

## 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:

***Danny Charles Pianta***

***Brisbane, Queensland***

### DEFINITIONS

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

**Acceptance Date** means the date of acceptance by ASIC of this enforceable undertaking.

**Act** means the *Corporations Act 2001*.

**Advamode Financial** means Advamode Financial Pty Ltd ACN 149 306 856 (AFSL No. 405652).

**AFSL** means Australian Financial Services Licence.

**ASIC** means the Australian Securities and Investments Commission.

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

**Austplan** means Austplan Pty Ltd ACN 079 967 203 (AFSL No. 244597).

**Authorised Representative** has the meaning given by section 916A of the Corporations Act.

**Client** means retail client and has the meaning given by sections 761G and 761GA of the Corporations Act.

**Corporations Act** means the *Corporations Act 2001*.

**Financial product** has the meaning given by Division 3 of Part 7.1 of the Corporations Act.

**Financial Product Advice** has the meaning given by section 766B of the Corporations Act.

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

**Financial Services Licensee** has the meaning given by section 761A of the Corporations Act.

**Financial Stewards** means Financial Stewards Pty Ltd ACN 603 160 170

**Mr Pianta** means Danny Charles Pianta, Authorised Representative No. 472354.

**PAC Financial** means PAC Financial Pty Ltd ACN 608 364 183.

**Relevant Period** means the period from 1 June 2015 to 1 August 2016.

**Representative(s)** means representatives (within the meaning of section 910A of the Corporations Act) authorised by the Licensee.

**Retail Client** has the meaning given by sections 761G and 761GA of the Corporations Act.

## **ASIC'S ROLE**

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.

## **BACKGROUND**

2. Mr Pianta is a director of PAC Financial and an Authorised Representative of Austplan.
3. During the Relevant Period, Mr Pianta was an Authorised Representative of Advamode Financial. Under this authorisation, Mr Pianta was relevantly authorised to provide Financial Product Advice.
4. During the Relevant Period, Mr Pianta was an Authorised Representative of Financial Stewards. Under this authorisation, Mr Pianta was relevantly authorised to provide Financial Product Advice.
5. During the Relevant Period, Mr Pianta was acting in his capacity as an Authorised Representative of Advamode and Financial Stewards.

### *ASIC's surveillance*

6. ASIC carried out surveillance into the conduct of Mr Pianta from 1 June 2015 to 27 February 2017 and in particular, into whether he contravened provisions of Chapter 7 of the Corporations Act with respect to Financial Services provided by him as an Authorised Representative of Advamode and Financial Stewards.
7. As part of the surveillance, ASIC reviewed a number of client files of Mr Pianta.
8. ASIC'S surveillance identified a number of concerns regarding the conduct of Mr Pianta.

### *ASIC's views concerning the conduct and circumstances*

9. With respect to the client files reviewed by ASIC, it appeared that Mr Pianta:
  - 9.1 failed to meet with his Clients to ascertain fact find details including personal details and financial information, prior to providing Financial Product Advice;

- 9.2 failed to make reasonable inquiries or otherwise into Clients' relevant objectives, financial situation and needs before providing Financial Product Advice;
- 9.3 failed to identify the subject matter of advice sought by the Client to appropriately scope the Financial Product Advice ultimately provided;
- 9.4 in some instances, failed to disclose, or incorrectly disclosed, details about the Client's existing health conditions or employment when applying for new insurance cover;
- 9.5 failed to properly consider and advise whether it was in the best interests of Clients to switch from their existing insurance policies into a recommended new insurance policy;
- 9.6 in some instances, failed to consider all costs, risks, benefits and disadvantages when advising Clients to switch from an existing insurance product into a recommended new insurance policy;
- 9.7 advised Clients to switch insurance products when it was not appropriate; and
- 9.8 used generic Statement of Advice templates when making Financial Product Advice recommendations to Clients.

#### **ASIC'S CONCERNS**

10. In light of the conduct and circumstances outlined in paragraph 9 of this enforceable undertaking, ASIC has concerns that Mr Pianta, acting in his capacity as an Authorised Representative of PAC Financial, may have:
  - 10.1 failed to act in the best interests of his Clients in relation to the Financial Product Advice provided (in contravention of section 961B of the Corporations Act);
  - 10.2 failed to ensure the Financial Product Advice provided to his Clients was appropriate (in contravention of section 961G of the Corporations Act);
  - 10.3 failed to ensure that, in the provision of Financial Product Advice to clients, he had prioritised the Client's interest before his own or that of PAC Financial (in contravention of section 961J of the Corporations Act); and
  - 10.4 failed to provide a cost comparison or details of other benefits the Client may lose by replacing their existing insurance policy (in contravention of section 947D of the Corporations Act).

#### **ACKNOWLEDGEMENT OF CONCERNS**

11. Mr Pianta acknowledges that ASIC's concerns set out in paragraph 10 of the enforceable undertaking are reasonably held.

## **UNDERTAKINGS**

12. Under section 93AA of the ASIC Act, Mr Pianta has offered, and ASIC has agreed to accept, the undertakings as set out in paragraphs 13 to 222 of this enforceable undertaking, as an alternative to ASIC exercising its power under section 920A of the Corporations Act to make a banning order against Mr Pianta.

### **Engagement of Independent Expert**

13. Within 30 days after the Acceptance Date, Mr Pianta must appoint and retain an independent expert (the **Independent Expert**).
14. 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.
15. In his written application to ASIC to engage an Independent Expert, Mr Pianta must provide evidence that the Independent Expert:
  - 15.1 has sufficient expertise in the area of financial services compliance, specifically experience in conducting Financial Product Advice reviews (including best interest obligations) and reviews of client remediation;
  - 15.2 has the capability to perform the necessary tasks to fulfil all of the obligations of this Enforceable Undertaking;
  - 15.3 is independent of Mr Pianta and any Financial Services Licensee (or its representatives) that authorises Mr Pianta to provide Financial Services during the period in which this enforceable undertaking is in force, and at all material times will be capable of exercising objective and impartial judgment; and
  - 15.4 has agreed to inform ASIC of information that adversely affects the Independent Expert's ability to exercise objective and impartial judgment throughout the term of the engagement.
16. The engagement of the Independent Expert will be effected by exercising the Independent Expert terms of engagement and providing a copy of it to ASIC within 3 business days of such execution.

### **Terms of engagement**

17. Under the terms of engagement of the Independent Expert, Mr Pianta must be obliged to:
  - 17.1 provide the Independent Expert with access to the client files of Mr Pianta, subject to any claim of legal professional privilege, and to the extent that is reasonable having regard to the requirements of the enforceable undertaking;

- 17.2 give the Independent Expert any information or explanation reasonably requested of any matter in any way connected with the Independent Expert's engagement; and
  - 17.3 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.
18. Mr Pianta will ensure that the Independent Expert's terms of engagement includes requirements that the Independent Expert will:
- 18.1 set out the steps that the Independent Expert has taken to fulfil their engagement, including but not limited to:
    - (a) the people who have assisted the Independent Expert and in what way;
    - (b) the personnel who have been interviewed; and
    - (c) the documents that have been assessed.
  - 18.2 set out any limitations or qualifications to the Independent Expert reports;
  - 18.3 list those documents or extracts of documents relevant in producing the Independent Expert reports; and
  - 18.4 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'.
19. Mr Pianta acknowledges and will also ensure that the Independent Expert's terms of engagement includes an acknowledgement that ASIC:
- 19.1 will issue a media release upon acceptance of the enforceable undertaking;
  - 19.2 may report publicly in relation to the content of any Independent Expert report;
  - 19.3 may make publicly available a summary of the content of any Independent Expert report;
  - 19.4 will not refer to any information that Mr Pianta has asked it not to publicly release, provided ASIC is satisfied that it:
    - (a) would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of Mr Pianta; or
    - (b) otherwise should not be disclosed because it would be against the public interest to do so; or
    - (c) consists of personal information about an individual.

- 19.5 may request from the Independent Expert, all relevant documents and information from time to time for the purpose of assessing Mr Pianta's compliance with the terms of this enforceable undertaking; and
- 19.6 will rely on the work of the Independent Expert that is being carried out for Mr Pianta in accordance with the engagement.

### **The Assessments and Reports**

20. Mr Pianta will procure the Independent Expert, on an annual basis for a period of 3 years, beginning 12 months from the Acceptance Date of this enforceable undertaking (Annual Review Period):
  - 20.1 to comprehensively review and assess the greater of, either 5 files, or 10% of Mr Pianta's Financial Product Advice files where such advice was provided during the previous 12 months;
  - 20.2 to review and assess whether Mr Pianta has met ongoing training requirements, as stipulated by his AFS licensee; and
  - 20.3 if a significant breach is identified by the Independent Expert, to immediately refer the breach to ASIC for consideration.
21. Within 3 months of the end of each Annual Review Period, the Independent Expert will:
  - 21.1 provide a report to Mr Pianta, ASIC and PAC Financial's current licensee (currently Austplan) regarding Mr Pianta's compliance with, amongst other things, sections 947D, 961B, 961G and 961J of the Corporations Act; and
  - 21.2 make recommendations for any further areas of training that the Independent Expert deems necessary.
22. Mr Pianta will cease having other persons meet with his clients to obtain personal details or to present Financial Product Advice documents.

### **Costs of compliance with this undertaking**

23. Mr Pianta undertakes to pay the costs of compliance with this enforceable undertaking, including the remuneration and costs associated with the engagement of the Independent Expert. Mr Pianta will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on the costs of compliance with this enforceable undertaking or any proportion of those costs to any clients.

### **Acknowledgements**

24. Mr Pianta acknowledges that:

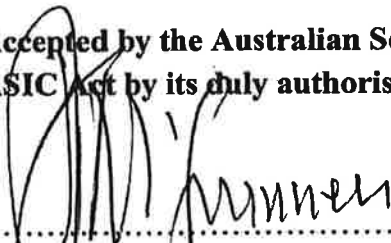
- 24.1 ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- 24.2 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.
25. Mr Pianta acknowledges that this enforceable undertaking has no operative force until accepted by ASIC, and Mr Pianta and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC (the **Acceptance Date**).
26. The address for providing ASIC with any document or certification that the enforceable undertaking requires to be provided is:

Australian Securities and Investments Commission  
GPO Box 9827  
BRISBANE Q 4001  
Attention: Senior Manager – Financial Services Enforcement



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Danny Charles Pianta

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



.....  
David McGuinness

Delegate of Australian Securities and Investments Commission

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Date 19 December, 2017

