

**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:

**Bobbob Pty Ltd**

ACN 652 793 318

*South Brisbane, Queensland*

**and**

**Byron Iftan Goldberg**

*Double Bay, New South Wales*

**DEFINITIONS**

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

**Acceptance Date** means the date of acceptance by ASIC of this court enforceable undertaking.

**AFS licence** means Australian Financial Services Licence, as defined by section 761A of the *Corporations Act 2001 (Cth)*.

**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 2001 (Cth)*.

**Bobbob** means Bobbob Pty Ltd, ACN 652 793 318.

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

**Corporate Authorised Representative** or **CAR** means an Authorised Representative that is a body corporate.

**Financial Service** has the meaning given by section 766A of the *Corporations Act*.

**Mr Goldberg** means Byron Iftan Goldberg.

**Relevant Period** means between 1 April 2022 to 1 December 2022.

**Retail Client** has the meaning given by sections 761G and 761GA of the *Corporations Act*.

**Sanlam** means Sanlam Private Wealth Pty Ltd, ACN 136 960 775, the holder of AFS licence number 337927.

## ASIC'S ROLE

- 2 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.

## BACKGROUND

- 3 Bobbob was incorporated on 13 August 2021. Since that time, Mr Goldberg has been:
  - 3.1 Bobbob's sole director; and
  - 3.2 a co-founder and the majority shareholder of Bobbob (through his interest in another entity of which he is the sole director).
- 4 Since at least 5 April 2022:
  - 4.1 Bobbob has been a CAR of the AFS licence holder Sanlam, pursuant to a CAR agreement (**CAR Agreement**). The CAR Agreement authorises Bobbob to provide certain Financial Services on behalf of Sanlam; and
  - 4.2 Mr Goldberg has been a sub-Authorised Representative of Sanlam under the CAR Agreement.
- 5 During the Relevant Period, Bobbob offered an interest earning crypto-asset based investment product to Australian consumers (**Investment Product**). The Investment Product was offered pursuant to the CAR Agreement. To acquire the Investment Product, customers deposited Australian Dollars (**AUD**) into a Bobbob account. The AUD deposits were then exchanged for the crypto-asset USD Coin (**USDC**), which is said to be a "stablecoin" whose value is pegged to the United States Dollar. This USDC was transferred to Bobbob's lending partners, who in turn, could loan the crypto-assets to various third party borrowers in return for interest. A portion of the interest earned on those loans was passed on to Bobbob customers. When customers withdrew from the Investment Product, their investment (plus interest) was returned in AUD.
- 6 During the Relevant Period, approximately 700 customers deposited funds totalling around AUD 1.6 million in the Investment Product. Since the product ceased to be offered on or around 1 December 2022, Bobbob has returned all funds (with interest) to customers.

## DETAILS OF CONDUCT

- 7 ASIC has conducted an investigation into Bobbob and its officers pursuant to s13 of the ASIC Act. The investigation relates to several representations Bobbob made about the Investment Product (**Representations**) during the Relevant Period.

8 The Representations (summarised at paragraphs 9 to 12 below) were published on:

8.1 Bobbob's website at the address <https://www.bobbob.co> (**Bobbob website**);

8.2 Bobbob's TikTok Account under the username "bobbobfinance"; and

8.3 Bobbob's Instagram Account under the username "bobbobfinance".

**ASIC Approval Representation**

9 The Bobbob website reproduced ASIC's logo under the words "Regulated by" and adopted the phrase "ASIC Licensed Investment Account".

**Comparison Representation**

10 The Bobbob website featured an "infographic" comparing the higher interest rates available to customers under the Investment Product to those offered by various banks.

**Safe and Stable Representation**

11 In some promotional materials, Bobbob described the Investment Product with the expressions "safe", "safely" and "Stable & Secure".

**Interest Rate Representation**

12 In some promotional materials, Bobbob made statements that customers would earn an interest rate of 7.6% per annum from the time they deposited funds in the Investment Product.

**Mr Goldberg's role in Bobbob's promotional activities**

13 At all material times during the Relevant Period, Mr Goldberg was the individual primarily responsible for reviewing, approving and/or causing the publication of, Bobbob's promotional content, including the Representations.

**ASIC'S CONCERNS**

14 ASIC is concerned that:

**ASIC Approval Representation**

14.1 Bobbob represented (through the conduct set out at paragraph 9), that ASIC had approved or licensed the Investment Product. That representation was false or misleading because ASIC did not approve or license the Investment Product.

**Comparison Representation**

14.2 Bobbob represented (through the conduct set out at paragraph 10), that the Investment Product shared some attributes, including the risk

profile, of a bank account. That representation was false or misleading because:

- 14.2.1 the Investment Product generated interest by exposing customers to loaned crypto-assets. The Investment Product involved greater risks than funds deposited in a bank account and exposed customers to potential capital losses; and
- 14.2.2 deposits of up to AUD 250,000 in each of the licensed banks to which the Investment Product was compared are guaranteed by the Federal Government's Financial Claims Scheme (**FCS**). The FCS did not apply to the Investment Product.

### ***Safe and Stable Representation***

14.3 Bobbob represented (through the conduct set out at paragraph 11), that the Investment Product was a safe and stable investment, with minimal risk of customers incurring capital losses. That representation was false or misleading because the Investment Product involved crypto-assets and exposed customers to market volatility and the risk of capital losses.

### ***Interest Rate Representation***

14.4 Bobbob represented (through the conduct set out at paragraph 12), that customers would earn an interest rate of 7.6% per annum. The statements comprising the Interest Rate Representation were not always qualified to indicate that customers could earn "up to" 7.6% per annum, being the maximum interest rate available. In those circumstances, Bobbob represented that every customer was eligible to receive a rate of 7.6%. That representation was false or misleading because:

- 14.4.1 customers received variable interest rates under the Investment Product. A customer's applicable interest rate was subject to Bobbob's "*Referral Rules*"; and
- 14.4.2 under Bobbob's "*Referral Rules*", customers received a varying percentage of the maximum interest rate (being 7.6% per annum across the Relevant Period) based on the number of new users they referred and who opened accounts with Bobbob. Higher percentages of the maximum interest rate applied where the customer referred more new users. Customers who had not made any referrals to Bobbob received a base interest rate of between 4% to 5% per annum, unless they received a promotional code.

15 As a result of the matters referred to in paragraphs 7 to 14 above, ASIC is concerned that:

15.1 by making the Representations, Bobbob contravened section 12DB(1)(e) of the ASIC Act; and

15.2 Mr Goldberg, as Bobbob's sole director and majority shareholder, was involved in Bobbob's contraventions.

## **ADMISSIONS**

16 Bobbob admits to the conduct identified at subparagraph 15.1.

17 Mr Goldberg admits to the conduct identified at subparagraph 15.2.

## **UNDERTAKINGS**

18 Under s93AA of the ASIC Act, Bobbob and Mr Goldberg have offered, and ASIC has agreed to accept as an alternative to ASIC pursuing administrative action under the Corporations Act, the undertakings in paragraphs 19 to 26 below.

### **Undertakings given by Bobbob**

19 Within five (5) business days from the Acceptance Date, Bobbob will cease to be a CAR of Sanlam.

20 Bobbob undertakes that it will not itself, or allow anyone else on its behalf to, at any time for a period of 12 months from the Acceptance Date:

20.1 provide Financial Services to Retail Clients;

20.2 apply to ASIC under s913A of the Corporations Act for an AFS licence, for the purpose of providing Financial Services to Retail Clients;

20.3 be appointed, or engage in any conduct, as a CAR of an AFS licence holder in relation to providing Financial Services to Retail Clients;

20.4 hold out to be a CAR of an AFS licence holder, in relation to providing Financial Services to Retail Clients; and

20.5 hold out to be authorised in any way to provide Financial Services to Retail Clients.

21 If Bobbob wishes to engage in any of the conduct described at subparagraphs 20.1 to 20.5 after the 12-month period referred at paragraph 20 and prior to 31 August 2028, it undertakes to, at least 28 days prior to engaging in that conduct:

21.1 notify ASIC of its intention to do so; and

21.2 provide ASIC with details of the Financial Services it, or anyone on its behalf, intends to provide to Retail Clients, including:

21.2.1 the nature of the Financial Services; and/or

21.2.2 details of the AFS licence holder that Bobbob will be authorised by to provide the Financial Services (name, licence number

and the authorisations the AFS licence holder will provide to Bobbob).

### **Undertakings given by Mr Goldberg**

- 22 Within five (5) business days from the Acceptance Date, Mr Goldberg will cease to be a sub-Authorised Representative of Sanlam under the CAR Agreement.
- 23 Mr Goldberg undertakes that he will not at any time for a period of 12 months from the Acceptance Date:
- 23.1 be involved in managing a business which provides Financial Services to Retail Clients;
  - 23.2 be a director of, or hold a managerial position at, a body corporate that provides on its own behalf or on behalf of another person, Financial Services to Retail Clients;
  - 23.3 apply to ASIC under section 913A of the Corporations Act for an AFS licence for the purpose of providing Financial Services to Retail Clients;
  - 23.4 be appointed, or engage in any conduct, as an Authorised Representative of an AFS licence holder in relation to providing Financial Services to Retail Clients;
  - 23.5 hold out to be an Authorised Representative of an AFS licence holder in relation to providing Financial Services to Retail Clients; and
  - 23.6 hold out to be authorised in any way to provide Financial Services to Retail Clients.
- 24 If Mr Goldberg wishes to engage in any of the conduct described at subparagraphs 23.1 to 23.6 after the 12-month period referred at paragraph 23 and prior to 31 August 2028, then Mr Goldberg undertakes to, at least 28 days prior to engaging in that conduct:
- 24.1 notify ASIC of his intention to do so; and
  - 24.2 provide ASIC with details of the Financial Services he intends to provide to Retail Clients, including:
    - 24.2.1 the nature of the Financial Services;
    - 24.2.2 the name of the entity which will be providing the Financial Services and Mr Goldberg's roles and responsibilities at that entity; and/or
    - 24.2.3 details of the AFS licence holder that he or a related entity will be authorised or employed by to provide the Financial Services

(name, licence number and the authorisations that the AFS licence holder will provide to Mr Goldberg or a related entity).

### **Costs of compliance**

25 Bobbob and Mr Goldberg jointly and severally undertake to pay, or procure the payment of, all costs of compliance associated with this court enforceable undertaking.

### **Provision of documents**

26 Bobbob and Mr Goldberg will provide all documents and information requested by ASIC from time to time for the purpose of assessing their compliance with the terms of this court enforceable undertaking.

### **ACKNOWLEDGEMENTS**

27 Bobbob and Mr Goldberg acknowledge that ASIC:

27.1 may issue a media release on execution of this court enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;

27.2 may from time to time publicly refer to this court enforceable undertaking; and

27.3 will make this court enforceable undertaking available for public inspection.

28 Further, Bobbob and Mr Goldberg acknowledge that:

28.1 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 enforceable undertaking or arising from future conduct;

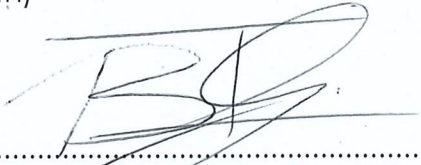
28.2 this court enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct;

28.3 this court enforceable undertaking has no operative force until accepted by ASIC; and

28.4 the date of the court enforceable undertaking is the date on which it is accepted by ASIC.

**EXECUTED by BOBBOB PTY LTD**

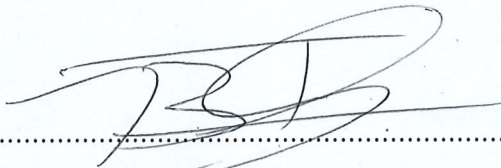
(ACN 652 793 318) in accordance with s127 of the Corporations Act 2001 (Cth)



**Byron Ifan Goldberg**

Sole Director and Company Secretary, Bobbob Pty Ltd

Date: 14 September 2023

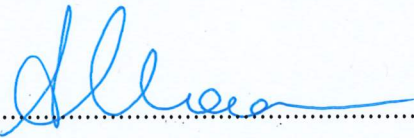


**Byron Ifan Goldberg**

(in his personal capacity)

Date: 14 September 2023

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



**Molly (Amal) Choucair**

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: 26 September 2023