

## COURT 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:

**PKF Melbourne Corporate Pty Ltd**

*ACN 063 564 045*

*Level 15, 500 Bourke Street Melbourne Victoria 3000*

*Australian Financial Services Licensee number 222050*

**(PKF)**

### 1. Definitions

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

**Acceptance Date** means the date this undertaking is signed by ASIC.

**AFSL** means Australian Financial Services Licence.

**ASIC** means the Australian Securities and Investments Commission.

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

**ASIC's Concerns** means the matters set out in paragraph 2.8.

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

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

**General advice** has the meaning given by subsection 766B(4) of the Corporations Act.

**IER engagements** means engagements of PKF by its clients to provide independent expert reports.

**Independent Expert** means the person, firm or company to be appointed pursuant to this undertaking as referred to in paragraph 5.2.

**Independent Expert Report** means a report prepared by the Independent Expert for the purposes of this court enforceable undertaking.

**PKF** means PKF Melbourne Corporate Pty Ltd (ACN 063 564 045).

- 1.2 Except so far as the contrary intention appears in this undertaking, the interpretation provisions in Part 1.2 of the Corporations Act and Part 1 Division 4 of the ASIC Act apply for the purposes of this undertaking as if those provisions were provisions of this undertaking.

## **2. Background**

### **ASIC's role**

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to strive to perform its functions and to exercise its powers to (among other things) promote the confident and informed participation of investors and consumers in the financial system.

### **Details of conduct**

- 2.2 PKF carries on a financial services business within the meaning of Chapter 7 of the *Corporations Act*.
- 2.3 Since 7 August 2002, PKF has held an AFSL (number 222050) authorising it to carry on a financial services business to provide General advice for securities to retail and wholesale clients.
- 2.4 The conduct that is the subject of this court enforceable undertaking occurred in the course of PKF providing General advice.

### **ASIC's concerns**

- 2.5 Between June 2023 to March 2024, and for the purposes of ensuring compliance with the *Corporations Act*, ASIC conducted inquiries by way of a review of three historical IER engagements to assess PKF's compliance with its statutory obligations, including compliance with its license conditions.
- 2.6 ASIC's inquiries included a review of certain of PKF's policies and procedures as well as a review of the General advice provided in the three IER engagements.
- 2.7 Through its inquiries, ASIC identified a number of concerns in relation to the three IER engagements, which ASIC communicated to PKF in a letter dated 24 January 2024.
- 2.8 Following the review of the three IER engagements and PKF's policies and procedures, ASIC holds the following concerns:

### **Internal Procedures**

- 2.8.1 PKF did not have any documented independent expert-specific internal policies and procedures directed to ensuring PKF complied with obligations associated with the preparation of IERs, including but not limited to manuals or other documents incorporating references to the relevant sections of the *Corporations Act* and ASIC's Regulatory Guide 111 *Content of expert reports* (RG 111) and Regulatory Guide *Independence of experts* 112 (RG 112);
- 2.8.2 PKF did not have documented policies in respect of valuation methodologies or adequately documented in its working papers its rationale for valuation methodology choice, to demonstrate it had a reasonable basis in respect of valuation methodology choice and application (except for as set out and documented in the IERs);
- 2.8.3 two of the three IER engagements ASIC reviewed contained a technical specialist report. PKF did not document PKF's assessment of the competence of the technical specialists assisting with the IER engagements prior to their engagement by PKF, and did not adequately document that PKF undertook a critical review of the technical specialist reports;
- 2.8.4 PKF did not have budget documentation to support a reasonable estimate of fees, hours and staffing requirements for IER engagements;
- 2.8.5 PKF did not have documented processes of review to account for any changes in law, regulatory guidance or professional practice.

### **Independence Specific Issues**

- 2.8.6 PKF did not have documented evidence on file of robust processes, checklists and documents supporting application of sound conflict of interest and risk management procedures prior to and during the three IER engagements;
- 2.8.7 PKF in some instances failed to take steps to ensure the absence of conflicts of interest prior to and during the three IER engagements.

## **3. ASIC's views concerning the conduct**

- 3.1 As a result of the matters referred to in paragraph 2.8 of this court enforceable undertaking, ASIC considers PKF has failed to comply with the following obligations under the *Corporations Act*:
  - 3.1.1 paragraph 912A(1)(a) - do all things necessary to ensure that the financial services covered by its licence are provided efficiently, honestly and

fairly; and

3.1.2 paragraph 912A(1)(aa) - have adequate arrangements for the management of conflicts of interest.

#### **4. Admissions by PKF**

- 4.1 PKF acknowledges the conduct identified by ASIC in paragraph 2.8 above and admits that conduct gives rise to contraventions of the provisions specified in paragraph 3.1 above.
- 4.2 ASIC acknowledges that on 12 March 2024 PKF agreed that it would not accept any new IER engagements until the finalisation of ASIC's inquiries.

#### **5. Undertakings**

##### **Acceptance of Court Enforceable Undertaking**

- 5.1 Under section 93AA of the ASIC Act, PKF has offered, and ASIC has agreed to accept the undertakings set out below, as an alternative to ASIC commencing court proceedings and/or taking administrative action against PKF in relation to the conduct and contraventions specified in this court enforceable undertaking.

##### **Engagement Independent Expert**

- 5.2 PKF undertakes that within 10 business days of the Acceptance date (or within such longer period as may be agreed by ASIC), it will request ASIC to approve:
  - 5.2.1 the appointment of an Independent Expert that meets the criteria in paragraph 5.4 of this court enforceable undertaking; and
  - 5.2.2 draft terms of engagement of the Independent Expert that meets the requirements of this court enforceable undertaking.
- 5.3 If ASIC approves the draft terms of engagement and the appointment of the Independent Expert following a request by PKF under paragraph 5.2, PKF undertakes to appoint the approved Independent Expert on the terms approved by ASIC, within 10 business days of receiving ASIC's approval, (or within such longer period as may be agreed by ASIC).
- 5.4 PKF undertakes to nominate an Independent Expert who it reasonably believes:
  - 5.4.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this court enforceable undertaking; and
  - 5.4.2 is independent of PKF, its related bodies corporate and its officers and who has no conflicts of interest at the time of appointment and who will

be capable of exercising objective and impartial judgement.

- 5.5 PKF undertakes to ensure the terms of the Independent Expert's engagement provided to ASIC for approval meet the requirements of this court enforceable undertaking and:
- 5.5.1 includes a statement to the effect that the work of the Independent Expert is being carried out for PKF and ASIC, and acknowledging that ASIC will be reviewing the work of the Independent Expert and will be relying on the work;
  - 5.5.2 includes a statement that upon request by ASIC, ASIC is to be copied into all or some communications between PKF and the Independent Expert;
  - 5.5.3 requires the Independent Expert to notify ASIC where a conflict of interest (actual or potential) arises during the engagement or when the Independent Expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgement; and
  - 5.5.4 includes a timetable for the preparation and delivery of each of the Independent Expert Reports to PKF and ASIC.
- 5.6 PKF undertakes to:
- 5.6.1 give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with any report required to be prepared by the Independent Expert under this court enforceable undertaking;
  - 5.6.2 provide that ASIC may seek from the Independent Expert an update or information of any relevant matter the subject of this court enforceable undertaking; and
  - 5.6.3 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 court enforceable undertaking.
- 5.7 PKF undertakes that it will not vary the terms of engagement of the Independent Expert without the prior written approval of ASIC.
- 5.8 PKF undertakes that it will pay the costs of its compliance with this court enforceable undertaking.
- 5.9 PKF undertakes to seek approval from ASIC (as provided for by paragraph 5.2) for the appointment of a new Independent Expert within 15 business days of becoming aware that the appointed Independent Expert is unable to continue

with their appointment.

- 5.10 PKF acknowledges that ASIC may direct PKF to replace the Independent Expert in circumstances where ASIC is not satisfied with the quality of the Independent Expert's work.
- 5.11 Prior to exercising its discretion under paragraph 5.10, ASIC will give the Independent Expert a reasonable opportunity to address its concerns about the quality of the Independent Expert's work.
- 5.12 PKF undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing its compliance with the terms of the court enforceable undertaking.

### **Policy and Procedure Review**

- 5.13 PKF undertakes to require the Independent Expert, within 10 business days of its engagement (or such other date as may be agreed by ASIC) to start to conduct a review of the effectiveness of PKF's:
- 5.13.1 IER-specific internal procedures including but not limited to manuals and guidelines reflecting policy guidance in RG111, 112 and Regulatory Guide 181 *Licensing: managing conflicts of interest* to assist PKF in meeting its obligations as an AFS licensee;
  - 5.13.2 Policies and procedures related to identifying and managing conflicts of interest;
  - 5.13.3 file audit policy and procedures; and
  - 5.13.4 other policies and procedures that the Independent Expert considers necessary to review to address ASIC's concerns.
- 5.14 PKF undertakes to require the Independent Expert to deliver, within 30 business days of its engagement (or such other date as may be agreed by ASIC), a report (**Policy and Procedure Report**) that:
- 5.14.1 details the Independent Expert's findings in respect of the matters referred to in paragraph 5.13;
  - 5.14.2 contains recommendations as to any action that should be taken by PKF in response to any of its findings; and
  - 5.14.3 the Independent Expert's opinion of a reasonable time period for implementation of all recommended action/s.
- 5.15 Within 21 business days (or such other date as may be agreed by ASIC) of receipt

of the Policy and Procedure Report, PKF undertakes to consider the Policy and Procedure Report and provide to ASIC and to the Independent Expert a plan (**Remedial Action Plan - Policy and Procedure**) that:

5.15.1 sets out the action PKF proposes to take to implement the recommendations made in the Policy and Procedure Report; and

5.15.2 specifies the date by which each action will be taken.

5.16 If ASIC or the Independent Expert requires any reasonable modifications to the Remedial Action Plan - Policy and Procedure, ASIC or the Independent Expert must notify PKF in writing within 7 business days of receipt of the Remedial Action Plan - Policy and Procedure. PKF undertakes to make such modifications to the Remedial Action Plan - Policy and Procedure and to provide a copy of the modified Remedial Action Plan - Policy and Procedure to both ASIC and the Independent Expert within 14 business days of receipt of such notification.

5.17 Subject to paragraph 5.16, PKF undertakes to implement the Remedial Action Plan - Policy and Procedure in full and within the specified time periods.

5.18 PKF undertakes to notify ASIC in writing within 2 business days of full implementation of the Remedial Action Plan - Policy and Procedure.

5.19 PKF undertakes to provide ASIC with a statement in writing, signed by a director of PKF, stating whether or not PKF has complied with all of the terms of this court enforceable undertaking, within 5 business days of providing the notification referred to at paragraph 5.18 above.

### **Refrain from IER engagements**

5.20 PKF undertakes not to accept any IER engagement until:

5.20.1 PKF notifies ASIC of the full implementation of the Remedial Action Plan – Policy and Procedure in accordance with paragraph 5.18;

5.20.2 ASIC receives the written statement under paragraph 5.19.

## **6. Acknowledgements**

6.1 PKF acknowledges that ASIC:

6.1.1 may issue a media release on execution of this undertaking referring to its terms, the admissions identified in paragraph **Error! Reference source not found.** and to the concerns of ASIC which led to its execution;

6.1.2 may from time to time publicly refer to this undertaking;

- 6.1.3 may from time to time publicly report about compliance with this undertaking;
  - 6.1.4 will make this undertaking available for public inspection;
  - 6.1.5 may, subject to paragraph 6.2, from time to time issue a media release referring to the content of any of the Independent Expert Reports;
  - 6.1.6 may from time to time publicly refer to the content of any of the Independent Expert Reports; and
  - 6.1.7 may make available for public inspection a summary prepared by the Independent Expert of any of the content of the Independent Expert Reports.
- 6.2 ASIC acknowledges it will not refer to any information from the Independent Expert that:
- 6.2.1 consists of personal information of a natural person whose acts or omissions are not the subject of a concern mentioned in the court enforceable undertaking;
  - 6.2.2 ASIC is satisfied would be unreasonable to release because the release would unreasonably affect the business, commercial or financial affairs of PKF or a third party other than in a way arising from the execution, implementation and reporting of the outcomes in the court enforceable undertaking;
  - 6.2.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
  - 6.2.4 PKF has requested not to be released and acting reasonably ASIC is satisfied that:
    - a) the release of the information could reasonably be expected to affect the business, commercial or financial affairs of PKF or a third party other than in a way arising from the execution, implementation and reporting of the outcomes in the court enforceable undertaking; or
    - b) it should not be released because it would be against the public interest to do so.
- 6.3 PKF further acknowledges that:
- 6.3.1 ASIC's acceptance of this court enforceable 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 court enforceable undertaking or arising from future conduct;

6.3.2 this court 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 undertaking or arising from future conduct; and

6.3.3 this court enforceable undertaking has no operative force until accepted by ASIC, and PKF and ASIC acknowledge that the date of the court enforceable undertaking is the date on which it is accepted by ASIC.

## **7. Notifications**

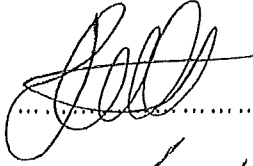
7.1 The address for providing ASIC with any document or notification required by this court enforceable undertaking is:

The Senior Manager, Enforcement Inquiries & Compliance Team (Financial Reporting, Audit and Corporations)  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne, VIC, 3001

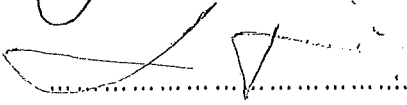
7.2 The address for providing PKF with any document or notification required by this court enforceable undertaking is:

PKF Melbourne Corporate Pty Ltd  
Level 15  
500 Bourke Street  
MELBOURNE VIC 3000

**EXECUTED** by PKF Melbourne Corporate Pty Ltd )  
in accordance with s.127(1) of the ) *Corporations Act 2001* )



..... Director



..... Director/~~Company Secretary~~

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



Delegate of Australian Securities and Investments Commission

**Tom O'Shea**  
Senior Executive Leader  
20 June 2024