



ASIC

Australian Securities & Investments Commission



M01569914

INFRINGEMENT NOTICE

Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 26 August 2016

Unique identification code: R20160000562979

TO:

Financial Index Australia Pty Ltd

ACN 094 287 037

Level 17, 181 William Street

Melbourne

VIC 3000

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**).
2. ASIC has reasonable grounds to believe that Financial Index Australia Pty Ltd (**FIA**) has contravened an infringement notice provision as follows:

Between 27 August 2015 and 2 December 2015 (**the relevant period**), FIA contravened paragraph 12DB(1)(a) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations (in the same form or substantially the same form as **Annexures A, B and C – extracts of the Findex Website**) on the website www.findex.com.au (**Website**) as to the standard, quality, value or grade of the services offered by the Findex Group of companies, whose parent entity is Findex Group Limited (ACN 128 588 714) (**Findex**).

Particulars

During the relevant period, the Website contained representations that the services provided by Findex were 'independent' and 'non-aligned'. As the registered owner of the Website, FIA is the promoter of the services offered by the Findex Group of companies. FIA is an entity in the Findex Group of companies and also trades under the name of Financial Index Wealth Accountants. Findex is an Authorised Representative of FIA.

During the relevant period, the Website contained the following representations:

- (a) 'Financial Index Wealth Accountants (FIWA) is one of Australia's leading independent providers of retail financial planning, accounting and wealth management services';
- (b) 'Findex Group is now the largest independent financial planning group in the country';
- (c) 'Findex's recent acquisitions of Crowe Horwath and Centric Wealth catapulted it to be Australia's largest independent financial advice company';

- (d) 'Findex Group has emerged as the biggest independent financial advice business in the country';
- (e) 'Financial Index Wealth Accountants (FIWA) is one of Australia's leading independent retailers of financial planning, accounting and wealth management';
- (f) 'As a leading independent provider, we intend to maintain our best of breed services to grow our business by meeting, and hopefully exceeding, our clients' expanding needs and expectations';
- (g) 'Following this acquisition Financial Index will become the largest independent financial advice business in Australia';
- (h) 'Our significant investment expertise in financial services means we are the largest provider of non-aligned wealth investment advice';
- (i) 'Non-aligned financial services advisory group Findex has announced the appointment of Peter Gardiner as its Global Head of Business Development and a member of its leadership team';
- (j) 'Australia's largest non-aligned financial advisory business, Findex Group'; and
- (k) 'Collectively the Findex Group is the largest privately owned, non-aligned financial advice business in Australia'.

The representations were false or misleading because:

- (a) They suggest the services offered by the Findex Group of companies are not influenced by outside parties or any conflict of interest when in fact entities within the Findex Group of companies receive commissions for certain services;
- (b) The representations prevent a consumer from correctly assessing the quality of the services; and
- (c) The representations may induce consumers to seek the services of the Findex Group of companies on the pretence that any advice received will not be affected by any commissions.

Penalty under this notice

3. The penalty payable under this notice in relation to the alleged contravention is \$10,800.
This penalty is payable to ASIC on behalf of the Commonwealth.
This penalty can be paid using one of the methods detailed in the enclosed invoice.

Consequences of complying with this notice

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):

- (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
- (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

Consequences of failing to comply with this notice

- 5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
- 6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1,800,000.

Time for payment

- 7. The time for payment is:
 - (a) within 28 days after the day on which the notice is issued to you; or
 - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

Applying for more time to pay the penalty under this notice

- 8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
- 9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

Applying to have this notice withdrawn

- 10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
- 11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

- 12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
- 13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.

14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

Requirements for applications

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
- (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:
- Bruce Standfield**
Australian Securities and Investments Commission
GPO Box 9827
MELBOURNE 3000
or by email: ACLInfringementNotices@asic.gov.au

Signature of delegate issuing the notice

Peter Kell

as a delegate of the Australian Securities and Investments Commission