



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:

*Seamus O'Brien
South Yarra, Victoria*

DEFINITIONS

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

Advice includes both general advice and personal advice, as defined in section 766B of the Corporations Act.

AFS Licence means Australian Financial Services Licence.

Authorised Representative has the meaning given to it by section 916A of the Corporations Act.

ASIC means the Australian Securities and Investments Commission

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth) and includes the regulations made under that Act.

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

Clients means both retail clients and wholesale clients, as defined in sections 761G and 761GA of the Corporations Act.

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

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

Financial Product has the meaning given to it by section 763A of the Corporations Act.

Financial Services has the meaning given to it by section 766A of the Corporations Act.

Financial Services Law has the meaning given to it by section 761A of the Corporations Act.

Mr O'Brien means Seamus O'Brien, date of birth 12 December 1973

PIS means Professional Investment Services Pty Ltd, AFS licence 234951

Relevant Period means 1 January 2012 to 9 October 2013.

SoA means Statement of Advice and has the meaning given to it in section 946A of the Corporations Act

BACKGROUND

ASIC's role

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.

Background

2. On 23 July 2013, in accordance with section 912D of the Corporations Act, PIS lodged a breach report with ASIC regarding Mr O'Brien. PIS reported that Mr O'Brien provided advice to clients about products that were not on PIS' approved list of products, that he did not consider alternate products or strategies when providing advice to clients and that he demonstrated a poor level of record keeping and collection of client details.
3. PIS terminated the authorisation of Mr O'Brien on 16 December 2013.

Mr O'Brien

4. Mr O'Brien became an authorised representative of PIS on 27 September 2007 and continued in that capacity until 16 December 2013.
5. Under its AFS Licence, PIS is authorised to operate a financial services business within the meaning of Chapter 7 of the Corporations Act, to provide Advice and to deal in a range of Financial Products, further details of which are set out in its AFS Licence.
6. Mr O'Brien provided advice services under the name Cambridge Financial Planning Pty Ltd and was located in South Yarra, Victoria.

ASIC'S SURVEILLANCE

7. For the purpose of ensuring compliance with the Corporations Act, ASIC conducted a surveillance activity into Mr O'Brien, in particular whether the advice he provided, during the relevant period, had a reasonable basis.
8. In the course of its surveillance, ASIC reviewed 6 client files of Mr O'Brien's and within those files, found extensive contraventions of section 945A (which applied

to Mr O'Brien's advice at the time it was provided) and section 947D of the Corporations Act.

9. Section 945A of the Corporations Act prohibits the giving of personal advice unless there is a reasonable basis for the giving of the advice. In order for there to be a reasonable basis for advice
 - a) the providing entity must determine the relevant personal circumstances of the client;
 - b) the providing entity must make reasonable enquiries in relation to those personal circumstances;
 - c) having regard to the information obtained from the client, in relation to those personal circumstances, the providing entity must give such consideration to, and such consideration of, the subject matter of the advice as is reasonable in all the circumstances; and
 - d) the advice must be appropriate to the client, having regard to that consideration and investigation.
10. Relevant personal circumstances typically include the client's goals, needs and objectives, personal details, risk profile and financial situation.
11. ASIC considers that when an adviser is recommending the replacement of one product with another, the obligation under section 945A(1) to determine, inquire and consider the personal circumstances of the client and to give advice which is appropriate to the client, requires, in part, that an adviser determine, inquire and consider the client's existing product.
12. It appears to ASIC that Mr O'Brien may have contravened section 945A(1) of the Corporations Act, which required him to have a reasonable basis for the advice given.
13. ASIC also considers that Mr O'Brien may have contravened section 946A(1) of the Corporations Act, which required him to give the client an SoA containing the information set out in sections 947C and 947D of the Corporations Act.
14. Section 947C of the Corporations Act requires, among other things, a SoA to include certain information about the advice given, including information about the basis on which the advice was given.
15. Section 947D of the Corporations Act requires additional information to be provided in an SoA when the advice recommends the replacement of one product with another, including information about charges a client may incur and "*any other significant consequences for the client taking the recommended action*". Significant consequences for the client may include things such as a material change in the nature of the risk of the product, changes in the allocation of the client's assets, the potential for exclusion of relevant health conditions when

starting a new risk insurance policy and the re-commencement of the right for the insurer to avoid a contract of insurance for non-fraudulent non-disclosure.

ASIC'S CONCERNS

16. Based on the documents obtained during its surveillance, ASIC found evidence of systemic failures by Mr O'Brien to:
- a) demonstrate a reasonable basis for the advice provided (in contravention of section 945A (as it then was) of the Corporations Act);
 - b) adequately provide replacement product advice to clients (in contravention of sections 945A and 947D of the Corporations Act);
 - c) comply with the record keeping obligations relating to personal advice; and
 - d) comply with the SoA content requirements in section 947C of the Corporations Act.
17. As a result of the matters referred to at clauses 7 to 15 above, ASIC is concerned that during the Relevant Period, Mr O'Brien may have failed to comply with his obligations under the Corporations Act.

Mr O'Brien's response

18. Mr O'Brien submits that ASIC's concerns regarding the breaches of sections 945A and 947D of the Corporations Act 2001 may have been caused by him not complying with the requirements of 947C of the Corporations Act and the record keeping obligations relating to personal advice.

ACKNOWLEDGMENT OF CONCERNS

19. Mr O'Brien acknowledges ASIC's concerns and believes that they are reasonably held.

UNDERTAKINGS

20. Under s93AA of the ASIC Act, Mr O'Brien has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action under the Corporations Act, the undertakings set out in clauses 21 to 34 below.

Undertaking to cease providing financial services

21. Mr O'Brien undertakes that he will not provide financial services, on behalf of himself or any other person, for a period of 12 months, commencing from the date of this undertaking.

22. Mr O'Brien undertakes that, after the 12 months period referred to in clause 21 above has elapsed, should he choose to re-enter the financial services industry, he will notify ASIC of his intention and the details of the AFS licensee he will be authorised or employed by, 28 days prior to his commencement.
23. Mr O'Brien further undertakes that should he re-enter the financial services industry, he will, for a period of 12 months from when he first provides Advice:
 - a) have each piece of advice he provides to clients audited by his AFS licensee;
 - b) record, in writing, any changes that his AFS licensee, required; and
 - c) implement any changes to the advice or the advice documents required by the AFS licensee;prior to providing the advice to the clients.
24. Mr O'Brien undertakes that he will pay the costs of his compliance with this undertaking.
25. Mr O'Brien undertakes that he will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on his costs of compliance with this undertaking, to any third party (including his clients).
26. Mr O'Brien further undertakes that should he leave his AFS licensee prior to the cessation of the 12 month period, the terms of this undertaking will recommence with his appointment to any subsequent AFS licensee or licensees, so that Mr O'Brien will comply with the requirements in paragraphs 22 to 25 for a period of at least 12 months, whether continuous or not.

Requests for documents by ASIC

27. Mr O'Brien will provide all documents and information requested by ASIC, in writing, where the request is for the purpose of assessing Mr O'Brien's compliance with the terms of this undertaking, within ten (10) Business days of the request being made.

AFS licensee

28. Mr O'Brien must obtain the agreement of the AFS licensee that it will assess the advice provided to retail clients by Mr O'Brien to ensure compliance with the relevant legislation and the AFS licensee's policies and procedures, and, if necessary, make written recommendations in relation to each piece of personal financial product advice Mr O'Brien intends providing to retail clients.
29. The agreement of the AFS licensee to undertake the assessment of advice as described in paragraph 23 shall be recorded in writing and a copy provided to ASIC, by Mr O'Brien, at the time of the notification described in paragraph 22 .

Advice Reviews

30. The AFS licensee will review each piece of advice provided to retail clients as described in clause 28 of this undertaking.
31. If the AFS licensee makes written recommendations in relation to the advice, Mr O'Brien will implement the recommendations made by the AFS licensee, prior to providing the Advice to clients.
32. Mr O'Brien will provide all reasonable assistance to the AFS licensee in fulfilling the obligations set out in this undertaking.

Non Compliance

33. Should Mr O'Brien fail to materially comply with any of the clauses in this undertaking, Mr O'Brien acknowledges and accepts that he will be in default of this undertaking.
34. Mr O'Brien undertakes that should he be in default of this undertaking, for a period of five (5) years from the date of default, he will not:
 - a) do any act or engage in any conduct as an AFS Licensee or as a representative of an AFS Licensee;
 - b) hold himself out as a representative of an AFS Licensee or an AFS Licensee;
 - c) provide a Financial Service whether on his own behalf or on behalf of another person who carries on a financial services business;
 - d) be involved in the provision of financial services or financial products;
 - e) hold out that he is in any way authorised to provide particular Financial Services or that he is in any way authorised to provide Financial Services generally; or
 - f) apply to ASIC under section 913A of the Corporations Act for an AFS Licence.

ACKNOWLEDGMENTS

35. Mr O'Brien 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;

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

36. Further, Mr O'Brien 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;
- 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;
- c) Mr O'Brien acknowledges that ASIC had reason to be concerned as to the alleged facts and has offered an undertaking in the terms of clauses 20 to 34 above; and
- d) Mr O'Brien acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr O'Brien and ASIC acknowledge that the date of the undertaking is the date on which it is accepted by ASIC.

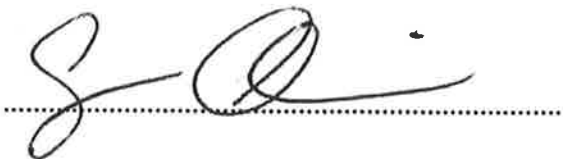
PROVISION OF DOCUMENTS

37. The address for providing ASIC with any notice, document, including but not limited to the Independent Expert's Statement is:

Australian Securities and Investments Commission
Level 20, 240 Queen Street
Brisbane QLD 4001
Attention: Senior Manager – Financial Advisers

38. The address for providing Mr O'Brien with any notice or document is:

Seamus O'Brien
As known to ASIC
South Yarra, Victoria



Seamus O'Brien

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



Joanna Bird

Delegate of Australian Securities and Investments Commission

8/12/14

Date