

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:

Macquarie Investment Management Ltd
ACN 002 867 003
Level 1, 1 Elizabeth Street, Sydney, New South Wales
(MIML)

1 Definitions

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

Affected Investor means a person who invested in SMF through Wrap and, as at the date of this Court Enforceable Undertaking, continues to have funds invested in SMF through Wrap.

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

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

Net Capital Amount means, in respect of each Affected Investor, the total amount deducted from the cash hub of the Affected Investor in order to give effect to an investment direction to acquire SMF units, less the total amount credited to the Affected Investor's cash hub following a direction to redeem SMF units, provided that the Net Capital Amount may not be less than zero.

SMF: see clause 2.2.

Wrap: see clause 2.3.

2 Background

- 2.1 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 ASIC is investigating the management and operation of the Shield Master Fund ARSN 650 112 057 (SMF), a registered managed investment scheme. Keystone Asset Management Limited (KAM) is the responsible entity of the scheme and is now in liquidation.
- 2.3 Affected Investors invested in SMF through the Macquarie Superannuation Plan (RSE R1004496) (MSP), a 'platform'-style superannuation fund the trustee for

which was MIML, or through an investor-directed portfolio service (**IDPS**), the operator and custodian of which is MIML. The MSP and the IDPS comprise an investment platform known as 'Macquarie Wrap' (**Wrap**).

- 2.4 ASIC has conducted an investigation (**MIML Investigation**) into MIML's conduct in making SMF available for investment through Wrap.
- 2.5 The MIML Investigation has resulted in MIML proposing the Ex Gratia Payment set out in section 4 below and ASIC and MIML seeking to finalise ASIC's concerns in relation to MIML that are the subject of ASIC's investigation through an agreed Court outcome, involving MIML admitting to contraventions of ss 912A(1)(a) and 912A(5A) of the Corporations Act and agreeing facts in support of those contraventions in proceedings to be commenced by ASIC against MIML, with ASIC agreeing not to seek a civil penalty in respect of those contraventions.
- 2.6 The proposed proceedings in relation to the agreed Court outcome (**Proceedings**) relate to failures by MIML to place each of the classes of SMF on a watch list so that they could be subject to further monitoring including additional reporting, due diligence, performance monitoring or other follow up action.
- 2.7 MIML:
 - 2.7.1 acknowledges and admits it contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act as set out in Attachment A;
 - 2.7.2 has agreed to make certain admissions in the Proceedings that will be commenced by ASIC to support ASIC obtaining declarations from the Court regarding the contraventions as set out in Attachment A (**the Declarations**). The admissions and facts upon which those admissions are based are recorded in a signed Statement of Agreed Facts and Admissions (**SAFA**), which will be filed in the Proceedings;
 - 2.7.3 will join with ASIC in making submissions to the Court in support of obtaining the Declarations; and
 - 2.7.4 has agreed to pay ASIC's costs of the Proceedings.

3 Implementation Plan

- 3.1 ASIC has been informed by MIML that:
 - 3.1.1 at the request of the Australian Prudential Regulation Authority (**APRA**), MIML appointed KPMG (the **Independent Expert**) to conduct a review of the design and operating effectiveness of MIML's Investment Governance Framework;
 - 3.1.2 the Independent Expert has completed the review, and its report was issued to APRA on 17 December 2024, before being provided to ASIC on 20 December 2024;

- 3.1.3 MIML has established a plan to address the recommendations made by the Independent Expert by timeframes acceptable to APRA and with assurance testing to be completed by 30 September 2026 (**Implementation Plan**);
- 3.1.4 assurance testing will be undertaken by the Macquarie internal audit function (**Internal Audit**) to review the design and operating effectiveness of all deliverables within the Implementation Plan, and report the conclusion of the assurance testing (**Assurance Report**);
- 3.1.5 MIML has also established a governance framework to oversee the completion of the Implementation Plan, including a steering committee that reports to the MIML Board;
- 3.1.6 a copy of the Implementation Plan was provided to ASIC on 6 March 2025;
- 3.1.7 within one week after the date of the Assurance Report, MIML will provide it to APRA and send a copy to ASIC; and
- 3.1.8 any findings identified in the Assurance Report will be addressed by MIML in a manner and time acceptable to APRA, with Internal Audit providing an updated assurance report to APRA, and sending a copy to ASIC (**Updated Assurance Report**).

4 **Payment Program**

- 4.1 Macquarie Group has commenced a program (**Payment Program**) in order to pay to each Affected Investor an amount equal to the Net Capital Amount. The Payment Program is comprised of the following steps:
 - 4.1.1 on 24 September 2025, MIML agreed to sell beneficial ownership of all units in SMF that it held for Affected Investors to Macquarie Financial Limited (**MFL**) in return for a cash payment that will be allocated to each Affected Investor's superannuation or IDPS account (as applicable) on or before 30 September 2025 (**Cash for Asset Swap**); and
 - 4.1.2 on or before 30 September 2025, MFL will make an ex gratia payment to each Affected Investor in an amount equal to their Net Capital Amount less the amount allocated to their superannuation or IDPS account as part of the Cash for Asset Swap (**Ex Gratia Payment**).

5 **Undertakings**

- 5.1 Under section 93AA of the ASIC Act, MIML has offered and ASIC, having regard to the Payment Program, the Proceedings and the matters referred to at paragraphs 2.6, 2.7 and 3, has agreed to accept as an alternative to other civil or administrative enforcement action against MIML arising from the MIML Investigation, undertakings from MIML that:

(Payment Program)

- 5.1.1 on or before 31 October 2025, it will arrange for the preparation, by a suitably qualified third party, of a report on the Payment Program (**Payment Program Report**), which will:
- i. assess whether payments made to each Affected Investor through the Payment Program are equal to the Net Capital Amount for each Affected Investor; and
 - ii. assess whether there are any Affected Investors who have not been paid an amount at least equal to their Net Capital Amount, and identify those Affected Investors (**Identified Affected Investors**) and the amount of their Net Capital Amount that has not been paid (**Shortfall Amount**); and
- 5.1.2 if there are any Identified Affected Investors, MIML will cause MFL to make payments to them of their respective Shortfall Amounts on or before 30 November 2025, failing which MIML will make those payments.

(Costs)

- 5.1.3 it will pay its costs and the costs of the suitably qualified third party in connection with the Payment Program and not seek reimbursement from or contribution towards those costs from any Affected Investor;
- 5.1.4 it will not seek any waiver or release from any Affected Investor of any claims it may have against MIML or any other company or individual;
- 5.1.5 it will pay the costs of its compliance with this court enforceable undertaking;
- 5.1.6 it will provide all documents and information requested by ASIC from time to time for the purpose of assessing MIML's compliance with the terms of this court enforceable undertaking.

6 Acknowledgements


- 6.1 MIML acknowledges that ASIC:
- 6.1.1 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;
 - 6.1.2 may from time to time publicly refer to this undertaking;
 - 6.1.3 will 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 issue a media release referring to the content of the Payment Program Report;

- 6.1.6 may from time to time publicly refer to the content of the Payment Program Report; and
- 6.1.7 may make available for public inspection a summary of the content of the Payment Program Report, or a statement that refers to its content.
- 6.2 ASIC acknowledges that it will not refer to any information from the Payment Program Report that:
 - 6.2.1 consists of personal information of Affected Investors;
 - 6.2.2 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the court enforceable undertaking;
 - 6.2.3 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of MIML or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking;
 - 6.2.4 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 6.2.5 MIML has asked not to be released if ASIC is satisfied:
 - i. it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of MIML otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the court enforceable undertaking; or
 - ii. it should not be released because it would be against the public interest to do so.
- 6.3 Further, MIML acknowledges that:
 - 6.3.1 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 the MIML Investigation^{2.4}, or arising from future conduct; and
 - 6.3.2 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.
- 6.4 MIML acknowledges that this undertaking has no operative force until accepted by ASIC, and MIML and ASIC acknowledge that the date of the court enforceable undertaking is the date on which it is accepted by ASIC.


Executed by **MACQUARIE INVESTMENT MANAGEMENT LTD ABN 66 002 867 003** in accordance with section 126(1) of the *Corporations Act 2001* (Cth) by its duly authorised delegates:


Signature of authorised delegate

John Vincent Edstin
Name of authorised delegate


Signature of authorised delegate

MICHELLE WEBER
Name of authorised delegate


Signature of authorised delegate

Matthew McLennan
Name of authorised delegate

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



Catherine Iles

Delegate of Australian Securities and Investments Commission

24 September 2025

ATTACHMENT A: DECLARATIONS

1. By 1 March 2022 (being the date on which the Conservative, Balanced and Growth classes of the SMF were added to Wrap), MIML ought to have placed each of those classes of the SMF on a watch list, such as the Watch List referred to in the IGF, in order that they could be subject to further monitoring action, including in accordance with the provisions of the IGF, additional reporting, due diligence, performance monitoring or other follow up action, but did not do so.
2. In the period between 1 March 2022 and 5 June 2023 (being the period during which the Conservative, Balanced and Growth classes of the SMF were investment options on Wrap), MIML ought to have placed each of those classes of the SMF on a watch list, such as the Watch List referred to in the IGF, in order that they could be subject to further monitoring action, including in accordance with the provisions of the IGF, additional reporting, due diligence, performance monitoring or other follow up action, but did not do so.
3. By 6 May 2022 (being the date on which the High Growth class of the SMF was added to Wrap), MIML ought to have placed that class of the SMF on a watch list, such as the Watch List referred to in the IGF, in order that it could be subject to further monitoring action, including in accordance with the provisions of the IGF, additional reporting, due diligence, performance monitoring or other follow up action, but did not do so.
4. In the period between 6 May 2022 and 5 June 2023 (being the period during which the High Growth class of the SMF was an investment option on Wrap), MIML ought to have placed that class of the SMF on a watch list, such as the Watch List referred to in the IGF, in order that it could be subject to further monitoring action, including in accordance with the provisions of the IGF, additional reporting, due diligence, performance monitoring or other follow up action, but did not do so.

5. By reason of the matters referred to in each of paragraphs 1, 2, 3 and 4 above, at all times between 1 March 2022 and 5 June 2023, MIML failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and MIML thereby contravened s 912A(1)(a) of the Corporations Act.
6. By reason of each of the contraventions referred to in paragraph 5 above, MIML contravened s 912A(5A) of the Corporations Act.