



ASIC

Australian Securities & Investments Commission

Our Reference: 17-20205

23 January 2018

Tidswell Financial Services Limited  
50 Hindmarsh Square  
Adelaide SA 5000

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Sydney NSW 2000  
GPO Box 9827, Sydney NSW 2001  
DX 653 Sydney

Telephone: +61 2 9911 2000  
Facsimile: +61 2 9911 2414  
www.asic.gov.au

Dear Sir/Madam

### Infringement Notice

I enclose by way of service an Infringement Notice issued in accordance with section 12GXA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

The Infringement Notice (the notice) has been issued to you:

- because ASIC has reasonable grounds to believe that you have contravened an infringement notice provision of the ASIC Act; and
- as an alternative to commencing a proceedings (whether criminal or civil) against you for the alleged contravention.

Details of the alleged contravention and the amount payable under the notice are contained in the notice.

Enclosures:

- Infringement notice
- Invoice
- ASIC Information sheet – *ASIC Act Infringement Notices: Your Rights, which sets out your rights in respect of the notice.*

If you have any questions in relation to the notice please contact Anika Baset on 03 9280 3211 or [anika.baset@asic.gov.au](mailto:anika.baset@asic.gov.au).

Yours sincerely

Peter Kell  
Acting Chairman



ASIC

Australian Securities & Investments Commission



M00204785

## INFRINGEMENT NOTICE

### Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 23 January 2018

Unique identification code: R20170000645807

TO: Tidswell Financial Services Limited ACN 010 810 607

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).
2. ASIC has reasonable grounds to believe that you have contravened an infringement notice provision as follows:

From 2 February 2017 until 25 September 2017, in your capacity as the trustee of the Spaceship Superannuation Fund (**Spaceship Fund**), you contravened paragraph 12DB(1)(e) of the ASIC Act by making false or misleading representations on the website [www.spaceship.com.au](http://www.spaceship.com.au) (**Website**) with respect to the benefits of becoming a member of the Spaceship Fund, being representations made in trade or commerce in connection with the supply or possible supply of financial services.

#### Particulars

A. From 2 February 2017 until 25 September 2017, the following statements appeared on the Website:

- i. On the 'Ethos' section of the Website under the heading "*Why Spaceship was created*":

*We will fight to get you the very best assets in your portfolio.*

*[W]e think it's important to share with you our fundamental decision making vehicle so that you, our customers may confirm that it is consistent with your investment philosophy...We will measure companies in our portfolio based on their ability to provide defensibility of profits and high levels of product differentiation.*

- ii. On the 'Investment Portfolio' section of the Website, under the heading "*What does \$100K invested in Spaceship look like?*":

*Tech: A core of \$34,170 invested in where the world is going. The site displays the allocation of the \$34,170 among more than 30 specific companies.*

*The Rest: The tech core is diversified with \$65,830 around it in other industries. The site displays the allocation of the \$65,830*

among more than 30 specific companies; and states that \$5,000 is invested in "*fixed interest*" and \$2,000 in "*cash*".

- B. The statements on the Ethos section of the Website represented to prospective members that the Spaceship Fund directly and actively selects companies in which it invests members' funds.
- C. The representations to prospective members on the Ethos section of the Website were reinforced by the impression given by the Investments section of the Website that the Spaceship Fund holds a direct investment in approximately 60 companies named on that page and that these had been evaluated by the managers of the Spaceship Fund and identified as appropriate investments for the GrowthX portfolio.
- D. The representations are false or misleading because:
  - i. The trustee of the Spaceship Fund, nor anyone on its behalf, does not "measure companies in [its] portfolio based on their ability to provide defensibility of profits and high levels of product differentiation".
  - ii. The Spaceship Fund invests up to 98 per cent of members' funds in eight passive, index-tracking exchange traded funds (ETFs).
  - iii. No qualitative assessment is undertaken of the underlying companies in which six of these ETFs invest. The asset allocation of the Spaceship Fund as at 9 June 2017, places 78 per cent of members' funds with these six ETFs; and 22.5 per cent of members' funds are invested in an ETF that aims to reflect the performance of the S&P/ASX 300.
  - iv. The responsible entities for two of the ETFs apply a qualitative analysis of the underlying companies in which members' funds are invested. On the strategic asset allocation of the Spaceship Fund at the relevant time, 19 per cent of members' funds were invested in these two ETFs.
  - v. This qualitative analysis is based on the investment research and analysis performed by the operator of those funds, but the selection of these companies is not capable of being influenced by the managers of the Spaceship Fund.

#### **Penalty under this notice**

- 3. The penalty payable under this notice in relation to the alleged contravention is \$12,600.

This penalty is payable to ASIC on behalf of the Commonwealth. This penalty can be paid using one of the methods detailed in the enclosed invoice.

### **Consequences of complying with this notice**

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
  - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
  - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

### **Consequences of failing to comply with this notice**

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$2,100,000.

### **Time for payment**

7. The time for payment is:
  - (a) within 28 days after the day on which the notice is issued to you; or
  - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

### **Applying for more time to pay the penalty under this notice**

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

### **Applying to have this notice withdrawn**

10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or

your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

### **Withdrawal of this notice**

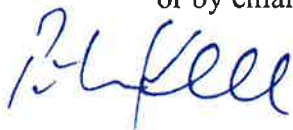
12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

### **Requirements for applications**

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
  - (a) must be in writing; and
  - (b) must include the unique identification code set out at the top of this notice; and
  - (c) must include your reasons for making the application; and
  - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:

Anika Baset  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne, VIC 3000

Or by facsimile: 03 9280 3444  
or by email: [ACLInfringementNotices@asic.gov.au](mailto:ACLInfringementNotices@asic.gov.au)



Peter Kell  
as a delegate of the Australian Securities and Investments Commission