements in the **attached** Schedule A.
- 3.10. At around the end of May 2013, and upon being notified of ASIC's concerns regarding the Representations in the Contravening Advertisements, Equanimity added a disclaimer to the Representations numbered 4 and 5 in Schedule A (**the Disclaimer**) which is **attached** at Schedule B.
- 3.11. The ASIC Investigation identified the following:
- 3.11.1. that for the purpose of making the Representations and causing them to be published in the Contravening Advertisements, Equanimity relies on various assumptions in its financial modelling each of which are considered by ASIC to be unrealistic including but not limited to:
- 3.11.1.1. continued growth in property values;
- 3.11.1.2. high rental returns;
- 3.11.1.3. annual rent increases of 8 per cent; and
- 3.11.1.4. no upward movements in applicable interest rates.
- 3.11.2. that it was not evident from the Contravening Advertisements that in order for a consumer to achieve a purported reduction in their existing mortgage term they would typically have to:
- 3.11.2.1. incur further debt by taking out an Investment Loan and a Line of Credit (collectively referred to as **Further Debt**); and

3.11.2.1.2. discharge that Further Debt by selling the Investment Property at a significant and taxable capital gain.

3.11.3. that from 1 January 2012 to 18 December 2013:

3.11.3.1. 171 people became clients of Equanimity and received the Equanimity Services; and

3.11.3.2. 85 People became clients of Equanimity as a result of responding to the Representations contained in the Contravening Advertisements.

3.11.4. that from 1 January 2012 to the date of this Enforceable Undertaking Equanimity does not have adequate compliance in place in respect of:

3.11.4.1. its policies, procedures and systems in relation to its advertising to ensure Equanimity complies with the general conduct obligations under section 47 of the National Credit Act; and

3.11.4.2. its policies, procedures and systems to ensure that Equanimity's advertising activities (including websites) comply with the Credit Legislation and any relevant ASIC Regulatory Guides. This is based on:

3.11.4.2.1. a letter dated 6 June 2014 from Equanimity which contains an admission that it did not have any compliance policies in place; and

3.11.4.2.2. a draft document entitled "Internal Marketing and Communications and Procedures Policy" together with a checklist (**Policy**).

3.12. ASIC is of the view that:

3.12.1. the Disclaimer does not address the ASIC Concerns, which are set out **below** at paragraph 3.13;

3.12.2. the Policy does not address the ASIC Concerns, which are set out **below** at paragraph 3.13; and

3.12.3. Equanimity does not have in place adequate compliance procedures, policies and systems in respect of its advertising activities to ensure that it complies with the Credit Legislation and the relevant ASIC Regulatory Guide so that the ASIC Concerns which are set out **below** at paragraph 3.13 remain.

The ASIC Concerns

3.13. ASIC is concerned that by making the Representations in paragraph 3.7 and causing them to be published in circumstances where:

3.13.1. Equanimity has failed to implement correct procedures, policies and systems to ensure that Equanimity's advertising activities comply with:

3.13.1.1. the general conduct obligations pursuant to section 47 of the National Credit Act;

3.13.1.2. Part 2 Division 2 of the ASIC Act (as relevant); and

3.13.1.3. ASIC Regulatory Guide 234 – *Advertising financial products and services (including credit)*.

JK 

Equanimity may have contravened section 12DB(1)(e) of the ASIC Act in relation to the characteristics of the Equanimity Services.

Acknowledgement of the ASIC Concerns

3.14. Equanimity acknowledges:

- 3.14.1. the ASIC Concerns set out in paragraph 3.13;
- 3.14.2. that the ASIC Concerns are reasonably held;
- 3.14.3. that the steps set out in this Enforceable Undertaking are necessary to address the ASIC Concerns; and
- 3.14.4. that it must comply with the requirements of this Enforceable Undertaking to ensure Equanimity's compliance with the Credit Legislation.

3.15. ASIC acknowledges that Equanimity:

- 3.15.1. voluntarily withdrew the Representations contained in the publications set out in paragraphs 3.8.3 to 3.8.8 inclusive on 30 April 2014 and before being formally requested to do so by ASIC on 6 May 2014;
- 3.15.2. removed the Representations on the Website and YouTube on 10 July 2014 following a request by ASIC for it to do so made on 9 July 2014; and
- 3.15.3. has co-operated with ASIC in agreeing to the terms of this Enforceable Undertaking.

4. UNDERTAKINGS

4.1. Under section 93AA of the ASIC Act:


- 4.1.1. Equanimity has offered the undertakings in paragraphs 4.2 to 4.3 and 4.5 to 4.21; and
- 4.1.2. The Knights have offered the undertakings in paragraph 4.4; and
- 4.1.3. ASIC has accepted those undertakings as an alternative to commencing civil penalty proceedings or pursuing administrative action under the ASIC Act and in relation to the Representations and the Contravening Advertisements.

General Undertakings

- 4.2. Equanimity agrees and undertakes that it will pay all of its own costs of compliance with this Enforceable Undertaking including any and all costs associated with the engagement of the Consultant (defined below at paragraph 4.5).
- 4.3. Equanimity will, within three (3) Business Days of receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purposes of ASIC assessing Equanimity's compliance with the terms of this Enforceable Undertaking.

Specific Undertaking (1) Removal of Advertising

- 4.4. The Knights undertake that within ten (10) Business Days of the date of this Enforceable Undertaking, one of them (referred to below as **the deponent**) will provide a statutory declaration to ASIC in their capacity as a director of Equanimity which declares:

JK 

- 4.4.1. whether or not the Contravening Advertisements have been removed; and
- 4.4.2. that Equanimity will not for as long as the deponent is a director of Equanimity publish or procure the publication of advertising material containing representations substantially of the kind that have given rise to the ASIC Concerns.

Specific Undertaking (2) Review

Engagement of Consultant


- 4.5. Equanimity will within thirty (30) days of acceptance of this Enforceable Undertaking by ASIC, or such further time agreed to by ASIC in writing engage an independent external compliance consultant (**the Consultant**) whose terms of appointment are to be based on the matters set out **below** at paragraphs 4.8 to 4.14 (**the Terms of Appointment**) and which terms must be approved by ASIC prior to the Consultant being engaged and will instruct the Consultant to prepare:
 - 4.5.1. the Initial Report (as defined in paragraph 4.9.2); and
 - 4.5.2. the Final Report (as defined in paragraph 4.14.2).
- 4.6. Equanimity will not vary the Terms of Appointment without the prior written approval of ASIC.
- 4.7. Equanimity will abide by and take such steps as are necessary to arrange and implement the processes described in paragraphs 4.8 to 4.16 **below**.

Terms of Appointment

- 4.8. The Terms of Appointment will require the Consultant to review and make recommendations in the reports described below in relation to:
 - 4.8.1. Equanimity's policies, procedures and systems in relation to its advertising (including its website) so as to ensure that Equanimity complies with:
 - 4.8.1.1. the general conduct obligations set out in section 47 of the National Credit Act;
 - 4.8.1.2. Part 2 Division 2 of the ASIC Act as applicable; and
 - 4.8.1.3. ASIC Regulatory Guide 234 – *Advertising financial products and services (including credit)*;
 - 4.8.2. measures taken and any to be taken by Equanimity so as to embed the policies, procedures and systems referred to in paragraph 4.8.1 within its business operations and to ensure compliance by staff with those policies, procedures and systems
(collectively referred to as **the Equanimity Compliance Obligations**).

Initial Compliance Review

- 4.9. Equanimity will instruct the Consultant:
 - 4.9.1. to undertake a review pursuant to the Terms of Appointment of the Equanimity Compliance Obligations (**the First Review**); and

JK 

- 4.9.2. following such review to prepare and provide a written report (**the Initial Report**) to ASIC and Equanimity pursuant to the Terms of Appointment that sets out:
- 4.9.2.1. a description of the methodology, parameters and limitations applicable to the First Review;
 - 4.9.2.2. the Consultant's assessment of Equanimity's adherence to the Equanimity Compliance Obligations during the period of 1 January 2012 to the date of the Initial Report;
 - 4.9.2.3. the Consultant's recommendations as to the steps or actions required to remedy any failure by Equanimity to adhere to the Equanimity Compliance Obligations (**the Consultant's Recommendations**); and
 - 4.9.2.4. the Consultant's opinion as to the timeframe within which Equanimity should reasonably be able to fully adhere to the Equanimity Compliance Obligations (**Consultant's Timeframes**); and
- 4.10. to complete the First Review and the Initial Report within thirty (30) days of being engaged pursuant to the Terms of Appointment.
- 4.11. Equanimity will within thirty (30) days of receiving the Initial Report submit a report that it has prepared to ASIC (**Recommendation Report**):
- 4.11.1. stating which of the Consultant's Recommendations have been implemented to date; and
 - 4.11.2. providing a timetable (to be based on the Consultant's Timeframes) for the implementation of any recommendations in the Initial Report which at the date of the Recommendation Report have not been implemented (**Outstanding Recommendations**); and
 - 4.11.3. insofar as that timetable departs from the Consultant's Timeframes provides a reasoned explanation for such departure.
- 4.12. Equanimity will implement the Outstanding Recommendations within no more than ninety (90) days of its receipt of the Initial Report or within such additional timeframe as may have been provided for in the Consultant's Timeframes.
- 4.13. Equanimity will provide all reasonable assistance to the Consultant in fulfilling the obligations set out in paragraphs 4.8, 4.9 and 4.14.

Final Review

- 4.14. Equanimity will, within seven (7) days of implementing all of any Outstanding Recommendations or at the expiry of the time periods provided for by paragraph 4.12 if later, instruct the Consultant pursuant to the Terms of Appointment to:
- 4.14.1. undertake a further review (**the Final Review**) the Equanimity Compliance Obligations within a period of fourteen (14) days; and
 - 4.14.2. prepare a further written report (**Final Report**) which states whether or not the Outstanding Recommendations have been implemented and which is to be provided to ASIC and Equanimity within fourteen (14) days of the Consultant being instructed as provided above.

JK d

Remedial Action Plan

- 4.15. Equanimity will, in the event that the Final Report identifies that any of the Outstanding Recommendations have not been implemented, then consider the reasons for such non-implementation and provide ASIC with a written plan (**Remedial Action Plan**) setting out:
- 4.15.1. the action Equanimity proposes to take to ensure that the Outstanding Recommendations are implemented; and
 - 4.15.2. the specific timeframe(s) within which such action will be taken.
- 4.16. Equanimity will provide the Remedial Action Plan to ASIC within fourteen (14) days of the Final Report being provided to ASIC and Equanimity.
- 4.17. Equanimity will implement any Remedial Action Plan within the timeframe specified in paragraph 4.15.2 except that if ASIC requires any reasonable modifications to any Remedial Action Plan then Equanimity will implement the Remedial Action Plan as so modified.

Variation

- 4.18. Equanimity must seek ASIC's written consent (not to be unreasonably withheld) to vary any of the requirements including timeframes of this Enforceable Undertaking and for the avoidance of doubt in order to be effective any variation of timeframes will require ASIC's written consent to such variation to be given prior to the expiry of the relevant timeframe.

Material Breach

- 4.19. A material breach of this enforceable undertaking will include but is not limited to the following:
- 4.19.1. Equanimity failing to meet any of the requirements of this enforceable undertaking (including but not limited any failure to appoint the Consultant pursuant to paragraphs 4.5 and 4.8) within the timeframes specified (or as varied under paragraph 4.18); and/or
 - 4.19.2. a determination by the Consultant in the Initial Report or the Final Report that Equanimity is unlikely to complete a material component of the Equanimity Compliance Obligations; and/ or
 - 4.19.3. a determination by the Consultant in the Final Report that Equanimity has not completed a material component of the Initial Report (each a **Material Breach**).
- 4.20. Equanimity undertakes in the event of a Material Breach and subject to what follows to provide to ASIC with written submissions setting out why ASIC should not take action to suspend or cancel Equanimity's ACL pursuant to section 55 of the National Credit Act, such submissions to be provided to ASIC within thirty (30) days of any written notification by ASIC to Equanimity to do so.
- 4.21. Equanimity agrees that in circumstances where there has been a Material Breach of this Enforceable Undertaking by Equanimity, paragraph 4.20 does not limit ASIC's power to take additional alternative action such as resuming the ASIC Investigation with a view to commencing either administrative action or civil penalty proceedings.

JK d

5. FURTHER ACKNOWLEDGEMENTS

5.1. Equanimity acknowledges that ASIC:

- 5.1.1. 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;
- 5.1.2. may from time to time publicly refer to this Enforceable Undertaking; and
- 5.1.3. will make this Enforceable Undertaking available for public inspection.

5.2. Equanimity acknowledges that in relation to the Initial Report, the Recommendation Report, the Final Report and the Remedial Action Plan, ASIC:

- 5.2.1. may issue a media release referring to their contents and otherwise publicly refer to them; and
- 5.2.2. may make available for public inspection a copy of each of them.

5.3. Further, Equanimity acknowledges that to address the ASIC concerns, Equanimity must comply with all of the requirements contained in this Enforceable Undertaking.

5.4. ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate, conduct surveillance, 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.

5.5. 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.

5.6. Equanimity acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC, and Equanimity and ASIC acknowledges that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

6. NOTICES

6.1. Provision of notice and documents to ASIC:

- 6.1.1. The address for providing ASIC with any notice, document, including but not limited to the Initial Report and the Final Report and documents required to be provided pursuant to this Enforceable Undertaking is:

Attention: Senior Manager - Financial Advisers
 Australian Securities & Investment Commission
 Level 7, 120 Collins Street
 MELBOURNE, VIC, 3000

- 6.1.2. The address for providing Equanimity with any notice or documents is:

C/- Prestige Legal & Corporate Services Pty Ltd
 Suite 30204 Level 2 Southport Central Commercial Tower 3
 9 Lawson Street
 SOUTHPORT QLD, 4215

JLC d

and by email to

keith@eqc.com.au and jordan@eqc.com.au


6.1.3. The address for providing the Knights with any notice or document is

C/- Prestige Legal & Corporate Services Pty Ltd
Suite 30204 Level 2 Southport Central Commercial Tower 3
9 Lawson Street
SOUTHPORT QLD, 4215

and by email to

keith@eqc.com.au and jordan@eqc.com.au

EXECUTED by EQUANIMITY CONCEPTS)
PTY LTD ACN 134 439 704 in accordance with)
the Corporations Act 2001 in the presence of:

 Director

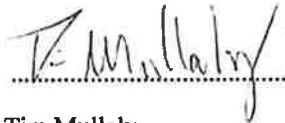
..... Director/Company Secretary

SIGNED BY Mr J Knights and Mr K Knights

 Jordan Keith Knights

 Keith Knights

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


.....

Tim Mullaly

Delegate of Australian Securities and Investments Commission

Date.....30/10/2014.....

JK 

SCHEDULE A

Date	Source	Representation	Rep #
Feb 2012 - July 2013	NSW Police News	<p><i>"BUY AN INVESTMENT PROPERTY AND PAY FOR IT LATER! OR PAY OFF YOUR 25 YEAR HOME LOAN IN LESS THAN 5 YEARS! Better still...do BOTH!!!"*</i></p> <p><i>*The above scenario is based on the actual experience of many of our clients. Actual results may vary, depending on your specific financial circumstances."</i></p>	1
Jun 2012	Virgin in-flight magazine		
Feb, Apr, Jun 2013	SA Police News		
Feb 2013 - May 2013	Jetstar in-flight magazine		
Nov 2012 - Jan 2013	NSW Police News	<p><i>"Buy an investment property like this one for \$120 a week, OR, buy it and pay for it later. OR, pay off your 25 year home loan in less than 5 years"*.</i></p> <p><i>*The above scenario is based on the actual experience of many of our clients. Actual results may vary, depending on your specific financial circumstances."</i></p>	2
Nov 2012 - Jan 2013	Jetstar in-flight Magazine		
Nov 2012- Jul 2013	Qantas in-flight magazine		
End of 2012	Women's Weekly magazine		
Current	YouTube	<p>http://www.youtube.com/watch?v=INJD4g54dM</p> <p><i>"We can show you how you can pay off a 25 year home loan in 5 years without paying any more than what you are paying for right now. You can build a property portfolio and not have to pay for it...The cost for us to do this is one maybe two cups of coffee."</i></p>	3
Current	Company Website	<p>(http://equanimityconcepts.com.au/how-it-works/wages-facility/)</p> <p><i>"By paying the rent, the Negative Gearing and your wages directly to your home loan, and by using your credit card properly, you will pay off your home loan in just 45 months (that's 3 years, 9 months), instead of 25 years. That means you will save 21 years, 3 months...."</i></p>	4

		<p style="text-align: center;">Negative Gearing (paid by the tax department)</p> <p>Rent \$7,590 per month (Wages)</p> <p>Paid off in 3 years And 9 months!</p> <p>\$250,000 Home Loan</p> <p>Credit Card (55 days interest free)</p> <p>\$3000 per month (Living Expenses)</p>	
<p>Current</p>	<p>Company Website</p>	<p style="text-align: right;">5</p> <p>Bank Fund</p> <p>(Bills)</p> <p>Investment Property</p> <p>Rent</p> <p>Negative Gearing (Paid by the Tax Department)</p> <p>Paid off in 7 years And 4 months!</p> <p>\$250,000 Home Loan</p> <p>\$426 per week (Your current loan payment)</p>	

JK

SCHEDULE B

Note: The example used in the scenario on this page is based on a hypothetical case and is intended solely to demonstrate what can be achieved using our Program. Individual, actual results will vary, depending on a person's specific financial circumstances. In this hypothetical example, the client has an annual salary of \$70,000 p.a. and \$250,000 equity in his/her own home. It assumes he/she uses that equity to purchase an investment property for \$315,000. It also assumes he/she borrows \$331,591 (at an interest rate of 7.5%) to purchase that property, and then applies the rental income (assumed to be \$16,000 per year) and Negative Gearing towards the home loan. A secondary bank funding account is used to fund the investment property until the home loan is paid off. It also assumes the Lender's qualifying criteria are met.

JK 