

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:

Dover Financial Advisers Pty Ltd

ACN 112 139 321

Australian Financial Services Licence No 307248

Cheltenham, Victoria

and

Terrence Paul McMaster

Cheltenham, Victoria

DEFINITIONS

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

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

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 916A of the Act.

Dover means Dover Financial Advisers Pty Ltd ACN 112 139 321.

Financial Product has the meaning given by Division 3 of Part 7.1 of the Act.

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

Financial Services has the meaning given by Division 4 of Part 7.1 of the Act.

Financial Services Business has the meaning given by Division 2 of Part 7.1 of the Act.

Financial Services Law has the meaning given by Division 2 of Part 7.1 of the Act.

Financial Services Licensee has the meaning given by Division 2 of Part 7.1 of the Act.

BACKGROUND

ASIC's role

1. Under section 1 of the ASIC Act, ASIC is charged with a 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 Dover and Mr McMaster

2. Dover has held an AFS Licence numbered 307248 since 31 May 2007, authorising it to carry on a Financial Services Business concerning retail and wholesale clients that involves the provision of Financial Product Advice and the dealing in Financial Products.
3. As at 1 June 2018, Dover had appointed 390 authorised representatives who collectively have approximately 11,129 clients, both past and present.
4. Mr McMaster is Dover's sole director and is named as its sole Key Person on its AFS Licence. Mr McMaster was also an authorised representative of Dover and provided Financial Product Advice.

Details of conduct

5. On 28 September 2015, Dover introduced the 'Dover Client Protection Policy' (**Protection Policy**) which set out the terms upon which its authorised representatives provided Financial Product Advice to their retail clients.
6. The Protection Policy purported to contain "*a number of client protections designed to ensure that every Dover client get [sic] the best possible advice and the maximum protection available under the law.*"
7. ASIC is concerned that the Protection Policy was averse to the interests of clients and that its terms intended to:
 - 7.1 excuse Dover and its authorised representatives from various liabilities arising from not acting in the client's best interests or providing advice that was not appropriate;
 - 7.2 oblige clients to compensate their adviser for commissions that have to be repaid to an insurer if an insurance policy was not maintained by the client for two years; and
 - 7.3 cause clients to believe that they could not make claims against Dover or its authorised representatives for contraventions of sections 961B and 961G of the Act.
8. Mr McMaster, in his capacity as an officer of Dover, prepared the terms of the Protection Policy.
9. Dover required statements of advice prepared by Dover's authorised representatives to refer to the Protection Policy.

10. On 22 March 2018 ASIC sent a letter to Dover setting out why it considered that each of the terms adverse to the interests of the client was inconsistent with or voided by the Financial Services Law. ASIC stated that the representation that the Protection Policy was protective of client's interests was deceptive.
11. On 29 March 2018 Dover withdrew the Protection Policy.
12. On 12 April 2018, Dover published on its website the following corrective disclosure notice at ASIC's request:

"Dear Client

I am writing to you regarding advice previously provided by Dover.

This advice included materials incorporated into the advice by a hyper-text link known as the Dover Client Protection Policy (the "Protection Policy").

The Protection Policy has been withdrawn and replaced by the Dover Client Information Policy, with retrospective effect.

The Protection Policy was deceptive because it contained certain provisions the effect of which were to avoid liability to compensate clients for any loss resulting from the advice provided.

Dover does not and will not rely on these clauses in any dispute because they are unlawful and are voided by the financial services law and the general law.

If you consider the advice provided to you has resulted in a financial loss you should seek independent legal advice or lodge a complaint with the Credit Industry Ombudsman and you should disregard the Protection Policy.

Please do not hesitate to contact me should you require further information about this matter.

Terry McMaster"

13. From 13 April 2018, at ASIC's request, Dover wrote to each of its 11,129 affected clients in the form stated in paragraph 12 above.

ASIC's views concerning the conduct

14. ASIC is concerned that by preparing, circulating and requiring its authorised representatives to refer to the Protection Policy in their statements of advice, Dover failed, deliberately and systemically, over the 30 months between 28 September 2015 to 29 March 2018, to comply with its obligations under the following sections of the Act:

- 14.1 section 912A(1)(a) which requires Dover to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;

- 14.2 section 912A(1)(c) which requires Dover to comply with the financial services laws; and
- 14.3 section 912A(1)(ca) which requires Dover to take reasonable steps to ensure that its representatives comply with the financial services laws.
15. The retainer between an authorised representative of Dover and each of their clients, insofar as it incorporated the terms of the Protection Policy, was a standard form contract for the purpose of section 12BK of the ASIC Act.
16. ASIC is concerned that certain terms of the Protection Policy were unfair pursuant to section 12BG of the ASIC Act because the terms:
 - 16.1 created a significant imbalance in the rights and obligation of the adviser and their client;
 - 16.2 were directed to protecting Dover's and its authorised representative's interest in avoiding liability to a client for loss resulting from bad advice; and
 - 16.3 were detrimental to clients.
17. ASIC is concerned that the preparation and circulation of the Protection Policy demonstrates that Dover lacks organisational competence as required by section 912A(1)(e) of the Act and cannot otherwise be relied upon to comply with its obligations under sections 912A(1)(a), (c) and (ca) of the Act.
18. Dover required statements of advice provided to Clients as required by s946A of the Act to refer to the Protection Policy. ASIC is concerned that Dover was aware or ought to have been aware that, in ASIC's opinion:
 - 18.1 it was deceptive to represent that a client would benefit from the terms of the Protection Policy; and
 - 18.2 the terms of the Protection Policy were voided by or otherwise inconsistent with the provisions of the Financial Services Law.
19. By reason of the matters set out in paragraphs 14 to 18, ASIC is concerned that Mr McMaster, in his individual capacity and in his capacity as a responsible officer of Dover:
 - 19.1 is not of good fame and character;
 - 19.2 has impaired Dover's ability to provide the Financial Services covered by the AFS Licence; and
 - 19.3 is likely to contravene a Financial Services Law in the future.

Acknowledgment of ASIC's views

20. Dover and Mr McMaster acknowledge the concerns of ASIC set out in paragraphs 14 to 19 are reasonably held.

UNDERTAKINGS

21. From 18 May 2018 the parties engaged in correspondence and discussions in relation to ASIC's concerns. Pursuant to section 93AA of the Act, Dover and Mr McMaster have offered, and ASIC has accepted, the undertakings in paragraphs 22 to 30 below as an alternative to ASIC exercising its powers under section 915C of the Act (including cancellation of Dover's AFS Licence).

Undertakings given by Dover

22. Effective from 4 pm on 8 June 2018 no new advice will be provided by Dover's authorised representatives under Dover's AFS Licence.
23. By 6 July 2018, Dover will:
- 23.1 lodge with ASIC an application under section 915B(3) of the Act requesting ASIC to cancel its AFS Licence immediately;
 - 23.2 notify ASIC under section 916F(3) of the Act that the appointment of each of its authorised representatives has been terminated; and
 - 23.3 otherwise cease to carry on a Financial Services Business which means that it will not:
 - i. hold out or represent that it holds an AFS Licence;
 - ii. provide a Financial Service;
 - iii. apply to ASIC under section 913A of the Act for an AFS Licence; or
 - iv. become an authorised representative of an AFS Licence holder.
24. Dover will continue to be a member of an ASIC-approved or otherwise authorised external dispute resolution scheme until at least 9 July 2019.
25. Dover will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on, the costs of compliance with this enforceable undertaking to any third party.
26. Dover will provide all documents and information requested by ASIC from time to time, for the purpose of assessing Dover's compliance with the terms of this enforceable undertaking, within 7 days of receiving a request from ASIC (or such longer period as may be agreed to in writing by ASIC).

Undertakings given by Terrence McMaster

27. From 6 July 2018, Mr McMaster will not at any time in the future:
- 27.1 carry on a Financial Services Business;
 - 27.2 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;
 - 27.3 act or engage in any conduct as an Authorised Representative of a Financial Services Licensee;
 - 27.4 act in a managerial capacity of any entity:
 - i. operating a Financial Services Business; or
 - ii. providing legal, accounting or other advisory services to a Financial Services Business;
 - 27.5 hold out that he holds an AFS Licence; or
 - 27.6 apply to ASIC under section 913A of the Act for an AFS Licence.
28. For the avoidance of doubt, the undertaking in subparagraph 27.4 above does not affect Mr McMaster's obligations as a director of Dover.
29. Mr McMaster will pay all his costs of compliance with this enforceable undertaking and will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on, his cost of compliance with this enforceable undertaking to any third party.
30. Mr McMaster will provide all documents and information requested by ASIC from time to time, for the purpose of assessing Mr McMaster's compliance with the terms of this enforceable undertaking, within 7 days of receiving a request from ASIC (or such longer period as may be agreed to in writing by ASIC).

ACKNOWLEDGMENTS

31. Dover and Mr McMaster acknowledge that ASIC:
- 31.1 may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 31.2 may from time to time publicly refer to and comment on this enforceable undertaking; and
 - 31.3 will make this enforceable undertaking available for public inspection.
32. Further, Dover and Mr McMaster acknowledge that:
- 32.1 this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges

in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;

32.2 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 enforceable undertaking or arising from future conduct; and

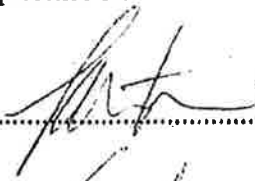
32.3 this enforceable undertaking has no operative force until accepted by ASIC.

PROVISION OF DOCUMENTS

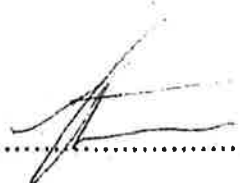
33. The address for providing ASIC with any notice or document which this enforceable undertaking requires to be provided to ASIC is:

Australian Securities and Investments Commission
Level 7, 120 Collins Street
MELBOURNE VIC 3000
Attention: Senior Manager – Financial Services Enforcement

THE COMMON SEAL of)
Dover Financial Advisers Pty Ltd)
ACN 112 139 321)
was affixed in accordance with the Corporations)
Act in the presence of:


..... Director


..... Director/Company Secretary


.....

Terrence Paul McMaster
(in his personal capacity)

Date: 26 June 2018

Accepted by the Australian Securities and Investments Commission under s 93AA of the ASIC Act by its duly authorised delegate:

A handwritten signature in black ink, appearing to read 'Tim Mullaly', is written over a horizontal dotted line.

Tim Mullaly

Delegate of the Australian Securities and Investments Commission

Date accepted by ASIC: 28/6/2018