

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:

Brian Dobinson
Mt Mee, Queensland

DEFINITIONS

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 916A 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 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.

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

Mr Dobinson means Brian Dobinson, Authorised Representative of TFSA from 1 October 2010 to 11 December 2015.

Relevant Period means the period from 1 July 2013 to 1 December 2015.

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

TFSA means Total Financial Services Australia Limited ACN 003 771 579.

ASIC'S ROLE

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.

BACKGROUND

2. Since 10 February 2003, TFSA has held an AFS Licence (No: 224954) authorising it to carry on a Financial Services Business to provide Financial Product Advice and to deal in Financial Products. TFSA has appointed certain persons (including Mr Dobinson) as Authorised Representatives to provide Financial Product Advice on its behalf.
3. Mr Dobinson was appointed as an Authorised Representative of TFSA on 1 October 2010.
4. Under this authorisation, Mr Dobinson was relevantly authorised to provide Financial Product Advice.
5. As an Authorised Representative of TFSA, Mr Dobinson provided Financial Product Advice through his related entities including Dobinson Financial, Dobinson Holdings Pty Ltd and Lighthouse Redcliffe Pty Ltd. Mr Dobinson operated out of offices located in Redcliffe, Queensland.
6. Mr Dobinson ceased to be an Authorised Representative of TFSA on 11 December 2015.
7. During the Relevant Period, Mr Dobinson was acting in his capacity as an Authorised Representative of TFSA.

ASIC's surveillance

8. ASIC carried out surveillance into the conduct of Mr Dobinson 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 TFSA.
9. As part of the surveillance, ASIC reviewed a number of Client files (**Client Files**) of Mr Dobinson.

ASIC's views concerning the conduct and circumstances

10. With respect to the Client Files, in ASIC's view, it appeared that Mr Dobinson:
 - (a) used a 'one size fits all' advice model regardless of individual Client circumstances;
 - (b) failed to properly consider and advise whether it was in the best interests of Clients to switch from an existing defined benefit superannuation fund into a recommended accumulation superannuation fund;

- (c) failed to make reasonable inquiries or otherwise into Clients' relevant objectives, financial situation and needs;
- (d) failed to consider all costs, risks, benefits and disadvantages when advising Clients to switch from an existing defined benefit superannuation fund into a recommended accumulation superannuation fund;
- (e) advised Clients to switch superannuation funds when it was not appropriate to do so;
- (f) failed to properly disclose the disadvantages and implications of switching from an existing defined benefit superannuation fund into a recommended accumulation superannuation fund;
- (g) disclosed fees and charges in a way that made the switch to a recommended accumulation superannuation fund appear to be significantly cheaper than it actually was;
- (h) disclosed superannuation fund performance figures in a way that misrepresented the outperformance of a recommended accumulation superannuation fund;
- (i) used generic newsletters and/or pre-filled documents to make recommendations to Clients without giving a general advice warning and in a way that was likely to mislead Clients as to whether those recommendations were personal advice;
- (j) failed to demonstrate the ability, professional skills and knowledge required to competently provide Financial Services; and
- (k) could not in the future be relied upon to discharge the duties and obligations imposed by the Corporations Act on a provider of 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 Dobinson acting in his capacity as an Authorised Representative of TFSA:

- (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);
 - (iii) give priority to the Clients' interests when providing the Financial Product Advice (in contravention of section 961J of the Corporations Act);
 - (iv) provide adequate Financial Product Advice when recommending replacement of one Financial Product with another (in contravention of section 947D of the Corporations Act);
 - (v) ensure the Financial Product Advice provided to Clients did not contain false or misleading statements likely to induce them to deal in a Financial Product (in contravention of section 1041E of the Corporations Act);

- (vi) ensure that a Statement of Advice was given to Clients (in contravention of section 946A of the Corporations Act);
- (b) was not adequately trained and competent to provide Financial Services;
- (c) was likely to in the future contravene a Financial Services Law.

ACKNOWLEDGMENT OF CONCERNS

12. Mr Dobinson 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 Dobinson has offered, and ASIC has agreed to accept, the undertakings as set out in paragraphs 14 to 18 (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 Dobinson.

Permanently cease to provide financial services

14. Mr Dobinson undertakes, from the Acceptance Date, that he will:
- (a) not do any act or engage in any conduct as a Representative of a Financial Services Licensee;
 - (b) not hold himself out as a Representative of a Financial Services Licensee, or hold out that he is in any way authorised to provide a particular Financial Service or Services or that he is in any way authorised to provide Financial Services generally;
 - (c) not provide a Financial Service or Services, whether on his own behalf or on behalf of another person who carries on a Financial Services Business, whether as an employee of that person or otherwise;
 - (d) not be involved in any way in the provision of Financial Services or Financial Products;
 - (e) not carry on a business in relation to Financial Products or Financial Services, either directly or indirectly as a director, partner, manager, servant or agent;
 - (f) not apply to ASIC under section 913A of the Corporations Act for an AFS Licence;
 - (g) not author, publish or circulate any document or information relating to Financial Services or Financial Products, including any factual information or information of a general nature;
 - (h) indicate to any Client seeking Financial Product Advice from him, that because of this enforceable undertaking, he can no longer provide Financial Product Advice;
- at any time in the future.

Assist with review program

15. In relation to any review program (**Review Program**) required to be conducted for the purposes of remediating any Client who was provided with Financial Product Advice by Mr Dobinson as Authorised Representative of TFSA, Mr Dobinson undertakes to:
- (a) give a relevant person (**Relevant Person**) (including ASIC, TFSA or an independent expert) any information, document, or explanation reasonably requested by the Relevant Person in relation to any matter in any way connected with the Relevant Person's role in a Review Program;
 - (b) otherwise reasonably assist the Relevant Person with their role in a Review Program.

Costs

16. Mr Dobinson undertakes that he will pay all costs of compliance with this enforceable undertaking.
17. Mr Dobinson undertakes that he will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on his cost of compliance with this enforceable undertaking to any third party (including to Clients).

Requests for documents from ASIC

18. Mr Dobinson undertakes to provide all documents and information requested by ASIC from time to time, for the purposes of assessing Mr Dobinson's compliance with the terms of this enforceable undertaking, within 7 days after receiving a request from ASIC (or such longer period as may be agreed to in writing by ASIC).

OTHER ACKNOWLEDGMENTS

19. Mr Dobinson acknowledges 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; and
 - (c) will make this enforceable undertaking available for public inspection.
20. Further, Mr Dobinson 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.

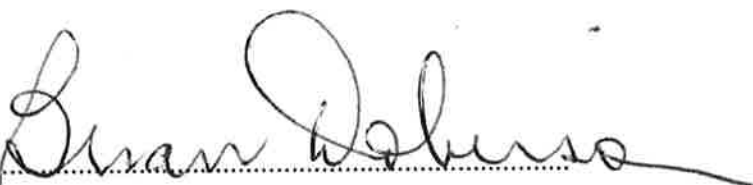
PROVISION OF DOCUMENTS

21. The address for providing ASIC with any notice or document which this enforceable undertaking requires to be provided to ASIC is:

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

22. The address for providing Mr Dobinson with any notice or document which this enforceable undertaking requires to be provided to Mr Dobinson is:

Brian Dobinson
'Mia Mia'
via Mt Mee, Queensland 4521



Brian Dobinson

Date: 12/05/16

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



Joanna Bird

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: