

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:

Frank John Tearle

Paddington, NSW

1. Definitions

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

AFSL means Australian financial services licence as that term is defined in section 761A of the Corporations Act 2001 (Cth).

AFSL Application as defined at paragraph 3.1 below.

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

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

Corporations Act means the Corporations Act 2001 (Cth).

Corporations Regulations means the Corporations Regulations 2001 (Cth).

Key Person Acknowledgment means the documents referred to in paragraph 3.6 and executed by each of Mr Epstein and Mr Tearle on 10 September 2015 and referred to in paragraph 3.7.

Mr Epstein means Justin Kurt Epstein.

Mr Tearle means Frank John Tearle.

OIS means One Investment Services Pty Ltd (subsequently IMS FX Services Pty Ltd, Deregistered) (ACN 604 843 049).

OIG means the business known as "One Investment Group" comprising One Investment Group Pty Ltd (ACN 136 507 241) and its related bodies corporate.

OMIFL means One Managed Investment Funds Limited (ACN 117 400 987).

Relevant Period means the period from 19 March 2015 to 22 February 2016.

Sale Agreement as defined at paragraph 3.2 below.

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.

Relevant entities

- 2.2 One Investment Group was established in 2009 and acts as an independent funds management business specialising in providing Responsible Entity, Trustee, Custody and Administration services.
- 2.3 OMIFL is a subsidiary of OIG.
- 2.4 OIS was incorporated on 19 March 2015 as a subsidiary of OIG and in July 2015, became a wholly owned subsidiary of OMIFL and an indirect subsidiary of OIG.
- 2.5 Mr Tearle and Mr Epstein were directors of OIG and directors, responsible managers of OMIFL during the Relevant Period, and were also directors of OIS until around September 2015 and responsible managers of OIS until 24 February 2016.
- 2.6 During the Relevant Period, entities related to Mr Tearle and Mr Epstein together owned OIG.

3. Details of Conduct

- 3.1 On 25 March 2015, OIS submitted an application for an AFSL (**AFSL Application**). The AFSL Application was signed by Mr Tearle and Mr Epstein as directors, nominated them as responsible managers and confirmed that OIS would rely on Mr Tearle, Mr Epstein and the financial, technical and human resources of OIG to comply with its obligations as an AFSL.
- 3.2 On 7 August 2015, whilst the AFSL Application was under assessment by ASIC, OMIFL entered into a share sale agreement (**Sale Agreement**) to sell OIS to an unrelated third party for \$150,000 plus/minus net assets which was conditional upon a number of matters completing by 31 August 2015, including OIS being granted an AFSL. The Sale Agreement was signed by Mr Epstein on behalf of OMIFL. Mr Tearle subsequently became aware of the Sale Agreement.
- 3.3 Under the Sale Agreement, OMIFL agreed to procure that Mr Tearle and Mr Epstein would remain as responsible managers for a minimum period of at least 90 days after the sale. In addition, any provision of financial services by OIS needed to be advised in advance by OIS and approved by Mr Tearle and Mr Epstein. Service agreements were entered into by each of Mr Tearle and Mr Epstein with OIS to provide ongoing responsible manager and compliance services to OIS.

- 3.4 On 12 August 2015, ASIC contacted Mr Tearle to discuss the sale of entities with AFSLs by OIG and its related entities. Mr Tearle stated that he did not consider that the sale of an entity was relevant to ASIC's consideration of whether or not that entity was entitled to be granted an AFSL under the Corporations Act. He told ASIC that if it had concerns it should put its request in writing and he would instruct his lawyer to respond. ASIC did not do so. During this discussion, Mr Tearle did not inform ASIC of the proposed sale of OIS nor of the existence of the Sale Agreement.
 - 3.5 As at 31 August 2015, the conditions precedent under the Sale Agreement had not been satisfied but the parties continued discussions.
 - 3.6 On 7 September 2015, ASIC informed OIS that it was intending to grant an AFSL, subject to a number of conditions which included OIS providing a confirmation from each of Mr Tearle and Mr Epstein acknowledging that they understood the implications of being named as a key person, including that they could not resign as key persons without ASIC's consent, and they consented to being so named on OIS's AFSL (**Key Person Acknowledgement**).
 - 3.7 On 14 September 2015, in response to ASIC's request, Mr Tearle provided a number of documents to ASIC, including a financial forecast for OIS for the period from May 2015 to December 2016 and an executed Key Person Acknowledgment from each of Mr Tearle and Mr Epstein.
 - 3.8 On 16 September 2015, ASIC granted an AFSL to OIS. As at this date, the conditions precedent under the Sale Agreement remained unsatisfied.
 - 3.9 Although ASIC did not subsequent to 12 August 2015 make any written request in relation to any sale of OIS as requested by Mr Tearle, at no time between the submission of the AFSL Application by OIS and the granting of the AFSL did Mr Tearle or Mr Epstein inform ASIC of the proposed sale of OIS or of the existence of the Sale Agreement.
 - 3.10 On 24 September 2015, OIS was sold to the unrelated third party and Mr Tearle and Mr Epstein resigned as directors of OIS but remained as key persons and responsible managers.
 - 3.11 On 22 February 2016, ASIC cancelled the AFSL on the grounds that the AFSL Application was materially misleading.
 - 3.12 Mr Tearle and Mr Epstein remained as key persons and responsible managers of OIS from the granting of the AFSL until the AFSL's cancellation by ASIC.
- 4. ASIC's investigation and analysis**
- 4.1 In February 2017, pursuant to section 13 of the ASIC Act, ASIC commenced an investigation into the conduct of OIS, OMIFL, Mr Tearle and Mr Epstein in relation to the AFSL Application.

5. ASIC's views concerning the conduct

- 5.1** As a result of its investigation, and by reason of the matters outlined in paragraphs 3.1 to 3.12 above, ASIC is concerned that Mr Tearle may have contravened his directors' duties under section 180(1) of the Corporations Act as set out below.
- 5.2** ASIC is concerned that during the Relevant Period Mr Tearle may have failed to exercise his powers and discharge his duties as a director of OIS with care and diligence in that he:
- 5.2.1** failed to inform ASIC of the proposed sale of OIS whilst the AFSL Application was under assessment;
 - 5.2.2** may have permitted potentially misleading information to be submitted on behalf of OIS in support of the AFSL Application;
 - 5.2.3** may have known that information relating to a potential sale of OIS would be material to the AFSL Application; and
 - 5.2.4** knew, or should have known, that providing misleading information to ASIC in relation to the AFSL Application could potentially result in OIS' AFSL being suspended or cancelled.

6. Acknowledgement of ASIC's views

- 6.1** Mr Tearle acknowledges that the views expressed by ASIC, set out at paragraph 5 above, in relation to the alleged facts are reasonably held and has offered an enforceable undertaking in the terms of paragraph 7 below.

7. Undertakings

- 7.1** Under s93AA of the ASIC Act, Mr Tearle has offered, and ASIC has agreed to accept as an alternative to ASIC pursuing civil or administrative action against him, the undertakings in paragraph 7.1.1 below.
- 7.1.1** Mr Tearle undertakes that from the Commencement Date he will:
- 7.1.1.1** not take on a role as a responsible manager in relation to any financial services businesses for a period of one year;
 - 7.1.1.2** not be involved, to the extent that is otherwise required by subparagraph 7.1.1.3 below, in any AFSL related applications by any entity of which he is either director or responsible manager, for a period of two years;
 - 7.1.1.3** use his best endeavours to procure each entity that holds an AFSL of which he is a director to have the following additional compliance measures in place in respect of AFSL applications for a period of two years:
 - (a) statements made in documents submitted to ASIC by the entity will be verified for accuracy by the applicant's general counsel (or where

relevant, the general counsel of the relevant group) or by a legally qualified alternative staff member prior to submission. A record will be made and retained of the verification and it will accompany each document submitted.

- (b) a standing agenda item at each entity's board meeting to consider the status of all documents that have been submitted to ASIC in the preceding period to determine whether there has been any change in circumstance that could render the statements misleading. Mr Tearle must immediately notify the relevant ASIC officer handling the document of any such change in writing.
 - (c) the relevant entity's independent auditor will verify that these compliance measures have been complied with every six months during this period and report to ASIC. The reports must be submitted no later than one month after each six month period.
- 7.1.1.4 for a period of two years notify ASIC in writing if he becomes aware that an agreement has been entered into which may result in a change of ownership of more than 50% of the shares of any entity holding an AFSL of which he is a director and will also provide such information about the prospective purchaser as is in his possession.
- 7.1.1.5 complete 30 hours of training within one year in courses to be pre-approved by ASIC, whose approval is not to be unreasonably withheld, and involving not more than 25% course content delivered on-line.
- 7.1.1.6 within 30 days, or such later date as ASIC may agree, pay the amount of \$100,000 to The Ethics Centre (www.ethics.org.au). The payment will be for the purpose of supporting the work undertaken by The Ethics Centre.
- 7.1.1.7 pay the costs of his compliance with this enforceable undertaking.
- 7.1.1.8 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.

8. Acknowledgements

8.1 Mr Tearle acknowledges that ASIC:

- 8.1.1** 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;
- 8.1.2** may from time to time publicly refer to this undertaking;
- 8.1.3** will from time to time publicly report about compliance with this undertaking; and
- 8.1.4** will make this undertaking available for public inspection.

8.2 Further Mr Tearle acknowledges that:

- 8.2.1** 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;
- 8.2.2** 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.

8.3 Mr Tearle acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Tearle and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

Frank Tearle

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Frank John Tearle

Date: *9 February 2018*

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

David McGuinness

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David McGuinness

Delegate of Australian Securities and Investments Commission

Date: *13 February 2018*