

**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:

**Ascentiv Group Pty Ltd (ACN 128 348 443)**

**and**

**Chris Pappas**

## 1. Definitions

1.1 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.

**Ascentiv** means Ascentiv Group Pty Ltd ACN 128 348 443.

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

**Authorising Licensee** means the AFS Licence holder (other than Ascentiv) that has authorised or is intending to authorise Chris Pappas to provide SMSF Establishment Advice on its behalf.

**Chris Pappas** means Chris Pappas, sole director/secretary of Ascentiv since 1 March 2009.

**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 Chapter 7 of the Corporations Act.

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

**Financial Services** 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.

**Letter** has the meaning given by paragraph 6.3 of this enforceable undertaking.

**Personal Advice** has the meaning given by subsection 766B(3) of the Corporations Act.

**Relevant Clients** has the meaning given by paragraph 6.3 of this enforceable undertaking.

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

**SMSF** means a self-managed superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

**SMSF Advice** means Financial Product Advice recommending the establishment or use of an SMSF.

**SMSF Establishment Advice** means Financial Product Advice recommending the establishment of an SMSF.

**SMSF Files** has the meaning given by paragraph 3.3 of this enforceable undertaking.

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

## **2. 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.

## **3. Background**

- 3.1 Since 7 December 2012, Ascentiv has held an AFS Licence (No: 430179) authorising it to carry on a Financial Services Business to provide Financial Product Advice and to deal in Financial Products. Chris Pappas is the sole director/secretary of Ascentiv and the named key person under Ascentiv's AFS Licence. Ascentiv has appointed certain persons (including Chris Pappas) as Representatives to provide Financial Product Advice on its behalf.
- 3.2 Ascentiv and/or Chris Pappas has a number of related entities who offer SMSF establishment services, finance services, accounting services, taxation services and real property services. Chris Pappas is the sole director/secretary of some of these related entities. At the time Ascentiv provides Financial Product Advice, Ascentiv's Clients may be referred to one or more of Ascentiv's and/or Chris Pappas' related entities.
- 3.3 ASIC conducted a surveillance of Ascentiv to monitor its compliance with certain Financial Services Laws when SMSF Advice was provided by or on behalf of Ascentiv. As part of the surveillance, in October 2014 ASIC requested and Ascentiv provided a sample of recent SMSF Advice Client files (*SMSF Files*).
- 3.4 Within the SMSF Files, ASIC found numerous instances where in ASIC's view, SMSF Advice provided by Ascentiv Representatives included:
- (a) inadequate enquiries about the Clients' relevant circumstances prior to providing advice;
  - (b) SMSF establishment recommendations for Clients with low balances who would be unlikely to increase their balances as suggested in the Statement of Advice; and/or
  - (c) recommendations for gearing within an SMSF structure where Clients did not have sufficient assets or cash flow to achieve the strategy or where the Clients' risk profile indicated that they were not suited to such as strategy.
- 3.5 Accordingly, ASIC considers that Ascentiv Representatives did not comply with their obligations and thereby contravened certain provisions of the Corporations Act, by failing to:
- (a) act in the best interests of the Client in relation to the Personal Advice provided (in contravention of section 961B of the Corporations Act);
  - (b) provide Personal Advice appropriate to the Client (in contravention of section 961G of the Corporations Act);

- (c) include in the Statement of Advice information about the remuneration (including commission) or other benefits and information about any other interests, whether pecuniary or not and whether direct or indirect, that might reasonably be expected to be or have been capable of influencing the providing entity in providing the Personal Advice (in contravention of paragraphs 947C(2)(e) and 947C(2)(f) of the Corporations Act);
- (d) ensure that statements and information included in the Statements of Advice were worded in a clear, concise and effective manner (in contravention of subsection 947C(6)) of the Corporations Act; and
- (e) provide adequate Personal Advice when recommending replacement of one Financial Product with another (in contravention of section 947D of the Corporations Act).

3.6 Following a request by ASIC in March 2015, Ascentiv arranged for a third party to independently review the SMSF Files. The findings from this independent review were broadly consistent with ASIC's findings.

3.7 In October 2015, Ascentiv and ASIC commenced negotiations for Ascentiv to enter into an enforceable undertaking in accordance with section 93AA of the ASIC Act to take remedial steps to address ASIC's concerns and to ensure compliance with the Corporations Act.

3.8 On 17 February 2016, Ascentiv notified ASIC that it intended to wind-up its Financial Services Business and voluntarily cancel its AFS Licence. On the same day, Chris Pappas notified ASIC that he intended to become a Representative of an Authorising Licensee to provide Financial Product Advice limited to SMSF Establishment Advice.

#### **4. ASIC's concerns**

4.1 In light of paragraph 3.5 of this enforceable undertaking, ASIC has concerns regarding:

- (a) deficient SMSF Advice provided by Ascentiv through its Representatives;
- (b) Ascentiv's management of conflicts of interests; and
- (c) Ascentiv's measures for monitoring and supervising (including training) of its Representatives.

4.2 Accordingly, with respect to the SMSF Files, ASIC considers that Ascentiv may not have complied with its obligations and thereby may have contravened certain provisions of the Corporations Act, by failing to:

- (a) comply with the Financial Services Laws and take reasonable steps to ensure its Representatives do the same (in contravention of paragraphs 912A(1)(c) and 912A(1)(ca) of the Corporations Act);
- (b) have in place adequate arrangements for the management of conflicts of interest (in contravention of paragraph 912A(1)(aa) of the Corporations Act);

- (c) ensure its Representatives are adequately trained and competent to provide Financial Services (in contravention of paragraph 912A(1)(f) of the Corporations Act); and
- (d) comply with the conditions on the AFS Licence (in contravention of paragraph 912A(1)(b) of the Corporations Act), by failing to comply with condition 4 on its AFS Licence requiring Ascentiv to establish and maintain compliance measures that ensure, as far as is reasonably practicable, that Ascentiv complies with the provisions of the Financial Services Laws.

## **5. Acknowledgements**

- 5.1 Ascentiv and Chris Pappas severally acknowledge that ASIC's concerns set out in paragraph 4 of this enforceable undertaking are reasonably held.
- 5.2 Ascentiv acknowledges that, following cancellation of its AFS Licence pursuant to the application referred to in paragraph 6.2 of this enforceable undertaking, it will be required to comply with ASIC's written notice of cancellation and any aspects of Ascentiv's AFS Licence that ASIC has specified have continued effect in accordance with section 915H of the Corporations Act including, but not limited to, maintaining:
  - (a) a dispute resolution system complying with subsection 912A(2) of the Corporations Act; and
  - (b) an adequate professional indemnity insurance policy until 20 May 2017.<sup>1</sup>
- 5.3 ASIC acknowledges that Ascentiv and Chris Pappas have co-operated with ASIC.

## **6. Undertakings**

### Acceptance of the enforceable undertaking

- 6.1 Under section 93AA of the ASIC Act, Ascentiv and Chris Pappas have severally offered the respective undertakings in this enforceable undertaking, and ASIC has agreed to accept those undertakings as an alternative to ASIC commencing civil proceedings or taking administrative action against Ascentiv in relation to ASIC's concerns set out in paragraphs 4.1 and 4.2 of this enforceable undertaking.

### AFS Licence cancellation

- 6.2 Within seven days after the Acceptance Date (or such longer period as approved in writing by ASIC), Ascentiv undertakes to lodge an application pursuant to paragraph 915B(3)(d) of the Corporations Act, for ASIC to cancel Ascentiv's AFS Licence.

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<sup>1</sup> 20 May 2017 is 12 months after the expiry of Ascentiv's current professional indemnity insurance policy.

### Write to Ascentiv Clients

- 6.3 Within 21 days after the Acceptance Date (or such longer period as approved in writing by ASIC), Ascentiv undertakes to notify by letter (*Letter*) its Clients (*Relevant Clients*) who were provided with SMSF Advice since 1 January 2014, that:
- (a) Ascentiv has entered into an enforceable undertaking with ASIC and that the enforceable undertaking can be viewed on ASIC's enforceable undertakings register available through ASIC's website;
  - (b) pursuant to that enforceable undertaking Ascentiv has lodged an application with ASIC for ASIC to cancel Ascentiv's AFS Licence and on this basis is in the process of winding-up its Financial Services Business;
  - (c) Clients may have been provided with Financial Product Advice that was not in their best interests in contravention of section 961B of the Corporations Act and that they may wish to consider having their advice reviewed;
  - (d) Clients have the right to seek dispute resolution through Ascentiv's internal dispute resolution scheme and failing that, Ascentiv's external dispute resolution scheme (inclusive of all relevant contact details); and
  - (e) if Clients want to make a complaint, they should lodge the complaint with Ascentiv within three months from the date of the Letter.
- 6.4 Ascentiv undertakes to obtain ASIC's written approval of the form, content and manner of delivery of the Letter, prior to sending the Letter to the Relevant Clients.
- 6.5 Within seven days (or such longer period as approved in writing by ASIC) after notifying all Relevant Clients by way of the Letter, Ascentiv undertakes to provide ASIC with:
- (a) confirmation that all Relevant Clients have been so notified by way of the Letter in the form, content and manner of delivery as approved by ASIC; and
  - (b) a list of all Relevant Clients' contact details who were so notified by way of the Letter.

### Dispute resolution

- 6.6 For any complaints received from Clients in relation to any Financial Services provided by Ascentiv, Ascentiv undertakes to engage a suitable service provider (as approved by ASIC in writing prior to engagement) within 21 days of the Acceptance Date, for a period no less than six months from the date of the Letter. The service provider is to consider each complaint, review the Client file and recommend whether and how the Client should be remediated for any financial loss or any other detriment suffered.
- 6.7 In the event a complaint made by a Client is unable to be resolved to the Client's satisfaction within 45 days from the receipt of the complaint, Ascentiv undertakes to notify its professional indemnity insurance policy provider of the complaint.

### Chris Pappas as a Representative

- 6.8 Chris Pappas undertakes to complete an SMSF specialist training course prior to being appointed a Representative of an Authorising Licensee.
- 6.9 Chris Pappas undertakes for a period of two years from the Acceptance Date, that within seven days (or such longer period as approved in writing by ASIC) after being appointed a Representative of an Authorising Licensee, to:
- (a) notify ASIC in writing that he has been appointed a Representative of an Authorising Licensee (inclusive of all relevant details);
  - (b) provide an electronic copy of this enforceable undertaking to the Authorising Licensee; and
  - (c) provide confirmation in writing to ASIC that the Authorising Licensee has been provided with an electronic copy of this enforceable undertaking.

### Other undertakings

- 6.10 Chris Pappas undertakes for a period of two years from the Acceptance Date, to not apply for an AFS Licence or to act as an officer of an AFS Licensee.
- 6.11 Chris Pappas undertakes not to provide Financial Services other than SMSF Establishment Advice for the period of two years from the Acceptance Date.
- 6.12 Ascentiv and Chris Pappas severally undertake that they will pay the costs of their compliance with this enforceable undertaking, including the remuneration and costs associated with the engagement of a suitable service provider as referred to in paragraph 6.6 of this enforceable undertaking.
- 6.13 Ascentiv and Chris Pappas severally undertake that they will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on their costs of compliance with this enforceable undertaking, to any third party (including to Clients).
- 6.14 Ascentiv and Chris Pappas severally undertake to, within 14 days after receiving a written request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing their compliance with the terms of this enforceable undertaking, including any correspondence with Clients and any Authorising Licensee.

## **7. Acknowledgements as to the operation of this enforceable undertaking**

- 7.1 Ascentiv and Chris Pappas severally acknowledge that ASIC:
- (a) may issue a media release on 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 Ascentiv's and Chris Pappas' compliance with this enforceable undertaking.

7.2 Ascentiv and Chris Pappas further severally acknowledge that:

- (a) ASIC's acceptance of this enforceable 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 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; and
- (d) the date of commencement of this enforceable undertaking is the Acceptance Date.

7.3 This enforceable undertaking constitutes two separate undertakings:

- (a) an undertaking given by Ascentiv to ASIC; and
- (b) an undertaking given by Chris Pappas to ASIC.

## **8. Provision of documents**

8.1 The address for providing ASIC with any document which this enforceable undertaking requires to be provided to ASIC is:

Senior Manager  
Financial Advisers  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street  
Melbourne VIC 3000

8.2 The address for providing Ascentiv and/or Chris Pappas with any document which this enforceable undertaking requires to be provided to Ascentiv and/or Chris Pappas is:

Chris Pappas  
Ascentiv Group Pty Ltd  
Aero Building G03  
247 Coward Street  
Mascot NSW 2020



**Executed by Ascentiv Group )**  
**Pty Ltd**  
in accordance with section 127 )  
of the *Corporations Act*



Chris Pappas

Director/Company Secretary

Date: 6-5-16

**Executed by Chris Pappas )**  
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Chris Pappas

Date: 6-5-16

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



Louise Macaulay

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: 4/5/16