

## 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:

*Michael Melamed  
Melbourne, Victoria*

### DEFINITIONS

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

**Acceptance Date** means the date of acceptance by ASIC of this enforceable undertaking.

**AFS Licence** means Australian Financial Services Licence.

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

**Authorised Representative** has the meaning given by section 761A of the Corporations Act.

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

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

**Financial Product** has the meaning given by Division 3 of Part 7.1 of the Corporations Act.

**Financial Product Advice** has the meaning given by section 766B of the Corporations Act.

**Financial Service** has the meaning given by Division 4 of Part 7.1 of the Corporations Act.

**Financial Services Business** has the meaning given by Chapter 7 of the Corporations Act.

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

**Financial Services Licensee** has the meaning given by section 761A of the Corporations Act.

**Mr Melamed** means Michael Melamed, Authorised Representative of Synchron from 4 February 2013 to 6 March 2015.

**Relevant Period** means the period from 6 March 2013 to 28 January 2015.

**Representative** has the meaning given by section 910A of the Corporations Act.

**Statement of Advice** has the meaning given by section 761A of the Corporations Act.

**Synchron** means Synchronised Business Services Pty Ltd (ACN 007 207 650).

### **ASIC's ROLE**

2. 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**

3. Since 1 March 2004, Synchron has held an AFS Licence (No: 243313) authorising it to carry on a Financial Services Business to provide Financial Product Advice and to deal in Financial Products. Synchron has appointed certain persons (including Mr Melamed) as Authorised Representatives to provide Financial Product Advice on its behalf.
4. Mr Melamed was appointed as an Authorised Representative of Synchron on 4 February 2013.
5. Under this authorisation, Mr Melamed was specifically authorised to advise on the following product areas on behalf of Synchron:
  - (a) life products including:
    - (i) investment life insurance products;
    - (ii) life risk insurance products; and
  - (b) superannuation.
6. Mr Melamed ceased to be an Authorised Representative of Synchron on 6 March 2015.
7. During the Relevant Period, Mr Melamed was acting in his capacity as an Authorised Representative of Synchron.

### *ASIC's surveillance*

8. ASIC carried out surveillance into the conduct of Mr Melamed during the Relevant Period and in particular, into whether he contravened provisions of Chapter 7 of the Corporations Act with respect to Financial Services provided by him as an Authorised Representative of Synchron.
9. As part of the surveillance, ASIC reviewed a number of Client files (*Client Files*) of Mr Melamed.

*ASIC's views concerning the conduct and circumstances*

10. With respect to the Client Files, in ASIC's view, it appeared that Mr Melamed:
- (a) failed to maintain accurate records relating to the provision of Financial Product Advice, including;
    - (i) Statements of Advice;
    - (ii) Client fact finding records;
    - (iii) versions of Financial Services Guides provided to Clients;
    - (iv) dates when Client files were created; and
    - (v) Client profile documents.
  - (b) failed to make reasonable inquiries or otherwise into Clients' relevant objectives, financial situation and needs;
  - (c) failed to conduct a needs analysis to determine if the amount of insurance cover sought was in Clients' best interests;
  - (d) recommended insurance cover where Clients were unable to afford insurance premiums; and
  - (e) failed to demonstrate the ability, professional skills and knowledge required to competently provide Financial Services.

**ASIC's CONCERNS**

11. In light of the conduct and circumstances outlined in paragraph 10 of this enforceable undertaking, with respect to the Client Files, ASIC has concerns that Mr Melamed acting in his capacity as an Authorised Representative of Synchron:
- (a) failed to:
    - (i) act in the best interests of the Client in relation to the Financial Product Advice provided (in contravention of section 961B of the Corporations Act);
    - (ii) provide Financial Product Advice appropriate to the Client (in contravention of section 961G of the Corporations Act);
  - (b) was not adequately trained and competent to provide Financial Services.

**ACKNOWLEDGEMENT OF ASIC's CONCERNS**

12. Mr Melamed acknowledges that ASIC's concerns set out in paragraph 11 of this enforceable undertaking are reasonably held.

**UNDERTAKINGS**

13. Under section 93AA of the ASIC Act, Mr Melamed has offered, and ASIC has agreed to accept, the undertakings as set out in paragraphs 14 to 19 (inclusive) of this enforceable undertaking, as an alternative to ASIC exercising its power under section 920A of the Corporations Act to make a banning order against Mr Melamed.

*Cease to provide financial services*

14. Mr Melamed undertakes, from the Acceptance Date, that he will not provide Financial Services, on his own behalf or on behalf of another person, for a period of three years.

*Re-entering the financial services industry*

15. In the event that Mr Melamed intends to re-enter the Financial Services industry after the three year period referred to in paragraph 14 of this enforceable undertaking has elapsed, Mr Melamed undertakes to notify ASIC in writing with details of any such intention including any intention to:
- (a) apply for an AFS Licence prior to making that application; or
  - (b) become an Authorised Representative of a Financial Services Licensee, prior to being authorised or employed by that Financial Services Licensee.
16. In the event that Mr Melamed intends to re-enter the Financial Services industry after the three year period referred to in paragraph 14 of this enforceable undertaking has elapsed, by becoming an Authorised Representative of a Financial Services Licensee, Mr Melamed undertakes to successfully complete the training requirements described in paragraphs 17 to 19 of this enforceable undertaking prior to being authorised or employed by that Financial Services Licensee.

*Training*

17. Prior to re-entering the Financial Services industry as an Authorised Representative, Mr Melamed undertakes to enrol in the following training courses:
- (a) Kaplan Education Pty Ltd--'ASIC RG 146 Competency Assessment and Gap Training Program for planners and advisers' (or similar as approved in writing by ASIC prior to enrolment);
  - (b) Financial Planning Association of Australia Limited--'Ethics and Conduct' (or similar as approved in writing by ASIC prior to enrolment); and
  - (c) any other training course necessary to be competent to provide Financial Services on behalf of a Financial Services Licensee.
18. In the event that Mr Melamed has not successfully completed the training courses referred to in paragraph 17 of this enforceable undertaking, Mr Melamed undertakes to not provide Financial Services until such courses are successfully completed.
19. As soon as practicable following the completion of a training course referred to in paragraph 17 of this enforceable undertaking, Mr Melamed undertakes to provide ASIC with documents substantiating successful completion of that training course.

## **OTHER ACKNOWLEDGEMENTS**

20. Mr Melamed acknowledges that ASIC:

- (a) may issue a media release on the execution of this enforceable 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 enforceable undertaking;
- (c) will make this enforceable undertaking available for public inspection; and
- (d) will publicly report on Mr Melamed's compliance with this enforceable undertaking.

21. Further, Mr Melamed acknowledges that:

- (a) ASIC's acceptance of this enforceable undertaking:
  - (i) 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 that is the subject of ASIC's concerns in this enforceable undertaking; and
  - (ii) 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 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;
- (c) this enforceable undertaking has no operative force until accepted by ASIC;
- (d) the date of commencement of this enforceable undertaking is the Acceptance Date.

## **PROVISION OF DOCUMENTS**

22. The address for providing ASIC with any notice or document in connection with this enforceable undertaking is:

Australian Securities and Investments Commission  
Attention: Senior Manager, Financial Advisers  
GPO Box 9827  
PERTH WA 6001

23. The address for providing Mr Melamed with any notice or document in connection with this enforceable undertaking is:

Michael Melamed  
[As known to ASIC]  
MELBOURNE VICTORIA

*M Melamed*

.....  
**Michael Melamed**

Date: **5/05/2015**

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

*L Macaulay*

.....  
**Louise Macaulay**

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: **11/5/16**