



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:

First Prudential Markets Pty Ltd
ACN 112 600 281
Level 5
10 Bridge Street
Sydney NSW 2000

1. Definitions

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

AFS Licence means Australian Financial Services Licence.

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

ASX means the licensed financial market operated by Australian Securities Exchange Limited.

CFD means a Contract-For Difference. A CFD is a derivative within the meaning of ss.761D and 1042A of the Corporations Act. A CFD is an agreement between an investor and a CFD issuer which allows the investor to speculate on future price movements in an underlying security (e.g. shares) without acquiring ownership of the security. The value of a CFD mirrors the price of the underlying security.

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

Financial Services Laws has the same meaning given to that term by section 761A of the Corporations Act.

First Prudential means First Prudential Markets Pty Ltd, holder of AFS Licence No 286354, ACN 112 600 281.

Independent Compliance Expert means any person appointed as an independent compliance expert under paragraph 2.18 of this undertaking.

Market Integrity Rules means the *ASIC Market Integrity Rules (ASX Market) 2010*.

Market Participant means a participant of ASX.

PDS means the "FP Markets Contracts for Difference Product Disclosure Statement" dated 19 August 2013 prepared by First Prudential Markets Pty Ltd

Representative has the meaning given by 910A of the Corporations Act and includes:

- (i) an authorised representative of First Prudential; or
- (ii) an employee or director of First Prudential; or
- (iii) an employee or director of a related body corporate of First Prudential; or
- (iv) any other person acting on behalf of First Prudential.

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.

First Prudential

- ~~2.2. First Prudential was incorporated as a company on 21 January 2005.~~
- 2.3. First Prudential holds AFS Licence No. 286354 and has since 31 May 2005. The AFS Licence has been amended and reissued several times, most recently on 5 January 2012.
- 2.4. First Prudential's AFS Licence authorises it to:
 - (a) *provide financial product advice for the following classes of financial products:*
 - (i) *deposit and payment products limited to:*
 - (A) *basic deposit products;*
 - (B) *non-cash payment products;*
 - (ii) *derivatives;*
 - (iii) *foreign exchange contracts;*
 - (iv) *securities; and*
 - (v) *standard margin lending facility;*
 - (b) *deal in a financial product by:*
 - (i) *issuing, applying for, acquiring, varying or disposing of a financial product in respect of the following classes of financial products:*
 - (A) *derivatives;*
 - (B) *foreign exchange contracts; and*
 - (C) *securities; and*

(ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:

(A) deposit and payment products limited to:

- 1. basic deposit products;*
- 2. non-cash payment products;*

(B) derivatives;

(C) foreign-exchange contracts;

(D) securities; and

(E) standard margin lending facility; and

(c) make a market for the following financial products:

(i) foreign exchange contracts; and

(ii) derivatives;

to retail and wholesale clients.

- 2.5. First Prudential offers CFDs to its clients through a Direct Market Access (DMA) model. First Prudential currently has around 20 employees (12 in 2013) and approximately 3,500 active clients.
- 2.6. Under its DMA model, First Prudential automatically hedges its exposure to any CFD position executed by a client by taking an equivalent one-for-one position in the underlying shares. This hedging mechanism can result in CFD trades having an immediate impact on the price for the underlying shares in the same way as trading in shares directly.
- 2.7. First Prudential clients are able to see CFD positions translate to an actual buy or sell order in the underlying shares on ASX.
- 2.8. First Prudential is not a Market Participant and therefore is not governed by the Market Integrity Rules. Accordingly, its orders are placed with ASX via a Market Participant appointed by First Prudential.

ASIC's Investigation

- 2.9. On 20 January 2014, ASIC commenced a formal investigation into a suspected failure by First Prudential to comply with its general obligations under section 912A of the Corporations Act during the period 1 January 2012 to 14 November 2013.
- 2.10. ASIC's investigation followed investigations into the trading of several former clients of First Prudential who were suspected of engaging in market manipulation through their CFD trading, with one former client subsequently having been sentenced to imprisonment for market manipulation. This gave rise to concerns of ASIC that First

Prudential's compliance processes for detecting and dealing with potentially manipulative client trading may not have been adequate.

ASIC's Concerns

- 2.11. ASIC has reviewed First Prudential's compliance policies, processes or procedures that were in place during 2013 as well as information provided by First Prudential's former and current employees in risk and compliance.
- 2.12. On the basis of this review and information gathered, it appears to ASIC that in 2013:
- a) First Prudential had two primary measures to detect/prevent manipulative trading:
 - (i) A warning contained in the PDS issued to First Prudential's clients when opening accounts; and
 - (ii) Implementation of IRESS Order System (IOS) pre-trade filters which required any CFD orders outside of filter parameters to be manually authorised by an operator.
 - b) First Prudential had two policy documents dealing with the monitoring, reporting and escalation within First Prudential of reports of CFD trading for suspected market manipulation:
 - (i) Direct Market Access Trading Policy which set out the factors that operators were to consider when determining whether to manually authorise a CFD trade resulting from an order that was outside certain parameters. An example of such an order includes if the order (if executed) would move the price of the underlying security from 2% to 5% of the last traded price; and
 - (ii) Identifying, Reporting and Managing Breaches Policy and Procedures.
 - c) When determining whether to manually authorise a CFD trade, operators were able to open a separate screen to consider the account's holdings, but that this was at the discretion of the operator depending on the nature of the alert.
 - d) Key staff in risk and compliance were not aware of all of the detail of First Prudential's relevant policies, including how any concerns should be escalated in accordance with those policies.
 - e) Operators were required to read relevant policy documents (including the DMA Trading policy) and familiarise themselves with First Prudential's systems. They would receive "on the job" training which involved sitting next to another risk manager to understand the system.
 - f) There were no adequate policies or processes for suspending or terminating client accounts for manipulative trading.

2.13. ASIC is concerned that :

Compliance Measures, Policies and Procedures

- a) First Prudential failed to fully document and implement compliance measures in order to adequately monitor client CFD trading for market manipulation.
- b) The DMA Policy document in place in 2013 was insufficient to provide effective guidance to First Prudential's Representatives in relation to the decision whether or not to authorise orders which breached the filters.
- c) First Prudential's capacity to determine whether or not a suspicious trade formed part of a pattern prior to the execution of that trade was limited, as First Prudential's operators would consider up to approximately 300 alerts per day and the alerts generated included limited information.

Training

- d) First Prudential failed to provide adequate training to their operators.

Recording Concerns

- e) First Prudential did not have adequate processes or policies for recording concerns against a client's account or for "flagging" accounts for closer monitoring.

Escalation of Concerns

- f) First Prudential did not have adequate policies and processes to escalate concerns in relation to client CFD trading for market manipulation.
- g) When put on notice about concerns regarding the trading of two clients, although First Prudential did take steps to contact the clients concerned, to warn the clients regarding their trading, and to impose additional limits on their trading (for example, by narrowing pre-trade filters); more should have been done to:
 - (i) make appropriate inquiries in relation to the history of trading on the accounts, for example through reviewing historic audit logs or Salesforce information;
 - (ii) adequately monitor the relevant accounts; and
 - (iii) suspend or terminate the relevant accounts.

2.14. Based upon the information and documents obtained during ASIC's investigation, ASIC is concerned that First Prudential may have failed to comply with its obligations under section 912A of the Corporations Act, specifically:

- a) Section 912A(1)(a) of the Corporations Act which requires the licensee to do all things necessary to ensure that financial services covered by the licence are

provided honestly, efficiently and fairly.

- b) Section 912A(1)(b) which requires the licensee to comply with the conditions of the AFS Licence. Condition 3 of First Prudential's AFS Licence requires:

The licensee must establish and maintain compliance measures, as far as reasonably practicable, that the licensee complies with the provisions of the financial services laws.

- c) Section 912A(1)(f) which requires the licensee to ensure that its representatives were adequately trained and competent to provide financial services.
- d) Section 912A(1)(h) which requires the licensee - unless the licensee is a body regulated by APRA - to have adequate risk management systems. These include systems to identify and evaluate risks faced by the licensee's business, (focusing on risks that adversely affect consumers or market integrity) and controls designed to manage or mitigate those risks.

Acknowledgement of ASIC's views

- 2.15. First Prudential acknowledges that the views expressed by ASIC in relation to the alleged facts and ASIC's concerns are reasonably held.
- 2.16. ASIC acknowledges that since the commencement of the ASIC's investigation, First Prudential has taken significant steps to improve their compliance arrangements. Among the steps taken by First Prudential are:
 - a) tightening pre-trade filters;
 - b) implementing post-trade monitoring;
 - c) introducing SMARTS, a sophisticated surveillance system in respect of trading on ASX;
 - d) engaging external compliance consultants to assist First Prudential to update, enhance and implement its internal compliance policies and procedures, including a new Market Misconduct Policy, adopted by First Prudential in August 2014; and
 - e) making significant changes to staffing in the risk and compliance areas.

Undertakings

- 2.17. Under s93AA of the ASIC Act, First Prudential has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action, the undertakings set out in paragraphs 2.18 to 2.34 below.

Engagement of Compliance Expert

- 2.18. First Prudential undertakes to, within 30 days of the date of this undertaking or at such other date agreed by ASIC, appoint a person who has particular expertise in the area of market integrity who is independent of First Prudential and its officers to be

First Prudential's independent expert for the purposes of this undertaking
(Independent Compliance Expert).

- 2.19. The Independent Compliance Expert and the Independent Compliance Expert's terms of engagement must be approved by ASIC before the Independent Expert is engaged. First Prudential must advise ASIC of the expertise and any prior association of the proposed Independent Compliance Expert with First Prudential and its related bodies corporate and officers at the time approval is sought from ASIC. The terms of engagement may only be varied with the agreement of ASIC.
- 2.20. All remuneration and costs associated with the Independent Compliance Expert must be borne by First Prudential.
- 2.21. The terms of engagement must ensure the Independent Compliance Expert reviews and assesses First Prudential's compliance arrangements having regard to the matters referred to in paragraph 2.23 below and provide written reports to First Prudential and ASIC, within the following timeframes:
 - a) within three months after the date of this undertaking or such later time as may be agreed with ASIC; and
 - b) within nine months after the date of this undertaking or such later time as may be agreed with ASIC, unless ASIC confirms to First Prudential under paragraph 2.29 that this report is not required.
- 2.22. The terms of engagement of the Independent Compliance Expert are to make provision for the publication of any report, and/or summary of any report provided for in paragraph 2.21 above.

Initial Report

- 2.23. First Prudential undertakes to engage the Independent Compliance Expert to provide to ASIC and First Prudential, within three months after the date of this undertaking or such later time as may be agreed with ASIC, a written report (**Initial Report**) that:
 - a) assesses whether, in the opinion of the Independent Compliance Expert:
 - i. the Market Misconduct Policy (as adopted by First Prudential in August 2014 and as amended from time to time) (**Market Misconduct Policy**) is appropriate having regard to the business of First Prudential;
 - ii. First Prudential has adequate controls and risk management systems in place for detecting, recording and escalating actual or potential market manipulation by its clients including, without limitation (A) pre-trade filters; (B) the review of pre-trade alerts before manual authorisation of trades; (C) post-trade monitoring procedures; and (D) escalation procedures;.
 - iii. First Prudential is taking reasonable steps to ensure that all staff in risk and compliance, together with operators responsible for reviewing pre-trade

alerts and manually authorising the entering of orders, comply with the Market Misconduct Policy and other policies and procedures relevant to the identification, reporting and escalation of actual or potential manipulative trading.

- iv. First Prudential has generated a culture in which senior management, relevant employees and consultants understand and appreciate the importance of dealing effectively with the risk of potential manipulative trading by clients and complying with First Prudential's relevant policies and procedures, including through relevant training.
- b) Identify any deficiencies from the assessments referred to in paragraph a).
- 2.24. If the Independent Compliance Expert identifies deficiencies in the assessment referred to in paragraph 2.23, the terms of engagement must ensure the Independent Expert sets out in the Initial Report details of the deficiencies and recommendations on how to rectify the deficiencies and a reasonable time for a rectification program to be commenced and implemented.

First Remedial Action Plan

- 2.25. First Prudential must consider the recommendations made by the Independent Compliance Expert to rectify those deficiencies and then provide to ASIC a plan (**First Remedial Action Plan**) setting out the action it proposes to take to rectify those deficiencies and specifying the reasonable time in which this action will be taken.
- 2.26. First Prudential must provide this plan to ASIC within one month after the date that the Initial Report was received by ASIC or such later time as may be agreed with ASIC. If ASIC requires any reasonable modifications to the First Remedial Action Plan, First Prudential must implement the First Remedial Action Plan as modified.
- 2.27. First Prudential must implement the First Remedial Action Plan within the time specified.

Second Report

- 2.28. First Prudential undertakes to engage the Independent Compliance Expert to provide to ASIC and First Prudential, within nine months after the date of this undertaking or such later time as may be agreed with ASIC, a written report (**Second Report**) that:
- a) assesses the effectiveness of the implementation of the recommendations and actions arising from the Initial Report and the First Remedial Action Plan; and
 - b) assesses each of the matters set out in paragraph 2.23.
 - c) identify any deficiencies arising from the assessments referred to in paragraphs a) and b).
- 2.29. The Second Report is not required if ASIC at its discretion determines to give a

notice to First Prudential to that effect before the date which is 7 months after the date of this undertaking.

Second Remedial Action Plan

- 2.30. First Prudential must consider the recommendations made by the Independent Compliance Expert to rectify any deficiencies identified in the Second Report and then provide to ASIC a plan (**Second Remedial Action Plan**) setting out the action it proposes to take to rectify those deficiencies and specifying the reasonable time in which this action will be taken.
- 2.31. First Prudential must provide this plan to ASIC within one month after the date that the Second Report was received by ASIC or such later time as may be agreed with ASIC. If ASIC requires any reasonable modifications to the Second Remedial Action Plan, First Prudential must implement the Second Remedial Action Plan as modified.
- 2.32. First Prudential must implement the Second Remedial Action Plan within the time specified.

Other Undertakings

- 2.33. First Prudential undertakes that it will pay the costs of its compliance with this enforceable undertaking.
- 2.34. First Prudential will provide all documents and information requested by ASIC from time to time for the purpose of assessing First Prudential's compliance with the terms of this enforceable undertaking.

3. Acknowledgements

- 3.1. First Prudential 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.
- 3.2. First Prudential acknowledges that in relation to each report provided to ASIC by the Independent Compliance Expert under paragraph 2.21 of this enforceable undertaking, ASIC:
 - a) may issue a media release referring to the content of the report;
 - b) may from time to time publicly refer to the report; and
 - c) will make available for public inspection a copy of the text of the report, or a copy of the text of a statement that refers to the content of the report.
- 3.3. ASIC acknowledges that in relation to any media release referring to the content of the report, public reference which refers to the content of the report, or text of the report or statement referred to in sub paragraph 3.2c) of this enforceable undertaking

ASIC will delete, remove or not refer to any information:

- a) that First Prudential has asked it not to release; and
- b) that ASIC is satisfied:
 - i. would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of First Prudential and in ASIC's view would be unreasonable to release because the release of the information would or could be expected to unreasonably affect the business, commercial or financial affairs of First Prudential otherwise than is contemplated by this enforceable undertaking; or
 - ii. otherwise should not be disclosed because it would be against the public interest to do so; or
 - iii. consists of personal information of an individual.

3.4. Further, First Prudential 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 enforceable 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.

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

4. Notification

4.1. The address for providing ASIC with any document or notification required by the enforceable undertaking is:

The Senior Manager
Market Participant and Supervision
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001

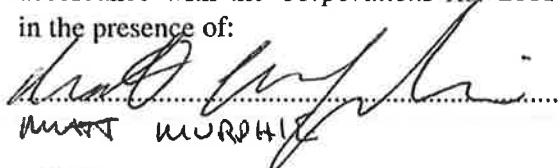
and by email to: market.participants@asic.gov.au

4.2. The address for providing First Prudential with any document or notification required by the enforceable undertaking is:

Matthew Murphie
Managing Director
First Prudential Markets Pty Ltd
Level 5
10 Bridge Street
Sydney NSW 2000

and by email to: m.murphie@fpmarkets.com.au

EXECUTED by FIRST PRUDENTIAL)
PTY LIMITED ACN 112 600 281 in)
accordance with the *Corporations Act 2001*
in the presence of:

..... Director
MATT MURPHIE

..... Director/Company Secretary
JULIANUS ALLEN.

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

.....

Christopher Savundra

Delegate of Australian Securities and Investments Commission

Date: 19th December 2014

