

## 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 by:

*Rankothge Bandula (Ben) Jayaweera  
Brisbane, Queensland*

### DEFINITIONS

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

**Act** means the *Corporations Act 2001*.

**ASIC** means the Australian Securities and Investments Commission.

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

**authorised representative** has the meaning given by section 916A of the 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.

**date of commencement** means the date this enforceable undertaking is accepted by ASIC.

**financial product** has the meaning given by Division 3 of Part 7.1 of the Act.

**financial product advice** has the meaning given by section 766B of the Act.

**financial services** has the meaning given by section 766A of the Act.

**financial services licensee** has the meaning given by section 761A of the Act.

**Growth Plus** means Growth Plus Financial Group Pty Ltd ACN 104 789 906.

**relevant period** means 1 July 2013 to 30 June 2015.

**retail client** has the meaning given by sections 761G and 761GA of the Act.

## **BACKGROUND**

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.
2. Growth Plus holds an Australian financial services licence (no. 274917). Under that licence, Growth Plus is authorised to provide financial product advice and to deal in a range of financial products in relation to retail clients.
3. Mr Jayaweera is a director of Growth Plus. Mr Jayaweera is also an authorised representative of Growth Plus.
4. ASIC was made aware that Growth Plus had failed to pay in full a determination made by the Financial Ombudsman Service Limited relating to financial product advice provided by Mr Jayaweera on behalf of Growth Plus. Following an ASIC review of this advice, concerns were identified regarding failures of the advice to meet the relevant legislative requirements, and potential misleading or deceptive representations as to the nature and risks of the investments associated with the advice.

## **ASIC'S CONCERNS**

5. ASIC reviewed 7 client files in the course of a surveillance of financial product advice provided by Mr Jayaweera on behalf of Growth Plus to retail clients during the relevant period.
6. Based on the files reviewed during its surveillance, ASIC has concerns that Mr Jayaweera may have:
  - (a) failed to act in the best interests of the clients in relation to the advice;
  - (b) failed to ensure the advice provided to his clients was appropriate; and
  - (c) failed to ensure that, in the provision of advice to clients, he had prioritised the client's interests before his own or that of Growth Plus.
7. As a result, ASIC is concerned that, during the relevant period, Mr Jayaweera may have failed to comply with sections 961B, 961G and 961J of the Act.

## **ACKNOWLEDGMENT OF CONCERNS**

8. Mr Jayaweera acknowledges that ASIC's concerns are reasonably held.

## **UNDERTAKINGS**

9. Under section 93AA of the ASIC Act, Mr Jayaweera has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action under the Act against Mr Jayaweera, the undertakings set out in this enforceable undertaking.
10. Mr Jayaweera undertakes, from the date of commencement, that he:
  - (a) will not provide any financial product advice on his own behalf or on behalf of another person to any retail client;
  - (b) will not hold himself out as being authorised to provide financial product advice on his own behalf or on behalf of another person to any retail client;
  - (c) will not be a director or senior manager of any body corporate that provides financial product advice on its own behalf or on behalf of another person to any retail client; and
  - (d) will not be involved in any capacity in the provision of financial product advice to any retail client.
11. The undertakings specified in paragraph 10 do not prevent Mr Jayaweera from being a director of Growth Plus in circumstances where Growth Plus is authorised to provide financial product advice on behalf of a financial services licensee, provided that Mr Jayaweera, in his capacity as director of Growth Plus, ensures that Growth Plus:
  - (a) does not provide financial product advice on behalf of the licensee; and
  - (b) does not authorise any individual under subsection 916B(3) of the Act to provide financial product advice on behalf of the licensee.
12. Mr Jayaweera, in his capacity as director of Growth Plus, undertakes to procure Growth Plus to make an application to ASIC requesting that ASIC vary the authorisation condition on its licence to remove the authorisation to provide financial product advice to retail clients.
13. Mr Jayaweera undertakes to provide all documents and information requested by ASIC, in writing, where the request is for the purpose of assessing Mr Jayaweera's compliance with the terms of this undertaking, within 10 business days of the request being made.

## **OTHER ACKNOWLEDGMENTS**

14. Mr Jayaweera 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.

15. Further, Mr Jayaweera 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) this undertaking has no operative force until accepted by ASIC.


**PROVISION OF DOCUMENTS**

16. The address for providing ASIC with any notice or document is:

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

17. The address for providing Mr Jayaweera with any notice or document is:


Ben Jayaweera  
[As known to ASIC]  
Brisbane, Queensland



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Ben Jayaweera

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



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Joanna Bird

Delegate of Australian Securities and Investments Commission

16/2/16  
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Date