

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:

Jenan Oslem Thorne
(also known as Cenan Thorne and Cenan Dikmen)
Gold Coast

1. Definitions

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

Acceptance Date means the date of acceptance by ASIC of this Enforceable Undertaking.

AFS Licence means Australian financial services licence and has the meaning given by section 761A of the Corporations Act.

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

Client(s) means retail clients and has the meaning given by section 761G of the Corporations Act.

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

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

Financial Products has the meaning given by section 761A of the Corporations Act.

Financial Services has the meaning given by section 761A of the Corporations Act.

Financial Services Business has the meaning given by section 761A of the Corporations Act.

Licensee means SMSF Advice Pty Ltd (AFSL 234664).

Ms Thorne means Jenan Oslem Thorne (also known as Cenán Thorne and/or Cenán Dikman), Authorised Representative (AR No 456988).

Relevant Period means 1 January 2016 to 27 November 2017.

Representative has the meaning given by section 910A of the Corporations Act.

Saber Accountants means Saber Accountants Pty Ltd ACN 133 901 747.

Saber Superannuation means Saber Superannuation Pty Ltd ACN 128 625 865.

SMSF means self managed superannuation fund and has the meaning given by section 761A of the Corporations Act.

SOA means Statement of Advice and has the meaning given by section 761A of the Corporations Act.

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.

2.2 Details of conduct

2.2.1 Since 1 January 2004, the Licensee has held an AFS Licence (No: 234664) authorising it to carry on a Financial Services Business to provide Financial Product Advice and to deal in Financial Products. The Licensee has appointed certain persons (including Ms Thorne) as Representatives to provide Financial Product Advice on its behalf.

2.2.2 Ms Thorne was appointed as a Representative of the Licensee on 28 April 2014. Under the authorisation mentioned above, Ms Thorne was authorised to provide Financial Product Advice. As a

Representative of the Licensee, Ms Thorne operated out of offices located in Southport, Queensland.

2.2.3 During the Relevant Period, Ms Thorne was a Director of Saber Superannuation and Saber Accountants. Saber Superannuation was also a Representative of the Licensee.

2.2.4 Ms Thorne ceased to be a Representative of the Licensee on 12 December 2017. During the Relevant Period, Ms Thorne was acting in her capacity as a Representative of the Licensee.

2.3 ASIC's surveillance and analysis

2.3.1 ASIC carried out a surveillance into the conduct of Ms Thorne during the Relevant Period and in particular into whether she contravened provisions of Chapter 7 of the Corporations Act with respect to Financial Services provided by her as a Representative of the Licensee.

2.4 ASIC's views concerning the conduct

2.4.1 Through its surveillance, ASIC conducted a review of material provided by the Licensee in relation to Ms Thorne's Clients and identified concerns in relation to the Financial Product Advice provided to 11 Clients. Based on the material reviewed, in ASIC's view Ms Thorne failed to:

2.4.1.1 act in the best interests of her Clients (section 961B of the Corporations Act) in relation to 11 of those Clients;

2.4.1.2 provide appropriate advice (s961G of the Corporations Act) in relation to 7 of those Clients;

2.4.1.3 prioritise the Clients interests above that of her own (s961J of the Corporations Act) in relation to 11 of those Clients; and

2.4.1.4 provide Statements of Advice within the relevant timeframe (s946C of the Corporations Act) in relation to 9 of those Clients.

2.4.2 Specifically, Ms Thorne:

2.4.2.1 did not undertake a professional assessment of the reasons why the Clients wished to invest in direct property through superannuation;

2.4.2.2 where relevant, did not compare the benefits and risks associated with the Clients maintaining their superannuation with existing providers, alternate fund providers and having superannuation subject to a SMSF. This would have involved a consideration of the costs

associated with establishing an SMSF, the costs associated with maintaining an SMSF, the risks associated with a rental property, the costs associated with obtaining insurance and the absence of diversification if a SMSF was used;

- 2.4.2.3** failed to ascertain whether the Clients intended to draw a pension from the SMSF once they reached retirement age, and if so, how they would achieve this with an illiquid asset such as an investment property;
- 2.4.2.4** recorded the Client's interest in establishing an SMSF for the purpose of purchasing direct property or investing their SMSF in direct property, as the Client's goal or objective and did not critically probe the reasons for the Clients wanting to invest in direct residential property and what they hoped to achieve by doing so;
- 2.4.2.5** inappropriately scoped the advice to remove retirement planning and insurance product recommendations;
- 2.4.2.6** classified all of the Clients as growth investors, despite the manner in which this was determined being insufficient. Despite classifying the Clients as growth investors, none of the Clients were invested in accordance with the stipulated growth asset allocation.
- 2.4.2.7** failed to include an adequate cost comparison within the SOA;
- 2.4.2.8** failed to ascertain whether the Clients had the time and expertise to manage their superannuation affairs correctly and did not discuss or implement a succession plan for the SMSFs;
- 2.4.2.9** did not consider how the Clients would meet their loan obligations in circumstances where the loan terms would surpass their superannuation preservation age;
- 2.4.2.10** did not include any provisions for insurance premiums in the SMSF cashflows;
- 2.4.2.11** failed to undertake adequate stress testing of the proposed strategy including whether the strategy would

remain viable if the Client's income reduced or the property remained untenanted;

- 2.4.2.12** proceeded to provide her advice to roll over existing superannuation despite knowing the Client had not sought external personal insurance advice;
 - 2.4.2.13** provided advice regarding the levels of personal insurance cover the Clients should hold however, these were generic amounts and not tailored to each Client;
 - 2.4.2.14** recommended a number of her Clients commence a new SMSF despite having less than, or just over, \$200,000 in superannuation assets, despite advising them that they needed at least \$200,000 in superannuation for it to be viable; and
 - 2.4.2.15** recommended a SMSF strategy that was more expensive with limited evidence to suggest that the strategy would provide an increased retirement benefit.
- 2.4.3** Ms Thorne also charged the Clients for establishing the SMSF and the holding trust and recommended that Saber Accountants prepare the annual accounts and tax returns. In these circumstances, it appears that Ms Thorne recommended the services of a related party to create extra revenue for herself, in circumstances where the initial advice was not in the client's best interests. As a result of this, ASIC was of the view that Ms Thorne failed to prioritise the interests of the client above her own interests (section 961J of the Corporations Act).
- 2.4.4** It was also ASIC's view that Ms Thorne failed to provide SOAs to Clients within the timeframe set out in section 946C of the Corporations Act.

2.5 Acknowledgments and admissions

- 2.5.1** Ms Thorne acknowledges and admits the conduct identified in paragraphs 2.4.2 to 2.4.4.
- 2.5.2** Ms Thorne admits to each and every contravention identified in paragraphs 2.4.1.1 to 2.4.1.4.

3. Undertakings

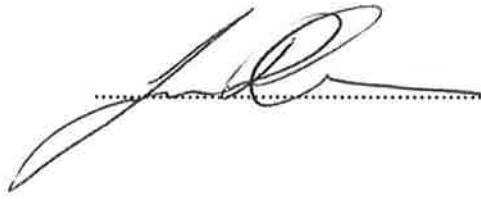
- 3.1** Under s93AA of the ASIC Act, Ms Thorne has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action under the Corporations Act, the undertakings in paragraphs 3.2 to 3.8.
- 3.2** Ms Thorne undertakes not to do any of the following for a period of 3 years commencing from the Acceptance Date:
- 3.2.1** act or engage in any conduct as a Representative of a Financial Services Licensee;
 - 3.2.2** provide Financial Services, whether on her own behalf or on behalf of another person who carries on a Financial Services Business, whether as an employee of that person or otherwise.
- 3.3** Ms Thorne undertakes to provide, within 28 days of the Acceptance Date, the following information in writing to each Client to whom she provided personal advice while authorised by the Licensee:
- 3.3.1** Her name and authorised representative number;
 - 3.3.2** A copy of ASIC's media release in relation to this Enforceable Undertaking;
 - 3.3.3** The name of the Licensee and the Australian Financial Services Licence number allocated to the Licensee;
 - 3.3.4** Contact details of the Licensee for dealing with enquiries and complaints regarding the Enforceable Undertaking or the conduct of Ms Thorne while a Representative of the Licensee.
- 3.4** Ms Thorne undertakes to notify ASIC in writing, within 35 days of the Acceptance Date, whether she has written to each Client as required by paragraph 3.3.
- 3.5** Ms Thorne undertakes to permanently refrain from doing any of the following if paragraph 3.6 is satisfied:
- 3.5.1** act or engage in any conduct as a Representative of a Financial Services Licensee; or
 - 3.5.2** provide Financial Services, whether on her own behalf or on behalf of another person who carries on a Financial Services Business, whether as an employee of that person or otherwise.

- 3.6** This paragraph is satisfied if:
- 3.6.1** Ms Thorne fails to do the things she undertakes to do under paragraph 3.3; and
 - 3.6.2** Ms Thorne fails to remedy the failure within 14 days of ASIC giving a written notice to Ms Thorne directing Ms Thorne to remedy the failure; and
 - 3.6.3** after the expiration of that 14-day period, ASIC gives a written notice to Ms Thorne specifying that she has failed to remedy the failure.
- 3.7** Ms Thorne undertakes that she will pay the costs of her compliance with this Enforceable Undertaking.
- 3.8** Ms Thorne undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing her compliance with the terms of this Enforceable Undertaking.

4. Acknowledgements

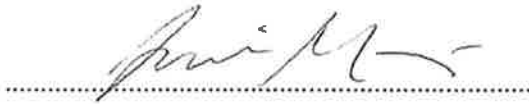
- 4.1** Ms Thorne acknowledges that ASIC:
- 4.1.1** may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2** may from time to time publicly refer to this undertaking;
 - 4.1.3** will from time to time publicly report about compliance with this undertaking; and
 - 4.1.4** will make this undertaking available for public inspection.
- 4.2** Further Ms Thorne acknowledges that:
- 4.2.1** 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;
 - 4.2.2** 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.
- 4.3** Ms Thorne acknowledges that this undertaking has no operative force until accepted by ASIC, and Ms Thorne and ASIC acknowledge that the

date of the Enforceable Undertaking is the date on which it is accepted by ASIC.



..... Jenan Thorne (aka Cenán Thorne)

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



Kate Metz

Delegate of Australian Securities and Investments Commission

[INSERT date]

13/2/19