

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:

Neo Financial Solutions Pty Ltd ACN 141 607 098
Suite 2, 315 Bulwer Street, Perth WA 6000

1. Definitions

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

AFSL means Australian Financial Services Licence

ASIC means Australian Securities and Investments Commission

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

Business Day means a day on which banks are open for business in Perth, excluding a Saturday, Sunday or public holiday in that city.

Corporations Act means the *Corporations Act 2001*.

Independent Expert Engagement Date means the date on which the Independent Expert enters into the agreement to perform services for the Licensee in connection with this Enforceable Undertaking.

Licensee means Neo Financial Solutions Pty Ltd ACN 141 607 098 AFSL 385845.

Relevant Period is the period from the commencement of ASIC's surveillance (6 July 2015) to the date of this Enforceable Undertaking.

Remediation Clients means all clients:

- reviewed as part of ASIC's surveillance of the Licensee;
- of Representatives that have been the subject of breach reports given to ASIC by the Licensee during the Relevant Period; or
- who were assessed by the Licensee within the Relevant Period for possible remediation.

Representative(s) means representatives (within the meaning of section 916A of the Corporations Act) authorised by the Licensee.

2. Background

ASIC's role

2.1 Under s1 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.

Neo Financial Solutions Pty Ltd

2.2 Neo Financial Solutions Pty Ltd ACN 141 607 098 has held an AFSL (Number 385845) since 4 January 2011.

2.3 The Licensee is authorised to operate a financial services business within the meaning of Chapter 7 of the Corporations Act to provide advice and deal in a range of financial products for retail and wholesale clients.

2.4 Condition 4 of the Licensee's AFSL requires that 'the licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws'.

ASIC's surveillance and analysis

2.5 Between 6 July 2015 and 5 February 2016, ASIC conducted a surveillance review of the Licensee's business and its compliance with its statutory obligations and its licence conditions.

2.6 ASIC's surveillance focussed on the Licensee's general obligations as a licensee and included a review of its compliance and risk management framework including programs, policies, procedures and controls. ASIC's surveillance also included reviews of financial product advice provided to retail clients, and audits and remediation reviews conducted by the Licensee.

2.7 ASIC's surveillance identified a number of concerns regarding the Licensee which were outlined in ASIC's letter to the Licensee dated 5 February 2016 (**ASIC's Letter of Concern**).

2.8 On 23 February 2016, ASIC met with the Licensee to discuss its concerns. The Licensee provided ASIC with a summary of some enhancements it would implement to its business.

ASIC's concerns

2.9 ASIC has concerns that the Licensee has failed to employ an appropriate risk management framework and compliance management framework, having regard to the nature, size and complexity of its business, including:

- (a) inadequate resources dedicated to its internal compliance function to enable it to carry out adequate monitoring and supervisory arrangements;
- (b) inadequate identification, recording and assessment of risks;

- (c) audit and remediation programs which were not timely and effective in identifying and remediating advice conduct and deficiencies;
 - (d) inadequate processes to prevent circumvention of its vetting process by advisers; and
 - (e) vetting policies and procedures which are not consistently applied or adequate to manage compliance risks.
- 2.10 ASIC is concerned that the Licensee failed to take reasonable steps to ensure its Representatives complied with financial services laws, including failure to:
- (a) detect and address advice provided by its Representatives which was not in the best interests of clients;
 - (b) adequately identify and address competence and training needs of its Representatives during the appointment, vetting and remediation processes;
 - (c) undertake remediation activities in a timely and effective manner; and
 - (d) demonstrate through adequate record keeping, that advice was appropriate for the client.
- 2.11 ASIC is concerned that the Licensee has failed to ensure that its Representatives are competent to provide financial services by:
- (a) appointing Representatives without taking all reasonable steps to ensure that they are competent to provide financial services;
 - (b) not effectively or consistently applying an enhanced oversight process for higher risk Representatives; and
 - (c) not providing for adequate consequences and remediation action for Representatives following apparent breaches of financial services laws.
- 2.12 ASIC considers that the Licensee may not have complied with certain obligations under the Corporations Act, including:
- (a) section 912A(1)(a), 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;
 - (b) section 912A(1)(c), which requires a financial services licensee to comply with the financial services laws;
 - (c) section 912A(1)(ca), which requires a financial services licensee to take reasonable steps to ensure that its representatives comply with the financial services laws;
 - (d) section 912A(1)(d), which requires a financial services licensee to have adequate resources (including financial, technological and human

resources) to provide the financial services covered by the licence and to carry out supervisory arrangements;

- (e) section 912A(1)(f), which requires a financial services licensee to ensure that its representatives are adequately trained, and are competent, to provide those financial services;
- (f) section 912A(h), which requires a financial services licensee to have adequate risk management systems;
- (g) section 961B, which requires that the provider of personal advice to a person as a retail client must act in the best interests of the client in relation to the advice;
- (h) section 961G, which requires that the provider must only provide personal advice to a person as a retail client if it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the duty under section 961B to act in the best interests of the client;
- (i) section 961H, which requires resulting personal advice based on incomplete or inaccurate information to contain warnings to the client and subsection 961H(5) which provides that nothing in this section affects the duty of the provider to make reasonable inquiries to obtain complete and accurate information;
- (j) section 961J, which requires the provider to give priority to the client's interests when giving personal advice, where the provider knows or reasonably ought to know, that there is a conflict between the interests of the client and the provider, the representative or the licensee; and
- (k) section 961L, which requires a financial services licensee take reasonable steps to ensure that representatives of the licensee comply with sections 961B, 961G, 961H and 961J.

2.13 The Licensee acknowledges that the concerns of ASIC in relation to the alleged conduct are reasonably held.

3. Undertakings

3.1 Under s93AA of the ASIC Act, the Licensee has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action against the Licensee, the undertakings set out in this Enforceable Undertaking.

Engagement of Independent Expert

3.2 Within 30 days after the date of this Enforceable Undertaking, the Licensee must engage a compliance expert (the **Independent Expert**) for the purposes of enabling the Licensee to comply with this Enforceable Undertaking.

- 3.3 The Independent Expert and the terms of engagement must be approved in writing by ASIC before the Independent Expert is engaged. The terms of engagement may only be varied with the agreement of ASIC.
- 3.4 In its written application to ASIC to engage an Independent Expert, the Licensee must provide evidence that the Independent Expert:
- (a) has sufficient expertise in the area of financial services compliance, specifically experience in conducting broad compliance reviews for a licensee of this size, client advice reviews (including best interests obligations) and reviews of client and representative remediation;
 - (b) has the capability to perform the necessary tasks to fulfil all of the obligations of this Enforceable Undertaking;
 - (c) is independent of the Licensee and its related bodies corporate and officers at the time of appointment, and at all material times will be capable of exercising objective and impartial judgment; and
 - (d) has agreed to inform ASIC if they become aware of information that adversely affects their ability to exercise objective and impartial judgment.
- 3.5 The engagement of the Independent Expert will be effected by executing the Independent Expert terms of engagement and providing a copy of it to ASIC within 3 business days of such execution.

Terms of engagement

- 3.6 Under the terms of engagement of the Independent Expert, the Licensee must be obliged to:
- (a) provide the Independent Expert with access to the books and records of the Licensee, subject to any claim of legal professional privilege, and to the extent that is reasonable having regard to the requirements of the Enforceable Undertaking;
 - (b) give the Independent Expert any information or explanation reasonably requested of any matter in any way connected with the Independent Expert's function under this Enforceable Undertaking; and
 - (c) provide reasonable access and assistance and take all reasonable steps to allow the Independent Expert to be able to fulfil the terms of their engagement.
- 3.7 The Licensee will ensure that the Independent Expert's terms of engagement include the following actions to be completed by the Independent Expert:
- (a) an initial assessment, report and recommendations in relation to the areas of concern identified in ASIC's Letter of Concern (see paragraph 3.10 – 3.14);

- (b) an assessment and report in relation to the Licensee's implementation of the recommendations made in the initial report (see paragraphs 3.15 – 3.16);
 - (c) an assessment, report and recommendations in relation to the Licensee's remediation process (see paragraphs 3.17 – 3.20);
 - (d) an assessment and report in relation to the Licensee's compliance with sections 912A, 961B, 961G, 961H, 961J and 961L of the Corporations Act (see paragraphs 3.21 – 3.25).
- 3.8 The Licensee will also ensure that the Independent Expert's terms of engagement includes requirements that the Independent Expert reports will:
- (a) set out the steps that the Independent Expert has taken to fulfil their engagement, including but not limited to:
 - (i) the people who have assisted the Independent Expert and in what way;
 - (ii) the personnel who have been interviewed; and
 - (iii) the documents that have been assessed.
 - (b) set out any limitations or qualifications to the Independent Expert reports;
 - (c) list those documents or extracts of documents relevant in producing the Independent Expert Reports; and
 - (d) otherwise comply (to the extent applicable) with those paragraphs of the Federal Court of Australia Practice Direction 'Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia', that fall under the sub-heading 'The form of the expert evidence'.
- 3.9 The Licensee acknowledges and will also ensure that the Independent Expert's terms of engagement includes an acknowledgement that ASIC:
- (a) will issue a media release upon acceptance of the Enforceable Undertaking;
 - (b) may report publicly in relation to the content of any Independent Expert report;
 - (c) may make publicly available a summary of the content of any Independent Expert report;
 - (d) will not refer to any information that the Licensee has asked it not to publicly release, provided ASIC is satisfied that it:
 - (i) would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of the Licensee; or
 - (ii) otherwise should not be disclosed because it would be against the public interest to do so; or

- (iii) consists of personal information about an individual.
- (e) may request from the Independent Expert, all relevant documents and information from time to time for the purpose of assessing the Licensee's compliance with the terms of this Enforceable Undertaking; and
- (f) will rely on the work of the Independent Expert that is being carried out for the Licensee and ASIC.

The Assessments and Reports

Initial Assessment and Review Report

- 3.10 The Licensee will procure the Independent Expert to:
- (a) within 2 months of the Independent Expert Engagement Date—conduct an Assessment (**Initial Assessment**) in relation to the specific areas of concern identified in ASIC's Letter of Concern; and
 - (b) within 1 month after the completion of the Initial Assessment—provide a written report (**Initial Licensee Review Report**) to the Licensee and ASIC.
- 3.11 The Licensee will procure the Independent Expert to:
- (a) review, assess and make recommendations with respect to the Licensee's risk management and compliance management frameworks; and
 - (b) provide an opinion as to whether the frameworks are being applied effectively and consistently, based on the results of sample testing the application of the risk management and compliance frameworks.
- 3.12 The Licensee will procure the Independent Expert to set out in the Initial Licensee Review Report details of any deficiencies and recommendations on how to remedy the deficiencies and a reasonable time for the recommendations to be implemented by the Licensee (no more than 2 months).
- 3.13 The Licensee must implement the recommendations from the Initial Licensee Review Report into a program (**the Licensee Improvement Program**) within the time specified by the Independent Expert.
- 3.14 If the Licensee believes any of the recommendations in the Initial Licensee Review Report (including the timeframe) to be unreasonable, it may seek permission from ASIC to exclude it from, or appropriately modify it in relation to, the Licensee Improvement Program. If ASIC requires any reasonable further modifications to the Licensee Improvement Program (whether or not at the request of the Licensee), the Licensee must implement them as modified.
- 3.15 The Licensee will procure the Independent Expert to:
- (a) within 5 months of the Initial Licensee Review Report being provided to the Licensee and ASIC—carry out a review (**the Implementation Review**) of

the extent to which the Licensee has implemented the recommendations set out in the Initial Licensee Review Report; and

- (b) within 1 month of completion of the Implementation Review—provide a written report (the **Implementation Report**) to the Licensee and ASIC that sets out the outcome of the Implementation Review.

3.16 If, following the work set out in clause 3.15, the Independent Expert finds any recommendations relating to remediation of clients have not been implemented, within 7 months of the Initial Licensee Review Report being provided to ASIC, the Licensee will redo the client remediation assessments (**Licensee Remediation Review**) for all Remediation Clients.

Remediation Assessment and Report

3.17 The Licensee will procure the Independent Expert to:

- (a) within 2 months after the Licensee Remediation Review—conduct an assessment (the **Remediation Assessment**) of the effectiveness of the Licensee Improvement Program by conducting a representative sample testing of the remediation process applied to the Remediation Clients; and
- (b) within 4 months after the Licensee Remediation Review—provide a written report (the **Remediation Report**) of that assessment to the Licensee and ASIC.

3.18 The Licensee will procure the Independent Expert to set out in the Remediation Report:

- (a) details of any deficiencies with the Licensee Improvement Program and a reasonable time for the Licensee Improvement Program to be amended and implemented by the Licensee (no more than 2 months); and
- (b) whether the Licensee should undertake additional remediation by way of:
 - (i) client communication;
 - (ii) the provision of further personal financial advice;
 - (iii) financial compensation; and/or
 - (iv) enhancing Representative(s) expertise (e.g. training, vetting).

3.19 The Licensee must implement the recommended enhancements to the Licensee Improvement Program within the time specified by the Independent Expert.

3.20 If the Licensee believes any of the recommendations in the Remediation Report (including the timeframe) to be unreasonable, it may seek permission from ASIC to exclude it from, or otherwise appropriately modify it in relation to its, incorporation into the Licensee Improvement Program. If ASIC requires any reasonable further modifications to the Licensee Improvement Program (whether

or not at the request of the Licensee), the Licensee must implement them as modified.

Final Assessment and Report

- 3.21 The Licensee will procure the Independent Expert to:
- (a) within 4 months of the Remediation Report being provided to the Licensee and ASIC—assess (the **Final Assessment**) the implementation and effectiveness of the compliance and risk management frameworks following the completion of the Licensee Improvement Program and form a view on the Licensee's compliance with sections 912A, 961B, 961G, 961H, 961J and 961L of the Corporations Act; and
 - (b) within 2 months of completion of the Final Assessment—provide a written report (the **Final Report**) to the Licensee and ASIC.
- 3.22 If the Independent Expert identifies, through the Final Assessment, deficiencies in respect of the Licensee's compliance with the financial services laws specified in paragraph 3.21(a), the Independent Expert must set out in the Final Report:
- (a) details of any deficiencies;
 - (b) recommendations on how to remedy the deficiencies; and
 - (c) a reasonable time for the Licensee Improvement Program to be amended, and implemented (no more than 2 months).
- 3.23 The Licensee must implement the recommended enhancements to the Licensee Improvement Program within the time specified by the Independent Expert.
- 3.24 If the Licensee believes any of the recommendations in the Final Report (including timeframes) to be unreasonable, it may seek permission from ASIC to exclude it from, or otherwise appropriately modify it in relation to, the Licensee Improvement Program. If ASIC requires any reasonable further modifications to the Licensee Improvement Program (whether or not at the request of the Licensee), the Licensee must implement them as modified.
- 3.25 The Licensee will provide to ASIC a written report attesting to compliance with this Enforceable Undertaking and detailing all action taken and remediation outcomes within 4 months of the Final Report being provided to the Licensee and ASIC.

Costs of compliance with this undertaking

- 3.26 The Licensee undertakes to pay the costs of compliance with this Enforceable Undertaking, including the remuneration and costs associated with the engagement of the Independent Expert. The Licensee will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on

Date 12/8/16