

## 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:

*David Lawrence Orth  
Robina, Queensland*

### 1. Definitions

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

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

**Authorised Representative** means a person authorised by a Financial Services Licensee under section 916A of the *Corporations Act 2001* (Cth)

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Corporations Regulations** means the *Corporations Regulations 2001* (Cth).

**Date of commencement** means the date this enforceable undertaking is accepted by ASIC.

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

**Financial Services Business** has the meaning given by Division 4 of Part 7.1 of the *Corporations Act 2001*

**Financial Services Licensee** means a person who holds an Australian Financial Services Licence pursuant to section 911A of the *Corporations Act 2001* (Cth)

**Relevant period** means the period from 1 May 2013 to 31 December 2016.

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

### 2. Background

#### ASIC's role

- 2.1 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.

## Details of Conduct

- 1.1 During the relevant period Mr Orth was the director of Real Wealth Pty Ltd ACN 162 503 488 (now SNG5 Pty Ltd) ("**Real Wealth**") and Responsible Manager of Professional Representatives Pty Ltd ACN 162 127 880. Mr Orth developed and caused Real Wealth to implement a business model whereby Real Wealth provided financial services to a number of clients by the following means:
- (a) Real Wealth would contact clients as a part of an opt in email campaign.
  - (b) Representatives of Real Wealth would offer to assist clients to complete a lost superannuation search.
  - (c) Where clients had more than one superannuation fund Real Wealth Representatives would make representations to clients about the advantages of consolidating their existing superannuation funds into a single superannuation fund and the returns on that fund.
  - (d) Real Wealth Representatives would always provide advice to clients to consolidate their separate superannuation funds into a single fund, most often HUB 24. In providing this advice, Real Wealth:
    - (i) did not purport to consider any of the clients' objectives, financial situation or needs;
    - (ii) did not make reasonable inquiries to obtain complete and accurate information regarding clients' relevant circumstances; and
    - (iii) did not conduct a reasonable investigation into alternate financial products which might achieve and meet clients' objectives and needs.
  - (e) Real Wealth would deal in financial products by arranging to consolidate the clients' superannuation funds.
- 1.2 Real Wealth provided a general advice warning and did not provide clients with statements of advice for the financial product advice that Real Wealth provided.
- 1.3 During the relevant period, Real Wealth provided Financial Services pursuant to the Real Wealth business model to over 750 clients. Real Wealth charged clients 4.4% of the total balance of their superannuation balances.
- 1.4 In December 2016, Mr Orth sold the assets and client list held by Real Wealth. Real Wealth no longer acts as the financial advisor for any clients.

### **ASIC's investigation**

- 1.5 ASIC commenced an investigation into the conduct of Mr Orth and Real Wealth and, in particular, into whether Mr Orth and/or Real Wealth had contravened provisions of Chapter 7 of the Corporations Act with respect to financial services provided by Real Wealth during the relevant period.

### **ASIC's views concerning the conduct:**

- 1.6 ASIC has concerns that, during the relevant period, in relation to a number of retail clients, Mr Orth may have caused Real Wealth to have:
- (a) Provided financial product advice in circumstances where a reasonable person may have considered that Real Wealth had considered one or more of the clients' objectives, financial situation or needs (i.e. provided personal advice);
  - (b) Failed to comply with the Best Interest Obligations imposed upon providers of personal advice under Part 7.7A Division 2 of the Corporations Act when providing the personal advice to the clients; and
  - (c) Contravened s912A of the Corporations Act by failing to provide financial services efficiently, honestly and fairly.

### **Acknowledgement of ASIC's views**

- 1.7 Mr Orth acknowledges that the views expressed by ASIC in relation to the alleged facts are reasonably held and has offered an enforceable undertaking in the terms of paragraphs 2.2 to 2.5 below.

## **2. Undertakings**

- 2.1 Under s93AA of the ASIC Act, Mr Orth has offered, and ASIC has agreed to accept as an alternative to pursuing court action against Mr Orth, the undertakings in paragraphs 2.2 to 2.5 below.

### **Financial services**

- 2.2 Mr Orth undertakes that, for a period of five years from the date of commencement, he will not:
- (a) provide Financial Services, whether on his own behalf or on behalf of another person who carries on a Financial Services Business, whether as an employee of that person or otherwise;
  - (b) be the director of a company that holds an Australian Financial Services Licence or a company that is a corporate authorised representative of an Australian Financial Services Licensee;
  - (c) hold out that he holds an Australian Financial Services Licence;

or

- (d) apply to ASIC under section 913A of the Corporations Act for an Australian Financial Services Licence.

### **Community benefit payment**

- 2.3 Mr Orth undertakes to, within 30 days of the date of commencement, make a community benefit payment in the amount of \$400,000 to Financial Literacy Australia to support the financial capability of vulnerable people.

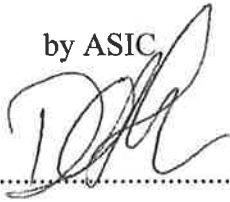
### **Reporting to ASIC**

- 2.4 Mr Orth undertakes that he will pay the costs of his compliance with this enforceable undertaking.
- 2.5 Mr Orth undertakes to provide all documents and information requested by ASIC, from time to time, for the purpose of assessing his compliance with the terms of this enforceable undertaking.

## **3. Acknowledgements**

- 3.1 Mr Orth acknowledges 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.
- 3.2 Further Mr Orth acknowledges that:
  - (a) ASIC's acceptance of this 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;
  - (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.
- 3.3 Mr Orth acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Orth and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted

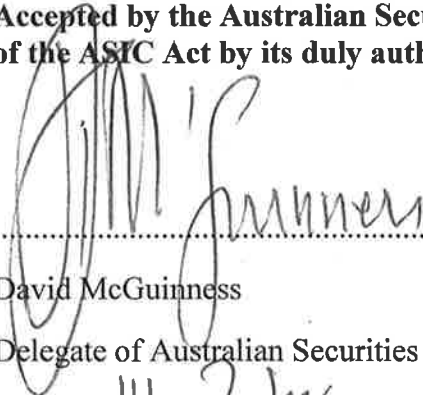
by ASIC



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David Orth

Dated: 31-1-2018

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



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David McGuinness

Delegate of Australian Securities and Investments Commission

Dated: 14 February 2018

