

## ENFORCEABLE UNDERTAKING

*Australian Securities and Investments Commission Act 2001(Cth)*

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

**Gregory John Blackaby**  
Thornlands, Queensland

### 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;

**Acquire** means Acquire Strategic Advisers Pty Ltd ACN 160 077 065;

**AFS Licence** means Australian financial services licence, as defined by section 761A of the Corporations Act;

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

**Authorised Representative** has the meaning given by section 761A of the Corporations Act;

**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);

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

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

**Financial Product** has the meaning given by section 761A of the Corporations Act;

**Financial Service** 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;

**IRESS** means IRESS Limited ACN 060 313 359;

**Licensee** means Capstone Financial Planning Pty Ltd ACN 093 733 969 (AFS Licence no. 223135);

**Mr Blackaby** means Gregory John Blackaby (Authorised Representative of the Licensee, AR no. 325438);

**Relevant Period** means 1 January 2018 to 8 April 2022;

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

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

**Xplan** means the financial planning and wealth management software Acquire used in the course of its business, including for its record keeping obligations.

## **BACKGROUND**

### **ASIC's role**

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.

### **Details of Acquire and Mr Blackaby**

2. Since 14 October 2002, the Licensee has held an AFS Licence authorising it to carry on a Financial Services Business to provide Financial Product Advice and to deal in Financial Products.
3. Since 14 November 2016, Acquire has been an Authorised Representative of the Licensee. Acquire operates a Financial Services Business located in Morningside, Queensland with approximately 280 Clients. Acquire provides Financial Product Advice to Clients, including investment strategies for SMSFs.
4. From 2015 to 2022, Mr Blackaby was employed as a financial adviser at Acquire. Mr Blackaby became an Authorised Representative of the Licensee on 14 November 2016.
5. On 4 February 2020, Mr Blackaby bought the Acquire business and was appointed sole director of Acquire.

### **Details of conduct**

6. As part of its business, Acquire provides ongoing services to Clients pursuant to 'Ongoing Service Agreements'. Acquire also services a small number of Clients on an ad hoc basis.
7. One of the ongoing services provided by Acquire to its Clients is an annual review of the Client's financial situation (**Annual Review**). A Client's Ongoing Service Agreement may require Acquire to provide a Client's Annual Review in the form

of a Record of Advice or Statement of Advice. Evidence of Clients' Annual Reviews (including the Records of Advice and Statements of Advice) should have been regularly uploaded to Acquire's Xplan platform.

8. In January 2022, Mr Blackaby caused an audit to be conducted of the Client files on Acquire's Xplan platform (**Audit**). The Audit revealed that for 240 of Acquire's Clients, those Clients' files on the Xplan platform did not contain any record, or evidence, of one or all of the Annual Reviews for the Relevant Period. Mr Blackaby informed ASIC that this was because, during the Relevant Period Acquire failed to put in place appropriate record keeping processes.

#### **ASIC's investigation**

9. ASIC carried out an investigation into the conduct of Acquire and Mr Blackaby, and in particular, whether there had been contraventions of the provisions of Chapter 7 of the Corporations Act with respect to the Financial Services provided by Mr Blackaby and Acquire during the Relevant Period.
10. During the investigation, Mr Blackaby provided ASIC with complete access to his personal laptop and the servers of Acquire where the original evidence of the annual client reviews was purportedly stored.

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

11. Based on the investigation, ASIC concluded that:
  - 11.1. Mr Blackaby failed to provide Financial Services to the standards expected of an Authorised Representative due to poor record keeping systems and processes;
  - 11.2. Mr Blackaby may have engaged in misleading and deceptive conduct pursuant to section 1041H of the Corporations Act, by uploading file notes which were not created contemporaneously with the events those file notes recorded; and
  - 11.3. Mr Blackaby may not have provided ongoing services to clients to which those clients were entitled.

#### **Acknowledgments and Admissions**

12. Mr Blackaby acknowledges and admits to the conduct identified in paragraph [11].

#### **UNDERTAKINGS**

13. Under s93AA of the ASIC Act, Mr Blackaby have offered, and ASIC has agreed to accept, the undertakings in paragraphs [15] to [18] below as an alternative to ASIC pursuing administrative action under the Corporations Act.
14. If ASIC requests information and documents for the purpose of assessing compliance with the terms of this enforceable undertaking, Mr Blackaby are to provide the requested information and documents to ASIC within 7 business days of the request.

### **Undertakings given by Mr Blackaby**

15. By 2 June 2023, Mr Blackaby must apply to ASIC to cease to be an Authorised Representative on ASIC's Authorised Representative Register.
16. Mr Blackaby undertakes that, from the Acceptance Date, he will not at any time in the future:
  - 16.1. carry on a Financial Services Business;
  - 16.2. 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;
  - 16.3. act or engage in any conduct as an Authorised Representative of a Financial Services Licensee;
  - 16.4. 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;
  - 16.5. hold out that he holds an AFS Licence;
  - 16.6. apply to ASIC under section 913A of the ASIC Act for an AFS Licence; and
  - 16.7. become an Authorised Representative of an AFS Licence.
17. Within 14 business days of the Acceptance Date, Mr Blackaby will write to all Clients who have been provided financial advice or ongoing reviews in the Relevant Period to notify them that:
  - 17.1. The Licensee is currently undertaking remediation and to refer to the Licensee if they have any queries or complaints in relation to the remediation; and
  - 17.2. They can also contact the Australian Financial Complaints Authority regarding any complaints, or disputes that they are not able to resolve with the Licensee.
18. Upon completion of the undertaking in paragraph [17], Mr Blackaby will provide ASIC an affidavit or statutory declaration stating that he has written to all the Clients and listing those Clients and their addresses (email or otherwise).

### **COSTS OF COMPLIANCE WITH THE UNDERTAKINGS**

19. Mr Blackaby undertakes to pay the costs of compliance with the enforceable undertakings in paragraphs [15] to [18]. Mr Blackaby will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on the costs of compliance with these enforceable undertakings or any proportion of those costs to any Acquire clients.

**ACKNOWLEDGMENTS**

20. Mr Blackaby acknowledges that ASIC:
- 20.1. 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;
  - 20.2. may from time to time publicly refer to this undertaking;
  - 20.3. will from time to time publicly report about compliance with this undertaking;
  - 20.4. will make this undertaking available for public inspection;
21. ASIC acknowledges that it will not refer to any information that:
- 21.1. 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;
  - 21.2. ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Acquire or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; and
  - 21.3. ASIC is satisfied should not be released because it would be against the public interest to do so.
22. Further, Mr Blackaby acknowledges that:
- 22.1. 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 the Independent review and Report and future conduct; and
  - 22.2. 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.
23. Mr Blackaby acknowledge that this undertaking has no operative force until accepted by ASIC, Mr Blackaby and the date of the enforceable undertaking is the date on which it is accepted by ASIC.

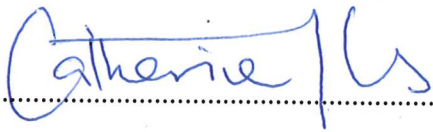


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**Gregory John Blackaby**

(in his personal capacity)

Date: 7/6/2023

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



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**Catherine Iles**

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: 15/6/2023