

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:

Vantage Global Prime Pty Limited

ACN 157 768 566

AFSL 428901

Level 29, 31 Market Street,

SYDNEY NSW 2000

(Vantage)

1. DEFINITIONS

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

ASIC means the Australian Securities and Investments Commission.

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

CFD means a contract for difference and as described in paragraph 2.2.

Commencement Date means the date this enforceable undertaking is accepted by ASIC.

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

Financial Services has the meaning given to that term by Division 4 of Part 7.1 of Chapter 7 of the Corporations Act.

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

Relevant Period means between 2 October 2015 and 25 January 2017.

Representative means a representative as defined by section 910A of the Corporations Act and includes:

- (a) an authorised representative of Vantage; or
- (b) an employee or director of Vantage; or
- (c) an employee or director of a related body corporate of Vantage; or
- (d) any other person acting on behalf of Vantage.

Vantage means Vantage Global Prime Pty Limited ACN 157 768 566 and holder of AFSL 428901.

- 1.2 Except so far as the contrary intention appears in this Enforceable Undertaking, the interpretation provisions in Part 1.2 of the Corporations Act and Part 2 Division 4 of the ASIC Act apply for the purposes of this enforceable undertaking as if the provisions of those Acts were provisions of this enforceable undertaking.

2. BACKGROUND

2.1 ASIC's role

2.1.1 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.

2.1.2 ASIC's responsibilities include the administration and enforcement of the financial services provisions of the Corporations Act.

2.2 CFD

A CFD is an agreement, between a client and the CFD provider, which allows a client to take a position on, and therefore make a profit or loss by reference to, fluctuations in the price of an underlying asset. CFDs are derivative products and are traded over-the-counter (or OTC) which means that it is not bought or sold on an exchange-traded market, and is a contract between the CFD provider and the CFD provider's client.

2.3 DJIA CFD

A DJIA CFD is a CFD that is ultimately referenced to the Dow Jones Industrial Average Index (DJIA) products.

2.4 Vantage

Vantage was incorporated on 12 April 2012 under the name MXT Global Pty Limited until 23 August 2015 when it changed its name to Vantage Global Prime Pty Limited.

2.5 Other relevant persons

A, B, C and D each separately denotes a client of Vantage.

3. DETAILS OF CONDUCT

3.1 Vantage is the holder of Australian financial services licence (AFSL) (No. 428901), which it has held since 21 December 2012. Vantage is authorised by its licence to:

- 3.1.1 provide general financial product advice for derivatives and foreign exchange contracts;
- 3.1.2 deal in a financial product by issuing, applying for, acquiring, varying or disposing of derivatives and foreign exchange contracts; and
- 3.1.3 make a market in derivatives and foreign exchange contracts; to retail and wholesale clients.

3.2 The Financial Services provided by Vantage relevantly include the making of a market and dealing in OTC derivatives, including CFD contracts, with retail and wholesale clients.

ASIC's investigation findings

- 3.3 During the Relevant Period, a senior employee (the **Senior Employee**) of a wholly owned subsidiary of Vantage who had the responsibility of managing a team, was authorised by Vantage to onboard new clients and manage the relationship of existing clients. As part of their role, the Senior Employee was authorised by Vantage to access Vantage systems to view confidential client trading information.
- 3.4 During the Relevant Period, the Senior Employee identified through confidential client trading information held by Vantage of four clients who had a record of successful and profitable trading: clients A, B, C and D.
- 3.5 During the Relevant Period, the Senior Employee used the confidential client trading information of clients A, B, C and D to derive a personal benefit of about \$95,000 in the following manner:
 - 3.5.1 the client would open a position with Vantage in DJIA CFD contracts;
 - 3.5.2 within about a minute of the client taking that position, the Senior Employee would follow the client's trading by opening positions in comparative DJIA CFD contracts, in the same direction as the client, on his own personal trading account with another CFD provider; and

- 3.5.3 the Senior Employee would subsequently close off his position in the DJIA CFD contracts on his personal account, generally when the contracts were in a profitable position.
- 3.6 The course of conduct described at paragraphs 3.5 occurred on 31 separate instances, specifically:
- 3.6.1 On 17 occasions, the Senior Employee followed client A, by commencing a course of transactions within an average of 50 seconds following client A commencing a course of transactions;
- 3.6.2 On 7 occasions, the Senior Employee followed client B, by commencing a course of transactions within an average of 40 seconds following client B commencing a course of transactions;
- 3.6.3 On 6 occasions, the Senior Employee followed client C, by commencing a course of transactions within an average of 50 seconds following client C commencing a course of transactions; and
- 3.6.4 On 1 occasion, the Senior Employee followed client D, by commencing a course of transactions within 62 seconds following client D commencing a course of transactions.
- 3.7 As an example of the course of conduct described at paragraph 3.6, on 25 January 2017:

Client B opens position

between 3:02.00pm and 3:02.59pm, B sells 450 DJIA CFDs in 9 transactions through Vantage

The Senior Employee opens position

at 3:02.51pm, the Senior Employee sells 200 DJIA CFDs through another CFD provider

between 3:03.00pm and 3:04.30pm, the Senior Employee sells a further 350 DJIA CFDs through another CFD provider

The Senior Employee closes position

between 3:42.34 and 3:42.45, the Senior Employee buys 550 CFDs through another CFD provider.

- 3.8 The above conduct identified concerns that, during the Relevant Period, Vantage did not have in place policies, procedures, systems or controls that applied to its Representatives about personal trading and use of confidential client information, did not have any training program to ensure its Representatives knew and understood Vantage's obligations as

a financial services licensee and, did not have any monitoring program to identify the above conduct.

Following the Relevant Period

- 3.9 Vantage, after becoming aware of ASIC's investigation, carried out remedial works to address its systems and controls failures including by implementing:
- 3.9.1 a new Compliance Manual, Compliance Monitoring Program, Compliance Procedures and Registers; and
 - 3.9.2 a Personal Trading Policy.

ASIC's views concerning the conduct

- 3.10 As a result of its enquiries, ASIC is concerned that Vantage did not have in place adequate policies, procedures, systems and controls to identify, monitor, prevent and respond to the inappropriate use of confidential client trading information by its Representatives for their own personal benefit, including that:
- 3.10.1 There was no systems or controls in place to monitor the personal trading of its Representatives;
 - 3.10.2 Vantage did not prevent or identify the conduct by the Senior Employee until it became aware of ASIC's investigation; and
 - 3.10.3 There was no systems and controls in place around ensuring its Representatives are adequately trained and competent to provide Financial Services under its AFSL.
- 3.11 As a result of the conduct referred to above, ASIC is concerned that Vantage may not have complied with its obligations under the Corporations Act, including:
- 3.11.1 s912A(1)(a), by failing to take all necessary steps to ensure that the Financial Services covered by its AFSL are provided efficiently, honestly and fairly;
 - 3.11.2 s912A(1)(aa), by failing to have in place adequate arrangements for the management of conflicts of interest;
 - 3.11.3 s912A(1)(e), by failing to maintain the competence to provide the Financial Services covered by its AFSL; and
 - 3.11.4 912A(1)(f), by failing to ensure its Representatives were adequately trained and competent to provide the Financial Services covered by its AFSL.

- 3.12 ASIC acknowledges that Vantage has cooperated with ASIC in relation to ASIC's investigation.

Acknowledgement of ASIC's views

- 3.13 Vantage acknowledges that the views expressed by ASIC in paragraphs 3.10 and 3.11 are reasonably held.

4. UNDERTAKINGS

- 4.1 Under s93AA of the ASIC Act, Vantage has offered, and ASIC has agreed to accept as an alternative to pursuing civil or administrative action against Vantage, the undertakings in paragraphs 4.2 to 4.15.

Remedial Undertakings

- 4.2 Vantage undertakes not to appoint the Senior Employee as a director of Vantage or of any wholly owned subsidiary of Vantage for a period of at least 12 months from the Commencement Date.
- 4.3 Vantage undertakes to, if the Senior Employee remains a Representative of Vantage:
- 4.3.1 arrange for the Senior Employee to enrol in and complete a course in business ethics agreed to by ASIC within 6 months from the Commencement Date, or such other date as agreed by Vantage and ASIC; and
- 4.3.2 arrange for the Senior Employee to complete 20 hours of compliance and related training about Vantage's obligations under the Financial Services Laws relating to the Financial Services covered by its AFSL provided by Vantage's Compliance Team or external providers, as determined by Vantage, in each calendar year of 2018 and 2019 with details of the training program and attendance dates to be provided to ASIC on or before 24 December of each of those years.

Training of Representatives

- 4.4 Vantage undertakes within 60 days after the Commencement Date, to arrange for and ensure the provision by external AFSL training provider(s) 10 hours of compliance related training about Vantage's obligations under the Financial Services Laws relating to the Financial

Services covered by its AFSL, to each of its Representatives.

Appointment of Independent Expert

- 4.5 Vantage undertakes to request, within 21 days after the Commencement Date, that ASIC approve:
- 4.5.1 the appointment of an Independent Expert that meets the criteria in paragraph 4.7; and
 - 4.5.2 draft terms of engagement for that expert that meet the requirements of this enforceable undertaking.
- 4.6 If ASIC approves the draft terms of engagement and the Independent Expert following a request by Vantage under paragraph 4.5, Vantage undertakes to appoint the approved Independent Expert on the terms approved by ASIC, within 14 days after receiving ASIC's approval.
- 4.7 Vantage undertakes to nominate, under paragraph 4.5.1, an Independent Expert who, in Vantage's opinion:
- 4.7.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
 - 4.7.2 is independent of Vantage, its related bodies corporate and its officers at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgement.
- 4.8 Vantage undertakes to ensure the terms of the Independent Expert's engagement provided to ASIC for approval under paragraph 4.5.2:
- 4.8.1 include a statement to the effect that the work of the Independent Expert is being carried out for Vantage and ASIC, and acknowledging that ASIC is relying on the work of the Independent Expert;
 - 4.8.2 include a statement that upon request by ASIC, ASIC is to be copied into all or some communications between Vantage and the Independent Expert;
 - 4.8.3 require the Independent Expert to notify ASIC where a conflict of interest arises during the engagement or when the Independent Expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgement;
 - 4.8.4 include an acknowledgement that in relation to the written reports to be provided to ASIC and Vantage as described in paragraphs 4.8.5 to 4.8.8, ASIC may from time to time publicly

refer to the content of the reports, and may make a summary of the content of the reports or a statement that refers to the content of the reports public;

- 4.8.5 require the Independent Expert, within 90 days after its engagement (or such other period as agreed by ASIC and Vantage), to:
- (a) carry out a review (the **Compliance Review**) on the adequacy of Vantage systems, controls, policies and procedures in relation to its provision of Financial Services covered by its AFSL to ensure compliance with the Financial Services Law (including, but not limited to, those in respect of compliance, supervision, monitoring, training and record-keeping) relevant to conduct of the nature which led to ASIC's concerns as set out in paragraphs 3.10 and 3.11; and
 - (b) provide a written report (the **Compliance Report**) to Vantage and to ASIC that sets out:
 - (i) details of its findings in respect of the **Compliance Review**;
 - (ii) details of any deficiencies identified by the **Compliance Review**;
 - (iii) recommendations on how to rectify any deficiencies; and
 - (iv) a reasonable time for rectification to be completed;
- 4.8.6 require the Independent Expert to inform Vantage and ASIC within 30 days after receiving (or such other period as agreed by ASIC and Vantage) from Vantage the First Remediation Plan described in paragraph 4.9.1 whether, in the opinion of the Independent Expert, the First Remediation Plan requires any modification to ensure it addresses the recommendations made in the **Compliance Report**;
- 4.8.7 require the Independent Expert, within 12 months after the date of their engagement (or such other period as agreed by ASIC and Vantage) to carry out a review to test whether the recommendations identified in the **Compliance Report** have been implemented (the **Implementation Review**) and to provide a written report (the **Implementation Report**) to Vantage and ASIC which sets out:

- (a) the Independent Expert's assessment of the implementation of the First Remediation Plan; and
 - (b) any recommendations for actions that, in the opinion of the Independent Expert, would be necessary for Vantage to implement to rectify deficiencies identified in the Implementation Review; and
- 4.8.8 in the event that the Implementation Report recommends any actions that, in the opinion of the Independent Expert, would be necessary for Vantage to implement to rectify deficiencies identified in the Implementation Review, require the Independent Expert to inform Vantage and ASIC within 30 days after receiving the Second Remediation Plan described in paragraph 4.9.5 whether, in the opinion of the Independent Expert, the Second Remediation Plan requires any modification to ensure it addresses the recommendations made in the Implementation Report.

4.9 Undertakings to Implement Expert's Recommendations

- 4.9.1 Within 60 days after receipt of the Compliance Report, Vantage must provide to ASIC and the Independent Expert a plan (the **First Remediation Plan**) to implement the recommendations contained in the Compliance Report which:
- (a) sets out the actions Vantage proposes to take to implement the recommendations identified in the Compliance Report;
 - (b) ensures that sufficiently qualified and skilled staff are employed to discharge the First Remediation Plan; and
 - (c) specifies the date by which each action will be taken.
- 4.9.2 Vantage undertakes to make all reasonable modifications to the First Remediation Plan requested by ASIC within 14 days of receiving the relevant request.
- 4.9.3 Vantage undertakes to implement the First Remediation Plan in full, and within the timeframes specified in it, or such varied timeframes as are agreed in writing by ASIC.
- 4.9.4 Vantage undertakes to notify ASIC within 14 days of full implementation of the First Remediation Plan.
- 4.9.5 In the event that the Implementation Report recommends any actions that, in the opinion of the Independent Expert, would be necessary for Vantage to implement to rectify deficiencies identified in the Implementation Review, Vantage will within 60 days after receipt of the Implementation Report, provide to ASIC

and the Independent Expert a plan (the **Second Remediation Plan**) to implement the recommendations contained in the Implementation Report which:

- (a) sets out the actions Vantage proposes to take to implement the recommendations identified in the First Implementation Report;
- (b) ensures that sufficiently qualified and skilled staff are employed to discharge the Second Remediation Plan; and
- (c) specifies the date by which each action will be taken.

- 4.9.6 If Vantage is required to provide the Second Remediation Plan under paragraph 4.9.5, Vantage undertakes to make all reasonable modifications to the Second Remediation Plan requested by ASIC within 14 days after receiving the relevant request.
- 4.9.7 If Vantage is required to provide the Second Remediation Plan under paragraph 4.9.5, Vantage undertakes to implement the Second Remediation Plan in full, and within the timeframes specified in it, or such varied timeframes as are agreed in writing by ASIC.
- 4.9.8 If Vantage is required to provide the Second Remediation Plan under paragraph 4.9.5, Vantage undertakes to notify ASIC within 14 days of full implementation of the Second Remediation Plan.

Community benefit payment

- 4.10 Vantage undertakes to make a voluntary payment of \$95,000 to, or as directed by, The Ethics Centre Limited ACN 094 609 015 within 30 days after the Commencement Date, or such other period as agreed by Vantage and ASIC, such amount representing the approximate profit realised by the Senior Employee.

Other undertakings

- 4.11 Vantage undertakes to:
- 4.11.1 permit the Independent Expert, to the extent that it is reasonable having regard to the requirements of this enforceable undertaking, to have access to its books and to interview current employees;
 - 4.11.2 give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with the reports required to be prepared by the Independent Expert under this enforceable undertaking; and

- 4.11.3 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.
- 4.12 For the avoidance of doubt, Vantage is not required to provide the Independent Expert with any document or information that is the subject of legal professional privilege.
- 4.13 Vantage undertakes to seek approval under paragraph 4.5 for the appointment of a new independent expert, within 14 days of becoming aware the appointed Independent Expert is unable to continue its appointment.
- 4.14 Vantage undertakes to pay the costs of its compliance with this enforceable undertaking, including the remuneration and costs associated with the engagement of any Independent Expert.
- 4.15 Vantage will, within 14 days of any written request (unless otherwise agreed by ASIC) provide all documents and information requested by ASIC from time to time for the purposes of assessing Vantage's compliance with this enforceable undertaking.

Timing

- 4.16 Where a requirement of this undertaking falls on a weekend or public holiday, Vantage will have until the next business day to comply with the requirement.

5. ACKNOWLEDGEMENTS

- 5.1 Vantage acknowledges that ASIC:
 - 5.1.1 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;
 - 5.1.2 may from time to time publicly refer to this undertaking;
 - 5.1.3 will from time to time publicly report about compliance with this undertaking;
 - 5.1.4 will make this undertaking available for public inspection;
 - 5.1.5 may issue a media release referring to the content of the Independent Expert reports required by this undertaking;
 - 5.1.6 may from time to time publicly refer to the content of the Independent Expert reports required by this undertaking; and
 - 5.1.7 will make available for public inspection a summary of the content of the Independent Expert reports required by this

undertaking, or a statement that refers to the content of those Independent Expert reports.

- 5.2 ASIC acknowledges that it will not refer to any information from an Independent Expert report that:
- 5.2.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;
 - 5.2.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Vantage or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
 - 5.2.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 5.2.4 Vantage has asked not to be released if ASIC is satisfied:
 - (a) It would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Vantage otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
 - (b) It should not be released because it would be against the public interest to do so.
- 5.3 Further Vantage acknowledges that:
- 5.3.1 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;
 - 5.3.2 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.

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

6. NOTIFICATION


6.1 The address for providing ASIC with any document or notification required by the enforceable undertaking is:

Senior Manager - Complex Products
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2001

6.2 The address for providing Vantage with any document or notification required by the enforceable undertaking is:

Head of Compliance
Vantage Global Prime Pty Ltd
Level 31, 31 Market Street
SYDNEY NSW 2000

Executed by Vantage Global Prime Pty Ltd ACN 157 768 566 in accordance with section 127 of the Corporations Act 2001 (Cth)


.....
Signature of director


.....
Signature of director

..... Cong Li

..... Wei Wang

Full Name

Full Name

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act:


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Sharon Concisom

Delegate of Australian Securities and Investments Commission

Dated: 22 June 2016 