

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:

MY ADVISER PTY LTD
ACN 065 370 354
AFSL 238307

Level 6, 161 Collins Street
Melbourne VIC 3000

1. Definitions

In addition to terms defined elsewhere in this Enforceable Undertaking, the following definitions are used for the purposes of this Enforceable Undertaking:

ActiveSuper Proceeding means *Australian Securities and Investments Commission v ActiveSuper Pty Ltd & Ors*, Federal Court of Australia Proceeding Number VID 426 of 2012, commenced by ASIC on 28 June 2012.

AFS Licence means Australian Financial Services Licence.

Arion Financial means Arion Financial Pty Ltd (ACN 163 193 253).

Arion Group means Arion Group Pty Ltd (ACN 163 361 144), previously named Arion Property Pty Ltd.

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

ASIC Investigation means the investigation commenced by the Australian Securities and Investments Commission on 22 January 2016 pursuant to section 13 of the ASIC Act.

Representative or AR refers to a representative of a financial services licensee within the meaning of section 910A of the Corporations Act or someone purporting to act as representative of Arion Financial or My Adviser.

Client or Clients means current or former client(s) of Arion Financial or Sleipner who received Financial Product Advice, during the Relevant Period from a Representative of My Adviser (and includes without limitation any SMSF in which a Client has a beneficial interest).

Commencement Date means the date this Enforceable Undertaking is accepted by ASIC.

Communications with Craig Gore means communications with Craig Gore and also communications with any individual acting in conjunction with or on behalf of Craig Gore.

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

Craig Gore means Craig Kirrin Gore whose date of birth is 7 January 1967.

Financial Product has the meaning given to it by Division 3 of Part 7.1 of Chapter 7 of the Corporations Act.

Financial Product Advice has the meaning given to that term by s766B of the Corporations Act.

Financial Services has the meaning given to that term by Division 4 of Part 7.1 of Chapter 7 of the Corporations Act.

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

Independent Expert means a person who is recognised as an expert in Financial Services Law and that meets the criteria set out in paragraph 5.2.

Interest for the purposes of this Enforceable Undertaking is to be calculated as a cumulative 5% as from the time that:

- a. monies were transferred by any Client to any of Arion Financial, Arion Group, 1835 Development Company or any company related to Arion Financial or Craig Gore; or in any other event
- b. the Client had Communications with Craig Gore; and
- c. until the day on which My Adviser pays compensation to the Relevant Client or Client pursuant to paragraph 4.2.3 or 5.10.4.

My Adviser means My Adviser Pty Ltd (ACN 065 370 354).

Relevant Period means the period 22 October 2012 to 30 September 2014.

Sleipner means Sleipner Financial Pty Ltd (ACN 159 430 583).

SMSF means self-managed superannuation fund.

1835 Development Company means 1835 Development Company Pty Ltd (in liq) (ACN 167 206 840), which was placed into liquidation on 9 November 2015.

Except so far as the contrary intention appears in this Enforceable Undertaking, the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act apply for the purposes of this Enforceable Undertaking as if the provisions of those Acts were provisions of this Enforceable Undertaking.

2. Context

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.

My Adviser Pty Ltd

- 2.2 My Adviser is the holder of AFS Licence number 238307.
- 2.3 On 24 August 2012, My Adviser appointed Sleipner as Corporate AR.
- 2.4 On 14 June 2013, My Adviser revoked the Corporate AR appointment of Sleipner.
- 2.5 On 14 June 2013, My Adviser appointed Arion Financial as Corporate AR.
- 2.6 On 30 September 2014, My Adviser revoked the Corporate AR appointment of Arion Financial.
- 2.7 As at 10 October 2014, My Adviser no longer had any ARs authorised under its AFS Licence, which remains the case as at the date of this Enforceable Undertaking.

Craig Gore

- 2.8 On 3 December 2012, orders were made by Marshall J of the Federal Court in the ActiveSuper Proceeding (**3 December 2012 Order**) for Craig Gore to be joined as a defendant to the ActiveSuper Proceeding, and to be restrained until further order from, relevantly:
- 2.8.1 making recommendations intended to influence persons in making a decision in relation to superannuation interests to acquire, vary or dispose of superannuation interests; and
- 2.8.2 unless he held an AFS licence or was the AR of an AFS licence holder:
- 2.8.2.1 providing financial product advice;
- 2.8.2.2 dealing in financial products;
- 2.8.2.3 conducting a financial services business; or

2.8.2.4 receiving or soliciting funds from or on behalf of persons for the purposes of investing in shares or interests in any entity.

- 2.9 On 15 January 2013, My Adviser received a copy of the 3 December 2012 Order.
- 2.10 On 28 February 2013, ASIC provided My Adviser with a copy of ASIC's Statement of Claim in the ActiveSuper Proceeding.
- 2.11 In July 2015, My Adviser contacted ASIC regarding its concerns of Relevant Clients who had Communications with Craig Gore.

ASIC Investigation and Details of Conduct

- 2.12 In January 2016, ASIC commenced the ASIC Investigation into suspected contraventions of the Corporations Act by entities including My Adviser arising from the conduct of My Adviser's Corporate ARs Sleipner and Arion Financial, and of persons associated with those entities.
- 2.13 As a result of the ASIC Investigation, ASIC is concerned that during the Relevant Period:
 - 2.13.1 Craig Gore had purported to act on behalf of Arion Financial;
 - 2.13.2 various Clients had Communications with Craig Gore;
 - 2.13.3 Craig Gore was also involved in the affairs and management of Arion Group and 1835 Development Company;
 - 2.13.4 various Clients transferred monies to Arion Financial, Arion Group or 1835 Development Company following and as a result of their Communications with Craig Gore; and
 - 2.13.5 Craig Gore was not at any stage an AR of My Adviser.
- 2.14 As a result of the ASIC Investigation, ASIC is also concerned that:
 - 2.14.1 My Adviser was aware that Craig Gore was a defendant to the ActiveSuper Proceeding and was subject to the restraints set out in the 3 December 2012 Order referred to in paragraph 2.8;
 - 2.14.2 My Adviser was aware of some of Craig Gore's involvement with Arion Financial, that some Clients may have had Communications with Craig Gore, and that as a result of the Communications with Craig Gore, some Clients had transferred monies to Arion Financial, Arion Group or 1835 Development Company; and
 - 2.14.3 as at the date of the commencement of the ASIC Investigation, the Principal referred to in paragraph 4.2.3, had not been paid to

the Relevant Clients.

- 2.15 The ASIC Investigation revealed that My Adviser was aware at all relevant times of each of the facts set out in paragraphs 2.13 and 2.14.
- 2.16 Further, ASIC has identified a number of other instances of advice provided by representatives of My Adviser to Clients during the Relevant Period where that advice may have been deficient.

ASIC's Concerns in relation to the Conduct of My Adviser

- 2.17 As a result of the matters referred to at paragraphs 2.13 to 2.16, ASIC is concerned that during the Relevant Period, My Adviser did not comply with its obligations under the Corporations Act, including:
- 2.17.1 s912A(1)(a) of the Corporations Act, which requires a financial services licensee to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;
 - 2.17.2 s912A(1)(ca) of the Corporations Act, which requires a financial services licensee to take reasonable steps to ensure that its representatives comply with the Financial Services Laws;
 - 2.17.3 s912A(1)(f) of the Corporations Act, which requires a financial services licensee to ensure that its representatives are adequately trained and are competent to provide those financial services; and
 - 2.17.4 s961L of the Corporations Act, which requires a financial services licensee to take reasonable steps to ensure that its representatives comply, relevantly, with:
 - 2.17.4.1 s961B of the Corporations Act, which requires a provider to act in the best interests of the client in relation to advice;
 - 2.17.4.2 s961G of the Corporations Act, which requires a provider to only provide advice if it would be reasonable to conclude that the advice is appropriate to the client; and
 - 2.17.4.3 s961J of the Corporations Act, which requires a provider to give priority to the client's interests when giving advice if there is a conflict.

(together, ASIC Concerns).

3. Acknowledgement of ASIC's Concerns

3.1 My Adviser acknowledges:

- 3.1.1 the ASIC Concerns as set out in paragraph 2.17;
- 3.1.2 that the ASIC Concerns are reasonably held;
- 3.1.3 that it must comply with the terms of this Enforceable Undertaking in order to address the ASIC Concerns as set out in paragraph 2.17; and
- 3.1.4 While the entry into this enforceable undertaking does not constitute an admission by My Adviser of the contraventions identified at paragraph 2.17 above, My Adviser makes the acknowledgement set out in this paragraph and has offered an enforceable undertaking in the terms set out herein.

4. Undertakings

- 4.1 Under s93AA of the ASIC Act, My Adviser has offered, and ASIC has agreed to accept as an alternative to ASIC exercising its civil powers and/or its administrative powers under the Corporations Act against My Adviser or others, the undertakings set out below, which are effective immediately.
- 4.2 My Adviser undertakes that it will, with reasonable expedition, take all steps reasonably necessary to:
 - 4.2.1 identify the Clients that had Communications with Craig Gore and that as a result of their Communications with Craig Gore transferred monies to any of Arion Financial, Arion Group, 1835 Development Company (**Relevant Clients**);
 - 4.2.2 identify the total amount of monies transferred by each of the Relevant Clients to any of Arion Financial, Arion Group, 1835 Development Company (**Principal**);
 - 4.2.3 repay to each of the Relevant Clients both Principal and Interest; and
 - 4.2.4 provide to ASIC full and complete details of all settlements or resolutions reached with each of the Relevant Clients, including full details of settlements and/or resolutions with any Relevant Clients that occurred prior to the execution of this Enforceable Undertaking.
- 4.3 My Adviser undertakes that it will appoint an Independent Expert to prepare an Expert Report (in accordance with section 5 of this

Enforceable Undertaking), and will implement a Remedial Action Plan, so as to ensure compliance with the terms of this Enforceable Undertaking.

- 4.4 My Adviser undertakes that it will pay all costs of its compliance with this Enforceable Undertaking.
- 4.5 My Adviser undertakes that it will not seek or procure reimbursement of, contribution towards or otherwise directly or indirectly pass on its costs of compliance with this Enforceable Undertaking in whole or in part to any Clients.
- 4.6 My Adviser will within 14 days (unless otherwise agreed with ASIC) provide all documents and information that may reasonably be requested by ASIC from time to time for the purpose of ASIC assessing My Adviser's progress with compliance with the terms of this Enforceable Undertaking.

5. Independent Expert

- 5.1 My Adviser undertakes that within 20 business days of the execution of this Enforceable Undertaking (or within such longer period as may be agreed by ASIC) and with regard to ASIC's Regulatory Guide 100.57-100.85, it will request ASIC to approve:
 - 5.1.1 the appointment of an Independent Expert that in ASIC's view fulfils the further criteria in paragraph 5.2 (and will, upon request by ASIC, provide ASIC with any information necessary to explain how those criteria are met); and
 - 5.1.2 draft terms of engagement for the appointment of an Independent Expert (**draft Terms of Engagement**) in accordance with the terms of this Enforceable Undertaking.
- 5.2 My Adviser undertakes to nominate, under paragraph 5.1.1, an Independent Expert who objectively:
 - 5.2.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this Enforceable Undertaking; and
 - 5.2.2 is independent of My Adviser, its related bodies corporate and its officers and who has no conflicts of interest at the time of the appointment, and who will be capable of exercising objective and impartial judgement.
- 5.3 My Adviser undertakes to ensure that the draft Terms of Engagement:
 - 5.3.1 meet the requirements of this Enforceable Undertaking as set out in paragraph 5.10;

- 5.3.2 include a statement to the effect that the work of the Independent Expert is being carried out for My Adviser and ASIC, and acknowledging that ASIC will be reviewing the work of the Independent Expert and will be relying on that work;
- 5.3.3 include a statement to the effect that upon request by ASIC, ASIC is to be copied into any or all communications between My Adviser (or its related bodies corporate) and the Independent Expert;
- 5.3.4 require the Independent Expert to notify ASIC where a conflict of interest (actual or potential) arises during the engagement or when the Independent Expert becomes aware of information that adversely affects their ability to exercise objective and impartial judgement;
- 5.3.5 include an acknowledgement that in relation to the Expert Report to be provided to ASIC and My Adviser as described in paragraph 5.10.6, ASIC may from time to time publicly refer to the content of the Expert Report, and may make public a summary of the content of the Expert Report or a statement that refers to the content of the Expert Report;
- 5.3.6 include a timetable for the preparation and delivery of the Expert Report (in consultation with ASIC) to My Adviser and ASIC;
- 5.3.7 instruct and requires the Expert Report to:
 - 5.3.7.1 set out the steps that the Independent Expert has taken to fulfil their tasks, including but not limited to details of the people that have assisted the Independent Expert and the nature of their assistance, and the documents that have been reviewed and assessed by the Independent Expert;
 - 5.3.7.2 detail any limitation or qualifications to the Expert Report; and
 - 5.3.7.3 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's Report.'
- 5.4 My Adviser agrees and undertakes that all remuneration and costs associated with the engagement of the Independent Expert will be borne by My Adviser.

- 5.5 My Adviser agrees and undertakes that after ASIC has approved the appointment of the Independent Expert and the draft Terms of Engagement following a request by My Adviser under paragraph 5.1, that it will appoint the approved Independent Expert on the approved terms of engagement (**Terms of Engagement**) within 10 business days of receiving ASIC's approval, or within such longer period as may be agreed to by ASIC.
- 5.6 My Adviser agrees and undertakes that it will not, without prior written approval from ASIC, vary the Terms of Engagement once those Terms of Engagement have been approved by ASIC.
- 5.7 My Adviser agrees and undertakes that it will provide the Independent Expert with a copy of this Enforceable Undertaking.
- 5.8 My Adviser undertakes to:
- 5.8.1 permit the Independent Expert to the extent required in order to comply with this Enforceable Undertaking, to have access to My Adviser's books (except insofar as such books are subject to a valid claim of legal professional privilege);
 - 5.8.2 permit the Independent Expert to consult with ASIC and disclose to ASIC any information obtained by the Independent Expert in the course of carrying out their assessment;
 - 5.8.3 subject to a valid claim of legal professional privilege, provide the Independent Expert with any information or explanation requested by the Independent Expert regarding any matter connected with the Expert Report; and
 - 5.8.4 otherwise provide reasonable assistance to the Independent Expert in carrying out the Terms of Engagement and preparing the Expert Report.
- 5.9 My Adviser undertakes to seek approval (as provided for by paragraph 5.1) for the appointment of a new Independent Expert within 15 business days of becoming aware that the appointed Independent Expert is unable to continue with their appointment.

Expert Report – form of Terms of Engagement

- 5.10 Within 90 days of the Commencement Date (or such later date as agreed between ASIC and My Adviser), the Independent Expert must:
- 5.10.1 select and review a random sample of 50 client files relating to clients (but excluding all Relevant Clients) that received advice from a My Adviser Representative during the Relevant Period (**Files**);

- 5.10.2 by reference to those Files and the Corporations Act, review and assess whether the Financial Product Advice given by the relevant My Adviser Representative to the client was appropriate (within the meaning of section 961G of the Corporations Act) and in the client's best interests (within the meaning of section 961B of the Corporations Act);
- 5.10.3 following their review and assessment of the Files (as detailed in paragraph 5.10.1), identify any deficiencies from the assessments referred to in paragraph 5.10.2 (**Deficiencies**);
- 5.10.4 consider and advise on whether an amount of compensation, and the amount of that compensation, should be paid to a client as a consequence of the Deficiencies (**Compensation**);
- 5.10.5 if Compensation has been recommended to be paid for more than 20% of the Files reviewed, consider and advise on whether, and how many, additional Files should be reviewed; and
- 5.10.6 provide a written report simultaneously to My Adviser and to ASIC (**Expert Report**) that sets out:
 - 5.10.6.1 details of any findings in respect of the matters referred to in paragraphs 5.10.2 to 5.10.4;
 - 5.10.6.2 details of any Deficiencies;
 - 5.10.6.3 recommendations as to action that should be taken, including whether any Compensation should be paid, the amount of that compensation, and how many additional Files should be reviewed; and
 - 5.10.6.4 the Independent Expert's opinion on a reasonable time period for implementation of the recommended action.

Remedial Action Plan

- 5.11 Within 30 days (or such later date as agreed between ASIC and My Adviser) of receipt of the Expert Report, and in the event that the Expert Report identifies Deficiencies, My Adviser must consider the Expert Report and provide to ASIC and to the Independent Expert a plan (**Remedial Action Plan**) that:
 - 5.11.1 sets out the action My Adviser proposes to take to implement the recommendations made in the Expert Report;
 - 5.11.2 confirms that sufficiently qualified and skilled persons are available to discharge the Remedial Action Plan; and

- 5.11.3 specifies the date by which each action will be taken, such dates to be within the time periods determined by the Independent Expert in consultation with ASIC.
- 5.12 If ASIC or the Independent Expert requires any reasonable modifications to the Remedial Action Plan, ASIC or the Independent Expert must notify My Adviser in writing within 14 days of receipt of the Remedial Action Plan. My Adviser undertakes to make such modifications to the Remedial Action Plan and to provide a copy of the modified Remedial Action Plan to both ASIC and the Independent Expert within 14 days of receipt of such notification.
- 5.13 Subject to paragraphs 5.11.3 and 5.12, My Adviser undertakes to implement the Remedial Action Plan in full, and within the time periods specified in the Expert Report.
- 5.14 My Adviser undertakes to notify ASIC in writing within 2 business days of full implementation of the Remedial Action Plan, that the Remedial Action Plan has been fully implemented.

6. Acknowledgements

- 6.1 My Adviser acknowledges that ASIC:
- 6.1.1 may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the ASIC Concerns which led to its execution;
 - 6.1.2 may from time to time publicly refer to this Enforceable Undertaking;
 - 6.1.3 will from time to time publicly report about compliance with this Enforceable Undertaking;
 - 6.1.4 will make this Enforceable Undertaking available for public inspection;
 - 6.1.5 may issue a media release referring to the content of the Expert Report described in paragraph 5.10.6;
 - 6.1.6 may from time to time publicly refer to the content of the Expert Report described in paragraph 5.10.6; and
 - 6.1.7 will make available for public inspection a summary of the content of the Expert Report described in paragraph 5.10.6, or a statement that refers to the content of the Expert Report.
- 6.2 My Adviser acknowledges that:

- 6.2.1 it will take all practicable steps to ensure it remains solvent and retains sufficient funds, or access to sufficient funds, at all relevant times so as to enable it to comply with all of the undertakings it gives in this Enforceable Undertaking.
- 6.2.2 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 specifically the subject of this Enforceable Undertaking or arising from future conduct;
- 6.2.3 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; and
- 6.2.4 this Enforceable Undertaking has no operative force until accepted by ASIC, and My Adviser and ASIC acknowledge that the date of the Enforceable Undertaking is the date on which it is accepted by ASIC.

NOTIFICATION

1. The address for providing ASIC with any document or notification required by this Enforceable Undertaking is:

The Senior Manager
Financial Advisers
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

2. The address for providing My Adviser with any document or notification required by this Enforceable Undertaking is:

Mr Gary Riordan
Group General Counsel
Level 6, 161 Collins Street
Melbourne VIC 3000

Executed by My Adviser Pty Ltd (ACN 065 370 354) in accordance with section 127 of the Corporations Act 2001 (Cth)



Signature of director



Signature of ~~director~~ Company Secretary

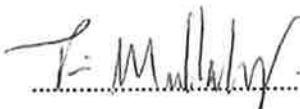
GARY RIORDAN

Full Name

PAUL VINE

Full Name

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



Timothy Mullaly

Senior Executive Leader and Delegate of the Australian Securities and Investments Commission

23 August 2016