

## VARIATION OF 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:

**James Thomas Banfield**

**813 Highbury Road, Vermont South, Victoria 3133**

#### **1. DEFINITIONS**

- 1.1 Defined terms used in this variation of undertaking have the same meaning as those in the undertakings given by Mr Banfield on 20 September 2013 (Undertakings), a copy of which is attached as an Annexure to this document.

#### **2. BACKGROUND**

- 2.1 On 20 September 2013 Mr Banfield offered the Undertakings to ASIC, and on 20 September 2013 ASIC accepted the Undertakings.
- 2.2 On 6 November 2014 Mr Banfield informed ASIC that he had not complied with paragraph 3.5 of the Undertakings in that he had not undertaken an Ethics course within the prescribed period.
- 2.3 ASIC has agreed to the variation of the Undertakings on the basis that it does not alter the intent of the Undertakings and there has been a material change in the circumstances which led to the undertaking being given, including that Mr Banfield has been unemployed since 1 February 2014 and as a consequence did not have sufficient funds to complete the Ethics course as he undertook to do in paragraph 3.5 of the Undertakings.

#### **3.0 VARIATION OF UNDERTAKINGS**

- 3.1 Under s93AA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), Mr Banfield has offered, and ASIC has agreed to accept, the following variations to the Undertakings:

- 3.1.1 Delete paragraph 3.5.

Insert the following paragraphs at 3.5 and 3.5A of the Undertaking:

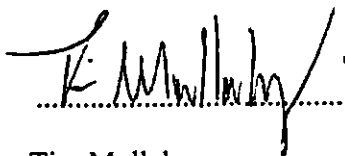
- 3.5 Banfield undertakes to complete an Ethics course conducted by Kaplan Education Pty Ltd (Kaplan) by 31 December 2015. Banfield will:
- 3.5.1 obtain documentary evidence from Kaplan that he has attended and successfully completed the Ethics course (Documentary Confirmation);
  - 3.5.2 within 14 days of successfully completing the Ethics course provide ASIC with the Documentary Confirmation.
- 3.5A Should Banfield fail to successfully complete the Ethics course by 31 December 2015, Banfield undertakes that he will not ever:
- 3.5A.1 provide any financial services or do any act or engage in any conduct as a representative of an Australian Financial Services Licensee;
  - 3.5A.2 deal with, communicate with or interact with any clients of any Australian Financial Services Licensee or authorised representative insofar as that dealing, communication or interaction is connected directly or indirectly with the provision of financial services to any client;
  - 3.5A.3 hold himself out as:
    - 3.5A.4.1 the holder of an AFSL;
    - 3.5A.4.2 an authorised representative of an AFSL holder; or
    - 3.5A.4.3 being in any way authorised to provide financial services;
  - 3.5A.4 carry on a financial services business as defined in Part 7.1 Division 2 of the Corporations Act;
  - 3.5A.5 apply to ASIC under s913A of the Corporations Act for an AFSL.
- 3.2 No other aspects of the Undertakings are changed in any way.
- 4.0 ACKNOWLEDGMENTS**
- 4.1 Mr Banfield acknowledges that ASIC:
- (a) may issue a media release on execution of this variation of 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 variation of undertaking; and
  - (c) will make this variation of undertaking available for public inspection.
- 4.2 Mr Banfield acknowledges that this variation of undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this variation of undertaking or the Undertakings.
- 4.3 Mr Banfield acknowledges that ASIC's acceptance of this variation of 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 or all of the conduct described in this variation undertaking or the Undertakings or any contravention arising from future conduct.

- 4.5 Mr Banfield acknowledges that the acceptance by ASIC of the variation modifies the Undertakings but does not affect the validity of the Undertakings and does not prejudice ASIC's ability to take any action in relation to the Undertakings.
- 4.6 Mr Banfield acknowledges that this variation of undertaking has no operative force until accepted by ASIC.

  
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James Thomas Banfield

17 March 2015

*Accepted by the Australian Securities and Investments Commission under the ASIC Act section 93AA by its duly authorised delegate:*

  
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Tim Mullaly  
Delegate of the Australian Securities and Investments Commission

Dated 24 MARCH 2015