

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:

Breakaway Finance Group Pty Ltd
ACN 124 739 206
AFSL 410525
(Breakaway)

And

Mark Godfrey Roberts
(Mr Roberts)

1. Definitions

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

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

AFS Licence means Australian Financial Services Licence.

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

Authorised Representative has the meaning given by section 761A of the Corporations Act.

Breakaway means Breakaway Finance Group Pty Ltd (ACN 124 739 206).

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* (Cth).

Exclusion Period means the period of two years from the Acceptance Date, referred to in paragraph 5.9 of this enforceable undertaking.

Financial Product has the meaning given by Chapter 7 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 Division 4 of Part 7.1 of the Corporations Act.

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

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

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

Letter has the meaning given by paragraph 5.3 of this enforceable undertaking.

Personal Advice has the meaning given by subsection 766B(3) of the Corporations Act.

Relevant Clients has the meaning given by paragraph 5.3 of this enforceable undertaking.

Representative has the meaning given by section 910A of the Corporations Act.

Statement of Advice has the meaning given by section 761A of the Corporations Act.

2. 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.

3. Background and ASIC's surveillance

- 3.1 Since 14 February 2012, Breakaway has held an AFS Licence (No: 410525) authorising it to carry on a Financial Services Business to provide Financial Product Advice and to deal in Financial Products. Mr Roberts is the sole director of Breakaway and a key person named in the conditions of Breakaway's AFS Licence. Mr Roberts also provided Financial Services, including Financial Product Advice, on behalf of Breakaway.
- 3.2 ASIC conducted a surveillance of Breakaway to monitor its compliance with the Financial Services Laws in the period from July 2013 to August 2016.
- 3.3 As part of its surveillance, ASIC considered a selection of Breakaway's policies and procedures (**Policies**). ASIC also reviewed a number of client files (**Client File Review**) containing advice provided by both Mr Roberts as well as other Representatives of Breakaway.
- 3.4 ASIC is concerned that the Policies were not effective in facilitating compliance with the relevant laws because they had not been adequately tailored to Breakaway's business operations. They also did not effectively deal with how conflicts of interest that may have arisen should have been addressed.
- 3.5 ASIC is also concerned that some key Policies had not been properly implemented or followed. For example, routine file reviews that were required to be performed at certain intervals in accordance with the Policies by a third party compliance consultant were not consistently performed. Even when those file reviews were performed, they were conducted in a way that was unlikely to adequately monitor the compliance of the Representatives subject to the review.
- 3.6 As a result of the Client File Review, ASIC is concerned that during the period under review Representatives of Breakaway may have:
- (a) failed to make reasonable enquiries into the Clients' relevant circumstances prior to providing advice;
 - (b) failed to conduct a needs analysis to determine if the amount of insurance cover recommended was in the Clients' best interests;
 - (c) recommended insurance cover where Clients were unable to afford the insurance premiums;

- (d) failed to provide adequate product replacement disclosure when recommending clients switched products; and/or
- (e) failed to accurately disclose product fees and costs payable to product issuers on products recommended.

4. ASIC's concerns

- 4.1 In light of the conduct and circumstances outlined in paragraphs 3.4 to 3.6 of this enforceable undertaking, ASIC has concerns regarding both the conduct of Breakaway as an AFS Licensee and Mr Roberts as a Representative providing Financial Product Advice to retail clients.
- 4.2 ASIC considers Mr Roberts may not have complied with certain provisions of the Corporations Act, by failing to:
 - (a) act in the best interests of clients (in contravention of section 961B of the Corporations Act);
 - (b) provide advice that was appropriate to clients (in contravention of section 961G of the Corporations Act); and
 - (c) providing the additional information required by section 947D when advising on the replacement of one product with another (in contravention of section 947D of the Corporations Act).
- 4.3 ASIC considers that Breakaway may not have complied with certain provisions of the Corporations Act by failing to:
 - (a) comply with the Financial Services Laws and take reasonable steps to ensure its Representatives do the same (in contravention of paragraphs 912A(1)(c) and 912A(1)(ca) of the Corporations Act);
 - (b) have in place adequate arrangements for the management of conflicts of interest (in contravention of paragraph 912A(1)(aa) of the Corporations Act);
 - (c) ensure its Representatives are adequately trained and competent to provide Financial Services (in contravention of paragraph 912A(1)(f) of the Corporations Act);
 - (d) comply with the conditions on the AFS Licence (in contravention of paragraph 912A(1)(b) of the Corporations Act), by failing to comply with condition 3 on its AFS Licence requiring Breakaway to establish and maintain compliance measures that ensure, as far as is reasonably practicable, that Breakaway complies with the provisions of the Financial Services Laws; and
 - (e) take reasonable steps to ensure its representatives complied with sections 961B, 961G, and 961J of the Act (in contravention of section 961L of the Corporations Act).

Acknowledgement of ASIC's views

- 4.4 Breakaway and Mr Roberts severally acknowledge that the views expressed by ASIC in relation to the alleged facts are reasonably held and each has offered enforceable undertakings in the terms of paragraphs 5.1 to 5.14 below.
- 4.5 ASIC acknowledges that Breakaway and Mr Roberts have co-operated with ASIC.

5. Undertakings

- 5.1 Under s93AA of the ASIC Act, Breakaway and Mr Roberts have severally offered the respective undertakings in this enforceable undertaking, and ASIC has agreed to accept those undertakings as an alternative to ASIC commencing civil proceedings or taking administrative action against Breakaway and/or administrative action against Mr Roberts in relation to ASIC's concerns set out in paragraphs 4.1 to 4.3 of this enforceable undertaking.

AFS Licence cancellation

- 5.2 Within seven days after the Acceptance Date (or such longer period as approved in writing by ASIC), Breakaway undertakes to lodge an application pursuant to paragraph 915B(3)(d) of the Corporations Act, for ASIC to cancel Breakaway's AFS Licence.

Write to Breakaway clients

- 5.3 Within 21 days after the Acceptance Date (or such longer period as approved in writing by ASIC), Breakaway undertakes to notify by letter (**Letter**) its Clients (**Relevant Clients**) who were provided with Financial Product Advice for the period of three years prior to the Acceptance Date, that:
- (a) Breakaway has entered into an enforceable undertaking with ASIC and that the enforceable undertaking can be viewed on ASIC's enforceable undertakings register available through ASIC's website;
 - (b) pursuant to that enforceable undertaking Breakaway has lodged an application with ASIC for ASIC to cancel Breakaway's AFS Licence and on this basis is in the process of discontinuing its Financial Services Business;
 - (c) The Relevant Clients may have been provided with Financial Product Advice that was not in their best interests in contravention of section 961B of the Corporations Act and that they may wish to consider having their advice reviewed;
 - (d) Clients have the right to make a complaint to Breakaway about the Financial Services provided by Breakaway, through Breakaway's internal dispute resolution procedure and, if the complaint is not resolved to the Clients' satisfaction by Breakaway, the Client has access to Breakaway's external dispute resolution scheme (inclusive of all relevant contact details); and

- (e) if Clients want to make a complaint, they should lodge the complaint with Breakaway as soon as possible and that delaying their complaint may limit their ability to obtain redress.
- 5.4 Breakaway undertakes to obtain ASIC's written approval of the form, content and manner of delivery of the Letter, prior to sending the Letter to the Relevant Clients.
- 5.5 Within seven days (or such longer period as approved in writing by ASIC) after notifying all Relevant Clients by way of the Letter, Breakaway undertakes to provide ASIC with:
- (a) confirmation that all Relevant Clients have been so notified by way of the Letter in the form, content and manner of delivery as approved by ASIC; and
 - (b) a list of all Relevant Clients' contact details who were so notified by way of the Letter.

Dispute Resolution

- 5.6 Breakaway undertakes to request ASIC to approve, within 21 days of the Acceptance Date (or within such longer period as may be agreed by ASIC in writing) and engage within 7 days of receipt of ASIC's approval (or within such longer period that may be agreed to by ASIC in writing), a suitable independent service provider for a period of no less than six months from the date of the Letter.
- 5.7 The independent service provider is to consider each complaint received from Clients in relation to any Financial Services provided by Breakaway, review the Client file and recommend whether and how the Client should be remediated for any financial loss or any other detriment suffered.

Breakaway as a Financial Services Provider

- 5.8 Breakaway undertakes for a period of two years from the Acceptance Date, to not
- (a) apply for an AFS Licence; or
 - (b) apply or agree to be an Authorised Representative of an AFS Licensee.

Mr Roberts as a Representative

- 5.9 Mr Roberts undertakes for a period of two years from the Acceptance Date, not to:
- (a) apply for an AFS Licence (either directly or through a corporate entity); or
 - (b) act as director, secretary, shareholder, employee, responsible manager or any other officer of an
 - i. AFS Licensee; or
 - ii. Authorised Representative of an AFS Licensee; or
 - (c) apply or agree to be an authorised representative of an AFS Licensee, or provide Financial Services.
- 5.10 The undertakings in paragraphs 5.9(b) and (c) do not apply during the period between the Acceptance Date and the date that Breakaway's AFS Licence is cancelled following compliance with the undertaking in clause 5.2.
- 5.11 During the period of three years following the conclusion of the Exclusion Period, Mr Roberts undertakes:
- (a) to notify ASIC in writing prior to the first time Mr Roberts makes an application for an AFS Licence;
 - (b) to notify ASIC in writing prior to the first time Mr Roberts becomes a Representative of an AFS Licensee, or a Representative of an Authorised Representative;
 - (c) prior to being authorised or employed by an AFS Licensee, or obtaining an AFS Licence, to successfully complete all training courses and exams mandated by the Financial Adviser Standards and Ethics Authority for a new adviser providing the Financial Services he intends to provide, or, to complete such other courses as may be agreed by ASIC in writing;
 - (d) to provide ASIC with documentation substantiating successful completion of the training courses and exams referred to in paragraph (c) as soon as practicable following the completion of the training courses and exams;
 - (e) to provide a copy of this enforceable undertaking to an AFS licensee prior to being authorised or employed by that licensee.

Other undertakings

- 5.12 Breakaway and Mr Roberts severally undertake that they will pay the costs of their compliance with this enforceable undertaking, including the

remuneration and costs associated with the engagement of a suitable service provider as referred to in paragraph 5.6 of this enforceable undertaking.

- 5.13 Breakaway and Mr Roberts severally undertake that they will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on their costs of compliance with this enforceable undertaking, to any third party (including to Clients).
- 5.14 Breakaway and Mr Roberts severally undertake to, within 14 days after receiving a written request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing their compliance with the terms of this enforceable undertaking, including any correspondence with Clients and any Authorising Licensee.

6. Acknowledgements

6.1 Breakaway and Mr Roberts severally acknowledge that ASIC:

- (a) 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;
- (b) may from time to time publicly refer to this undertaking;
- (c) will from time to time publicly report about compliance with this undertaking; and
- (d) will make this undertaking available for public inspection.

6.2 Further Breakaway and Mr Roberts severally acknowledge that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or institute proceedings against Breakaway or Mr Roberts in respect of:
 - (i) the criminal consequences of any conduct the subject of this enforceable undertaking;
 - (ii) any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- (b) this 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;
- (c) this undertaking has no operative force until accepted by ASIC; and
- (d) that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

6.3 This enforceable undertaking constitutes two separate undertakings:

- (a) an undertaking given by Breakaway to ASIC; and
- (b) an undertaking given by Mr Roberts to ASIC.

If an undertaking or other provision of one of the enforceable undertakings mentioned in this clause is or becomes invalid or unenforceable, that will not affect or impair the validity or enforceability of the other enforceable undertaking mentioned in this clause.

6.4 The address for providing ASIC with any document which this enforceable undertaking requires to be provided to ASIC is:

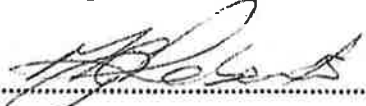
Senior Manager
 Financial Advisers
 Australian Securities and Investments Commission

Level 5, 100 Market Street
Sydney NSW 2000


6.5 The address for providing Breakaway and/or Mr Roberts with any document which this enforceable undertaking requires to be provided to Breakaway and/or Mr Roberts is:

Mark Roberts
As known to ASIC

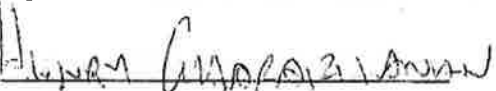
Signed by Breakaway Finance Group Pty Ltd)
ACN 124 739 206 in accordance with section)
127 of the *Corporations Act 2001*:


.....
Mark Godfrey Roberts
Sole director

Signed by Mark Godfrey Roberts in
the presence of:


.....
Signature of witness


.....
Mark Godfrey Roberts


.....
Print full name of witness

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


.....

20/12/17

Delegate of Australian Securities and Investments Commission