

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:

Sentinel Private Wealth Pty Ltd

*ACN 141 149 304
Level 4 Commercial Building
33 Remora Road
Hamilton QLD 4007*

1. Definitions

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

Act means the *Corporations Act 2001* (Cth)

AFSL (short for Australian Financial Services Licence) has the meaning given by s761A of the Act.

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

ASIC's Concerns means the matters set out in paragraphs 2.8 to 2.10.

Client File Audit means SPW's monitoring and supervision process to prevent and detect poor quality and non-compliant Financial Product Advice.

Financial Product has the meaning given by Division 3 of Part 7.1 of the Act.

Financial Product Advice has the meaning given by s766B of the Act.

Financial Services Business has the meaning given by s761A of the Act.

Financial Services Laws has the meaning given by s761A of the Act.

Financial Services Licensee has the meaning given by s761A of the Act.

Independent Expert means the person, firm or company to be appointed in relation to this enforceable undertaking and referred to in paragraph 3.2.

Independent Expert Report means a report prepared by the Independent Expert for the purposes of this enforceable undertaking.

Material Breach, in relation to this enforceable undertaking, includes a failure by SPW to meet a material component of any remedial requirement under it in the opinion of ASIC or the Independent Expert (including a failure to complete client remedial action described in paragraph 3.14.2).

Personal Advice has the meaning given by s766B(3) of the Act.

Representative means a representative within the meaning of s910A of the Act who provides Personal Advice on behalf of SPW to a Retail Client.

Retail Client has the meaning given by s761G and 761GA of the Act.

SOA means Statement of Advice.

SPW means Sentinel Private Wealth Pty Ltd ACN 141 149 304.

Systemic Issue means an issue causing actual or potential loss or detriment, monetary or otherwise, to a number of clients as a result of misconduct or other compliance failure by SPW or its current or former Representatives.

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.

SPW's Business

- 2.2 SPW carries on a Financial Services Business, and holds an AFSL (number 344762) authorising it to carry on that business.
- 2.3 Since 22 April 2010, SPW has held an AFSL authorising it provide Financial Product Advice and deal in Financial Products.
- 2.4 SPW authorised certain Representatives to provide Personal Advice on its behalf.

ASIC's Surveillance

- 2.5 Between 21 December 2016 and 6 July 2017, and for the purposes of ensuring compliance with the Act, ASIC conducted a surveillance of SPW's business and its compliance with its statutory obligations and its licence conditions.
- 2.6 ASIC's surveillance included a review of 44 pieces of Personal Advice provided by Representatives of SPW, and audits of that advice by SPW.
- 2.7 Through its surveillance, ASIC identified a number of concerns and deficiencies in relation to the Personal Advice provided on behalf of SPW, which ASIC communicated to SPW in a letter dated 1 August 2017.

ASIC's Concerns

- 2.8 ASIC has the following concerns in relation to the Personal Advice provided by Representatives of SPW to Retail Clients:
- 2.8.1 the scope of advice contained in SOAs was not clearly defined;
- 2.8.2 inadequate inquiries were made into clients' relevant circumstances;
- 2.8.3 the SOAs recorded generic benefits for recommended strategies that were either incorrect or not relevant to client's circumstances; and
- 2.8.4 inadequate analysis was undertaken to determine whether any financial benefits could be expected by clients who were recommended a self-managed superannuation fund.

- 2.9 ASIC also has concerns that, in relation to SPW's Client File Audits, there were failures to identify poor Financial Product Advice and, where issues were identified, failures to appropriately respond to those issues.
- 2.10 ASIC also has concerns that SPW may have failed to comply with its obligations under the Act including:
- 2.10.1 s912A(1)(ca), which requires a Financial Services Licensee to take reasonable steps to ensure that its Representatives comply with the Financial Services Laws, relevantly:
- i. s961B, which requires a provider to act in the best interests of the client in relation to Personal Advice;
 - ii. s961G, which requires a provider to only provide Personal Advice if it would be reasonable to conclude that it is appropriate to the client; and
 - iii. s961J, which requires a provider to give priority to the client's interests when giving Personal Advice if there is a conflict;
- 2.10.2 s912A(1)(d), which requires a Financial Services Licensee to have available adequate resources to provide the financial services covered by its AFSL and to carry out supervisory arrangements.

Acknowledgement by SPW of ASIC's Concerns

- 2.11 SPW acknowledges that:
- 2.11.1 ASIC's Concerns are reasonably held;
- 2.11.2 it has offered this enforceable undertaking; and
- 2.11.3 it must comply with all of the requirements of this enforceable undertaking in order to address ASIC's Concerns.

Acknowledgement by ASIC of SPW's Co-operation

- 2.12 ASIC acknowledges that SPW:
- 2.12.1 has fully co-operated with ASIC's inquiries and has expressed a commitment to strengthening its arrangement for supervision and monitoring of its Representatives;
- 2.12.2 voluntarily started taking steps to address ASIC's Concerns prior to receipt of ASIC's letter dated 1 August 2017.

3. Undertakings

Acceptance of Enforceable Undertaking

- 3.1 Under s93AA of the ASIC Act, SPW has offered, and ASIC has agreed to accept as an alternative to ASIC taking administrative action or civil proceedings against SPW, the undertakings set out below.

Engagement of Independent Expert

- 3.2 SPW undertakes that within 21 days of acceptance of this undertaking (or within such longer period as may be agreed by ASIC), it will request ASIC to approve:
- 3.2.1 the appointment of an Independent Expert that meets the criteria in this enforceable undertaking; and
 - 3.2.2 draft terms of engagement of the Independent Expert that meets the requirements of this enforceable undertaking.
- 3.3 If ASIC approves the draft terms of engagement and the appointment of the Independent Expert, SPW undertakes to appoint the approved Independent Expert on the terms approved by ASIC, within 14 days of receiving ASIC's approval (or within such longer period as may be agreed by ASIC).
- 3.4 SPW undertakes to nominate an Independent Expert who:
- 3.4.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
 - 3.4.2 is independent of SPW, its related bodies corporate and its officers and who has no conflicts of interest at the time of appointment and who will be capable of exercising objective and impartial judgment.
- 3.5 SPW undertakes to ensure the terms of engagement:
- 3.5.1 include a requirement that the Independent Expert is to submit all client file review templates for ASIC's approval, before commencing any client file reviews;
 - 3.5.2 include a requirement that all Independent Expert Reports will set out the steps that the Independent Expert has taken to fulfil their tasks, including:
 - i. details of the people that have assisted the Independent Expert and the nature of the assistance provided;
 - ii. the personnel and/or clients that have been interviewed;

- iii. the documents that have been reviewed and assessed including, where appropriate, reference to those documents or extracts of documents that the Independent Expert considers most relevant to matters raised in the Expert Reports; and
- iv. any limitation or qualifications to the Expert Reports;

- ~~3.5.3~~ include a statement to the effect that the work of the Independent Expert is being carried out for SPW and ASIC, and acknowledging that ASIC will be reviewing the work of the Independent Expert and will be relying on the work;
- 3.5.4 include a statement that upon request by ASIC, ASIC is to be copied into all or some communications between SPW and the Independent Expert;
- 3.5.5 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 its ability to exercise objective and impartial judgement;
- 3.5.6 include a timetable for the preparation and delivery of each of the Independent Expert Reports to SPW and ASIC; and
- 3.5.7 include a provision that permits SPW to terminate its contract with the Independent Expert, upon receiving a direction from ASIC, made for the purpose of paragraph 3.11.

3.6 SPW undertakes to:

- 3.6.1 permit the Independent Expert (to the extent that it is reasonable having regard to the requirements of this enforceable undertaking) to have access to SPW's books, to interview clients, employees, contractors, agents and/or consultants and to consult with ASIC in the course of performing its role;
- 3.6.2 give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with any report required to be prepared by the Independent Expert under this enforceable undertaking;
- 3.6.3 provide that ASIC may seek from the Independent Expert an update or information on any relevant matter the subject of this enforceable undertaking; and
- 3.6.4 otherwise reasonably assist the Independent Expert in carrying out the terms of its engagement and producing the reports required to be prepared by the Independent Expert under this enforceable undertaking.

- 3.7 SPW undertakes that it will not vary the terms of the engagement of the Independent Expert without the prior written approval of ASIC.
- 3.8 SPW undertakes that all remuneration and costs associated with the engagement of the Independent Expert will be borne by SPW.
- 3.9 SPW undertakes to seek approval from ASIC under paragraph 3.2 for the appointment of a new Independent Expert within 21 days of becoming aware that the appointed Independent Expert is unable to continue with their appointment.
- 3.10 SPW acknowledges that ASIC may direct SPW to replace the Independent Expert in circumstances where ASIC is not satisfied with the quality of the Independent Expert's work.
- 3.11 SPW undertakes to terminate its contract with the Independent Expert and seek ASIC's approval under paragraph 3.2 for the appointment of a new Independent Expert, within 21 days of receiving a direction from ASIC to replace the Independent Expert.
- 3.12 Prior to directing SPW to replace the Independent Expert, ASIC will give the Independent Expert a reasonable opportunity to address its concerns about the quality of the Independent Expert's work.

Independent Expert Reviews

- 3.13 SPW undertakes to require the Independent Expert to complete the following reviews and provide a report of its findings to SPW and ASIC.
 - 3.13.1 Initial Audit Review – an initial review of SPW's audit program (see paragraphs 3.14 to 3.19). The purpose of this review is to independently test the adequacy and effectiveness of SPW's adviser audit policies, procedures and templates and to address concerns identified in specific client files by ASIC's review.
 - 3.13.2 Ongoing Audit Reviews – an ongoing review consisting of three cycles, each of three months duration, in which the Independent Expert reviews the adviser audits conducted as part of SPW's audit program (see paragraphs 3.20 to 3.24). The purpose of this review is to independently test on an ongoing basis the effectiveness of SPW's adviser audits and to monitor the recommended actions from the Initial Audit Review.
 - 3.13.3 Final Audit Review – a review of SPW's adviser audits and adherence to its audit program (see paragraphs 3.25 to 3.27). The purpose of this review is to assess the improvement in SPW's adviser audits and compliance with its audit program, including any changes required from the Initial Audit Review and recommendations from Ongoing Audit Reviews.

Initial Audit Review

- 3.14 SPW undertakes to complete a review of the client files which led to ASIC's Concerns, as detailed in ASIC's letter dated 1 August 2017, and provide a report of its findings to the Independent Expert, within 30 days of the appointment of the Independent Expert, detailing:
- 3.14.1 for each client file, a breakdown of SPW's findings, including whether the advice complied with ss 961B, 961G and 961J of the Act and reasons for its conclusions;
 - 3.14.2 for each client file, any action it has taken, or intends to take in relation to its findings, including any adviser or client remedial action and the timeframe for completion of that action; and
 - 3.14.3 SPW's opinion of whether Systemic Issues exist, including reasons why that opinion is held. SPW's consideration should include its findings from the reviews undertaken for the purpose of 3.14.1 as well as other information known to SPW. If SPW concludes that Systemic Issues exist, it is to provide an explanation of how it will respond to those issues that is consistent with ASIC Regulatory Guide 256: *Client review and remediation conducted by advice licensees*.
- 3.15 SPW undertakes to require an Independent Expert to complete a review:
- 3.15.1 of the adequacy of SPW's review and actions resulting from paragraph 3.14;
 - 3.15.2 of the adequacy and effectiveness of SPW's compliance arrangements given its obligations as a Financial Services Licensee under the Act with specific regard to:
 - i. any steps implemented by SPW to address ASIC's Concerns; and
 - ii. its policies, procedures and templates for supervising and monitoring of its Representatives, including its audit process, rating system and remediation process where compliance audit issues are identified.
 - 3.15.3 of the compliance staff arrangements to ensure that SPW has the right people with the requisite skills to effectively monitor and supervise SPW's Representatives and SPW's business.
- 3.16 SPW undertakes to require the Independent Expert to deliver, within 90 days of its engagement (or within such longer period as agreed by ASIC) a report (**Initial Audit Review Report**) to ASIC and SPW that details its findings from its review, undertaken as a result of paragraph 3.15, and specifically including:

Client file review

- 3.16.1 the Independent Expert's opinion on the adequacy of the review undertaken by SPW under paragraph 3.14, including:
- i. for each client file, whether it agrees with SPW's findings and the actions taken or to be taken by SPW to resolve the issues identified;
 - ii. whether it agrees with SPW's opinion about whether Systemic Issues exist and the appropriateness of any actions taken by SPW, or proposed to be taken to investigate and resolve any Systemic Issues; and
 - iii. recommendations for any alternate action SPW should take, including reasonable timeframes (that do not extend beyond delivery of the Third Ongoing Audit Report) for completion of any recommended action/s;

Policy and procedure review

- 3.16.2 details of its findings in respect of the matters referred to in paragraph 3.15.2 and recommendations as to any action that should be taken by SPW in response to any of its findings;
- 3.16.3 the Independent Expert's opinion on a reasonable time period (that does not extend beyond delivery of the Third Ongoing Audit Report) for completion of any recommended action/s;

Compliance resources review

- 3.16.4 details of its findings in respect of the matters referred to in paragraph 3.15.3 and recommendations as to any action that should be taken by SPW in response to any of its findings; and
- 3.16.5 the Independent Expert's opinion on a reasonable time period (that does not extend beyond delivery of the Third Ongoing Audit Report) for completion of any recommended action/s.
- 3.17 Within 45 days of receipt of the Initial Audit Review Report (or such other date as agreed by ASIC), SPW must consider it and provide to ASIC and to the Independent Expert a plan (**Remedial Action Plan**) that:
- 3.17.1 sets out the actions SPW proposes to take to implement the recommendations made in the Initial Audit Review Report; and
 - 3.17.2 specifies the date by which each action will be completed.
- 3.18 If ASIC or the Independent Expert requires any reasonable modifications to the Remedial Action Plan and notifies SPW in writing of any modifications within 21 days of the receipt of the Remedial Action Plan, SPW 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.

- 3.19 Subject to paragraph 3.18, SPW undertakes to implement the Remedial Action Plan recommendations in full and within the specified time periods.

Ongoing Audit Review

- 3.20 SPW undertakes to review at least one client file involving Personal Advice, each three months, from each of its Representatives, from the engagement of the Independent Expert.
- 3.21 SPW undertakes to require the Independent Expert to complete ongoing reviews (**Ongoing Audit Reviews**) to determine the adequacy and effectiveness of SPW's audits, conducted as part of its audit program, and provide to ASIC and SPW reports (**Ongoing Audit Review Reports**) of its findings:
- 3.21.1 within 6 months of the engagement of the Independent Expert (**Ongoing Audit Review 1**);
- 3.21.2 within 9 months of the engagement of the Independent Expert (**Ongoing Audit Review 2**); and
- 3.21.3 within 1 year of the engagement of the Independent Expert (**Ongoing Audit Review 3**)
- (or within such longer periods as agreed by ASIC).
- 3.22 Each Ongoing Audit Review will:
- 3.22.1 consist of a review by the Independent Expert of a minimum of 12 Client File Audits, completed by SPW in that quarter as part of its audit program. The Client File Audits will be selected at random and sample all SPW Representatives in the course of the undertaking;
- 3.22.2 consist of a review of both the Personal Advice provided and the audit conducted as part of SPW's adviser audit program. If the file was pre-vetted by SPW when the advice was being prepared, the quality of the pre-vet will also be reviewed;
- 3.22.3 have regard to ASIC's findings as detailed in paragraph 2.8 and Independent Expert findings from Ongoing Audit Reviews;
- 3.22.4 contain an assessment as to the adequacy of the client/adviser remedial actions recommended by SPW and any progress made in completing those remedial actions; and
- 3.22.5 review SPW's progress in implementing its Remedial Action Plan.

- 3.23 Each Ongoing Audit Review Report provided to SPW and ASIC by the Independent Expert must contain:
- 3.23.1 a description of the methodology used by the Independent Expert to select client files and audits:
- 3.23.2 for each client file audited:
- i. a breakdown of SPW's findings, including whether in SPW's view the advice complied with ss 961B, 961G and 961J of the Act;
 - ii. a breakdown of the Independent Expert's findings, including whether in the Independent Expert's opinion the advice complied with ss 961B, 961G and 961J of the Act;
 - iii. if applicable, an opinion on why SPW's audit findings differ to the Independent Expert's findings for the matters referred to in paragraphs 3.23.2.i. and 3.23.2.ii.;
 - iv. an opinion on whether the remedial actions recommended by SPW and the actions taken in response to those recommendations are appropriate (if applicable);
- 3.23.3 the Independent Expert's opinion on the completeness of SPW's Remedial Action Plan, including independent testing of the actions completed by SPW, to provide an opinion on whether the changes made to SPW's audit program adequately address ASIC's Concerns and any Independent Expert recommendations made as a result of these undertakings; and
- 3.23.4 the Independent Expert's opinion of whether SPW has complied with its audit policies, procedures and templates, including any changes required by the Remedial Action Plan.
- 3.24 SPW undertakes to certify each Ongoing Audit Review report, acknowledging its receipt and stating that SPW is satisfied that it has complied, or will comply, with any recommendation specified in it or providing reasons why the recommendation is not appropriate.

Final Audit Review

- 3.25 SPW undertakes to require the Independent Expert to provide SPW and ASIC, within 18 months from the appointment of the Independent Expert (or within such further time as is agreed with ASIC), a report (the **Final Audit Review Report**) detailing its findings from a review into the adequacy and effectiveness of SPW's audit program.
- 3.26 The Final Audit Review Report must contain:

- 3.26.1 an assessment of a sample of SPW's Client File Audits, for the balance of SPW Representatives not reviewed in earlier reports, and in accordance with paragraphs 3.22.1 to 3.22.4;
 - 3.26.2 the Independent Expert's opinion on the completeness of SPW's Remedial Action Plan, including independent testing of the actions completed by SPW, to provide an opinion on whether the actions adequately address ASIC's Concerns and any Independent Expert recommendations made as a result of these undertakings;
 - 3.26.3 the Independent Expert's opinion of whether SPW has complied with its audit policies, procedures and templates, including any changes required by the Remedial Action Plan;
 - 3.26.4 the Independent Expert's opinion about the adequacy of the SPW's audit program as it will operate on an ongoing basis and respond to the changes in the business or regulatory environment;
 - 3.26.5 recommendations to SPW, to address any issues identified pursuant to paragraphs 3.26.1 to 3.26.4 of these undertakings, with specified timeframes;
 - 3.26.6 a list of SPW Representatives who have and have not completed the training required by paragraph 4.1; and
 - 3.26.7 any other matter the Independent Expert wishes to bring to ASIC's attention regarding SPW's audit framework.
- 3.27 SPW undertakes to certify the Final Audit Review report, acknowledging its receipt and stating that SPW is satisfied that it has complied, or will comply, with any recommendation specified in it or providing reasons why the recommendation is not appropriate.

4. Other Undertakings

- 4.1 SPW undertakes that all of its Representatives will:
 - 4.1.1 within 90 days of acceptance of this undertaking or as otherwise agreed to by ASIC—commence training that has been approved by ASIC, on ss 961B, 961G and 961J of the Act; and
 - 4.1.2 obtain written confirmation from the providers of the training that each Representative has completed each part of the training.
- 4.2 SPW undertakes to, before giving any consent to another Financial Services Licensee for the purposes of s916C of the Act in relation to a Representative of SPW, notify the Financial Services Licensee of the existence of this enforceable undertaking.
- 4.3 SPW undertakes that it will not seek reimbursement or pass on to clients the costs incurred in carrying out this enforceable undertaking.

- 4.4 SPW undertakes that it will provide all documents and information requested by ASIC from time to time for the purpose of assessing SPW's compliance with the terms of this enforceable undertaking.
- 4.5 SPW undertakes that it will notify ASIC as soon as reasonably practicable and in any event within 14 days of becoming aware, of any failure by SPW to comply with a term of this enforceable undertaking.

5. Material Breach

- 5.1 SPW undertakes, in the event of a Material Breach of this enforceable undertaking, to provide ASIC with written submissions setting out why ASIC should not take action to suspend or cancel its AFSL under s915C of the Act, such submissions to be provided to ASIC within 45 days of any written notification by ASIC to SPW to do so.
- 5.2 SPW agrees that where there is a Material Breach of this enforceable undertaking by SPW, paragraph 5.1 does not limit ASIC's power to take additional alternative action such as resuming the surveillance, or commencing a new surveillance, with a view to taking administrative action or civil proceedings.

6. Acknowledgements

- 6.1 SPW acknowledges that ASIC:
 - 6.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 6.1.2 may from time to time publicly refer to this undertaking;
 - 6.1.3 will from time to time publicly report about compliance with this undertaking;
 - 6.1.4 will make this undertaking available for public inspection.
 - 6.1.5 may issue a media release referring to the content of any of the Independent Expert Reports;
 - 6.1.6 may from time to time publicly refer to the content of any of the Independent Expert Reports; and
 - 6.1.7 may make available for public inspection a summary of the content of any of the Independent Expert Reports.

- 6.2 ASIC acknowledges that it will not refer to any information from an Independent Expert Report that:
- 6.2.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, this enforceable undertaking;
 - 6.2.2 ASIC is satisfied would be unreasonable to release because the ~~release of the information would unreasonably affect the business,~~ commercial or financial affairs of SPW or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of this enforceable undertaking;
 - 6.2.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 6.2.4 SPW has asked not to be released if ASIC is satisfied:
 - i. it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of the SPW otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of this enforceable undertaking; or
 - ii. it should not be released because it would be against the public interest to do so.
- 6.3 SPW acknowledges that:
- 6.3.1 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 the subject of ASIC's Concerns or arising from future conduct;
 - 6.3.2 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 undertaking or arising from future conduct.
- 6.4 SPW acknowledges that this undertaking has no operative force until accepted by ASIC, and SPW and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.
- 6.5 ASIC and SPW acknowledge that this enforceable undertaking ends on acceptance by ASIC of the Final Audit Review Report, if that report adequately includes those matters described by paragraph 3.26.
- 6.6 Nothing contained in this undertaking constitutes an admission by SPW.


7. Notifications

7.1 The address for providing ASIC with any documentation or notification required by this enforceable undertaking is:

The Senior Manager
Financial Advisers
Australian Securities and Investments Commission
GPO Box 9827
Perth WA 6001
DX 158 Perth

EXECUTED by Sentinel Private Wealth)
Pty Ltd in accordance with s.127(1) of the)
Corporations Act 2001:


..... Director


..... Director/Company Secretary

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


.....

Delegate of Australian Securities and Investments Commission

Date: 11/10/17

