

Annexure A

TERMS OF AGREEMENT WITH INDEPENDENT EXPERT

Definitions

In addition to terms defined elsewhere in this Agreement, the following definitions apply:

Advice means personal advice and has the meaning given to it by section 766B of the Corporations Act.

AFS Licence means Australian Financial Services Licence.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth) and includes the regulations made under that Act.

Audit Review(s) means an assessment of Advice to test compliance with Financial Services Laws as required by clauses 7 to 10 of this agreement.

Authorised Representative has the meaning given to it by section 916A of the Corporations 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.

Client(s) means both retail and wholesale clients and has the meaning given to them by section 761G of the Corporations Act.

Compliance Breach(es) means a breach of a financial services law.

Corporations Act means the *Corporations Act 2001* (Cth).

Corporations Regulations means the *Corporations Regulations 2001* (Cth).

Enforceable Undertaking means the written undertakings dated 17 September 2015, offered by Mr Menkens to ASIC

Financial Product has the meaning given to it by section 763A of the Corporations Act.

Financial Services has the meaning given to it by section 766A of the Corporations Act.

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

Independent Expert means a compliance expert appointed in accordance with the terms of clauses 17 to 24.3 of the Enforceable Undertaking.

Independent Expert Engagement Date means the date upon which the Independent Expert signs this agreement.

Independent Expert's Statement means the written report(s) provided by the Independent Expert in accordance with the terms of clause 29 of the Enforceable Undertaking.

Menkens Financial Group means Menkens Financial Group Pty Ltd ACN 146 152 892

Mr Menkens means Leo Ignatius Menkens, date of birth 19 June 1950

Relevant Period means 16 December 2013 to 6 February 2015.

Review Period means 12 calendar months from the Independent Expert Engagement Date, or until such further period as may be caused by any extension as required by clause 7.4 of this agreement.

Background

1. Under the Enforceable Undertaking, Mr Menkens undertook to obtain the agreement of a compliance expert:
 - 1.1. who is independent of Mr Menkens and the Menkens Financial Group; and
 - 1.2. had not previously provided compliance services to Mr Menkensto act as Independent Expert for the purposes of the Enforceable Undertaking.
2. The Independent Expert must be approved by ASIC before the Independent Expert is formally engaged by Mr Menkens.
3. At the time the approval is sought from ASIC, Mr Menkens must provide the following information to ASIC in writing:
 - 3.1. the Independent Expert's name, position and summary of their relevant qualifications and experience; and
 - 3.2. confirmation of the Independent Expert's independence with reference to clause 1 above.
4. The terms of engagement of the Independent Expert may only be varied with the express agreement of ASIC.
5. Upon the engagement of the Independent Expert, Mr Menkens must ensure the Independent Expert has copies of the current compliance policies and procedures relating to Advice issued by any AFS Licensee for whom Mr Menkens acts as Authorised Representative during the Review Period.
6. Mr Menkens and the expert acknowledge that:
 - the work of the expert is being carried out for Mr Menkens and ASIC
 - ASIC is relying on the work of the expert

- ASIC is entitled to be informed of, provided with, or be copied into all communications between Mr Menkens and the expert, including but not limited to negotiations about fees.
- ASIC:
 - (a) may issue a media release referring to the content of expert reports;
 - (b) may from time to time publicly refer to the content of the expert reports; and
 - (c) will make available for public inspection a summary of the content of the expert reports, or a statement that refers to the content of the expert reports.

Obligations

7. The Independent Expert shall undertake the following tasks:

Pre vetting

- 7.1. Audit the next five (5) pieces of Advice Mr Menkens prepared for Clients prior to the Advice being provided to these Clients;
- 7.2. record in writing any changes that are required to be made to the Advice prior to it being provided to the Clients; and
- 7.3. Consent to a copy of the document described in subparagraph 6.2 being provided to the AFS Licensee under whose authorisation the advice was provided.

Audit Review

8. Conduct a minimum of four (4) Audit Reviews across the Review Period:
 - 8.1. the first review is to be completed three (3) months from the Independent Expert Engagement Date (First Audit);
 - 8.2. each Audit Review will include the assessment of four (4) individual pieces of Advice that were provided by Mr Menkens during the preceding 3 month period;
 - 8.3. subsequent Audit Reviews will be completed three (3) months after the First Review and thereafter until the end of the Review Period (Subsequent Audits);
 - 8.4. notwithstanding the terms of subparagraph 7.3 above, the final Audit Review will be completed by the expiry of the Review Period (Final Audit), except if there is insufficient pieces of Advice to meet the required quantity for the Audit Review, in which case the Review Period will be extended.
9. In order to conduct the First Audit, the Independent Expert will review, assess and make written recommendations (if required) in relation to the Advice provided by Mr Menkens:
10. In each subsequent Audit Review (including the Final Audit), the Independent Expert will also have regard to the recommendations made in one or more of the

previous Audit Reviews and whether these issues continue to be detected within the Advice.

11. Within seven (7) Business Days after completing each Audit Review, the Independent Expert will provide the Independent Expert's Statement to ASIC, which will be made available to Mr Menkens and the AFS Licensee under whose authorisation the Advice the subject of that Audit Review was provided, which shall set out details of:
 - 11.1. The review, assessment and recommendations made in relation to Mr Menkens' Advice;
 - 11.2. Mr Menkens' compliance with legislative and licensee requirements relating to the Advice; and
 - 11.3. In Audit Reviews subsequent to the First Audit, the instance of any Compliance Breach(es) detected that have previously been detected in Audit Reviews.
12. Mr Menkens will provide all reasonable assistance to the Independent Expert in fulfilling the obligations set out in paragraphs 6 to 10 above.

Reporting

13. The Independent Expert's Statement will:
 - 13.1. be produced in accordance with requirements specified in the Enforceable Undertaking. If there are any inconsistencies between the terms of this Agreement and the Enforceable Undertaking, the Enforceable Undertaking will prevail;
 - 13.2. set out any limitation or qualifications to it;
 - 13.3. set out the steps that the Expert has taken to fulfil their tasks, including:
 - (a) details of the people that have assisted the Expert and the nature of their assistance;
 - (b) the personnel and/or Clients that have been interviewed;
 - (c) the documents that have been reviewed and assessed including, where appropriate, reference to those documents or extracts of documents that the Expert considers most relevant to matters raised in the Expert Reports; and
 - 13.4. otherwise comply (to the extent applicable) with the paragraphs of Practice Note CM 7 'Expert Witnesses in Proceedings in the Federal Court of Australia' issued by the Chief Justice of the Federal Court of Australia that fall under the sub-heading 'The Form of the Expert Report'.
14. The Independent Expert warrants that:

- 14.1. he/she is independent of Mr Menkens and Menkens Financial Group, and will at all times be capable of exercising objective and impartial judgment;
- 14.2. he/she will notify Mr Menkens, Menkens Financial Group and ASIC immediately if he or she is no longer capable of exercising objective and impartial judgment in relation to this engagement. This includes, but is not limited, to circumstances where the Independent Expert:
- (a) could directly or indirectly benefit from a financial interest in any company in which Mr Menkens has a controlling interest (where "financial interest" refers to an interest in equity of other security, debenture, loan or other debt instrument of a company);
 - (b) is promoting, or may be perceived to promote, Mr Menkens' position or opinion to the point that objectivity and/or impartiality it is compromised;
 - (c) begins to have a close relationship with Mr Menkens;
 - (d) may be deferred from acting objectively and/or impartially by the conduct of Mr Menkens' or Menkens Financial Group's employees; or
 - (e) becomes aware of past or current circumstances the existence of which places the Independent Expert in breach of any of the warranties contained in this Agreement.

Independent Expert Name

Signature

Dated

