

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:

Shivdeep Jaidka

(Mr Jaidka)

CRANBOURNE NORTH, VIC 3977

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 court enforceable undertaking;

Authorised Representative has the meaning given by section 9 of *the Corporations Act 2001 (Cth)*;

Client(s) means retail clients and has the meaning given by sections 9, 761G and 761GA of *the Corporations Act 2001 (Cth)*;

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

Financial Product Advice has the meaning given by sections 9 and 766B of the *Corporations Act 2001 (Cth)*;

Financial Product has the meaning given by section 9 and Division 3 of Part 7.1 of the *Corporations Act 2001 (Cth)*;

Financial Service has the meaning given by section 9 and Division 4 of Part 7.1 of the *Corporations Act 2001 (Cth)*;

Financial Services Business means a business of providing Financial Services.

ASIC's role

- 2 Under section 1 of the *Australian Securities and Investments Commission Act 2001 (Cth)* (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 Mr Jaidka conducts an accountancy business under the business name K2 Advisors Pty Ltd (ACN 625 487 201). Mr Jaidka's accountancy business specialises in accounting services for organisations which provide vocational training within the vocational education and training section in Australia.
- 4 Mr Jaidka also offered financial product advice on the establishment or use of self managed superannuation funds (SMSFs) to purchase real property. Clients were referred to Mr Jaidka for advice on SMSFs by other accountants, mortgage brokers and property advisors.

Mr Jaidka was appointed as an Authorised Representative of various Australian financial services license (AFSL) holders and was recorded as a financial adviser on the Financial Advisers Register maintained by ASIC between July 2017 and June 2023. From 17 June 2022 to 1 August 2022 (**the Relevant Period**), Mr. Jaidka was an Authorised Representative for SMSF Advisers Network Pty Ltd (ACN 155 907 681, AFSL Number 430062).

- 5 Between August 2022 and July 2023, ASIC conducted a review of the financial services provided by Mr Jaidka during the Relevant Period while Mr Jaidka was an Authorised Representative of SMSF Advisers Network Pty Ltd. The review included a review of 5 client files.
- 6 Based on this review, ASIC formed the view that Mr Jaidka had failed to comply with s961B and s961G of the Corporations Act in relation to each client file reviewed, including that Mr Jaidka had:
 - (a) failed to act in the best interests of the clients in relation to the Financial Product Advice provided, by failing to identify and adequately consider each client's relevant circumstances, and by failing to make reasonable inquiries as to, and to verify, personal information provided by clients; and
 - (b) failed to provide Financial Product Advice that was appropriate and tailored to the clients, including by failing to conduct a reasonable investigation into the Financial Products that might achieve the clients' objectives.
- 7 Mr Jaidka acknowledges and admits the matters identified in paragraph 6.

UNDERTAKINGS

- 8** Under s93AA of the ASIC Act, Mr Jaidka has offered, and ASIC has agreed to accept, the undertakings in paragraphs 9 to 12 below.
- 9** Mr Jaidka undertakes that, from the Acceptance Date of this court enforceable undertaking, Mr Jaidka will not for a period of 5 years:
- (a) carry on a Financial Services Business;
 - (b) provide a Financial Service, including on behalf of another person who carries on a Financial Services Business, whether as an employee of that person, Authorised Representative or otherwise;
 - (c) control, whether alone or in concert with one or more other entities, an entity that carries on a Financial Services Business;
 - (d) perform any function involved in the carrying on of a financial services business (including as an officer, manager, employee, contractor or in some other capacity); and
 - (e) apply to ASIC under section 913A of the ASIC Act for an AFS Licence.
- 10** For the avoidance of doubt, this undertaking does not prevent Mr Jaidka from providing tax agent or accountancy services or business advice work that is not a Financial Service, whether on his own behalf or on behalf of another person or company.
- 11** If ASIC requests information and documents for the purpose of assessing compliance with the terms of this court enforceable undertaking, Mr Jaidka undertakes to provide the requested information and documents to ASIC within 7 business days of the request.
- 12** Mr Jaidka undertakes to pay the costs of compliance with the court enforceable undertakings in paragraphs 9 to 12. Mr Jaidka will not seek reimbursement of, contribution towards, or otherwise directly or indirectly pass on the costs of compliance with these court enforceable undertakings or any proportion of those costs to any Clients.

ACKNOWLEDGMENTS

13 Mr Jaidka acknowledges that ASIC:

- a) 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;
- b) may from time to time publicly refer to this undertaking;
- c) may from time to time publicly report about compliance with this undertaking; and;
- d) will make this undertaking available for public inspection.

14 ASIC acknowledges that it will not refer to any information that:

- a) 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;
- b) ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Mr Jaidka or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the court enforceable undertaking; and
- c) ASIC is satisfied should not be released because it would be against the public interest to do so.

15 Further, Mr Jaidka acknowledges that:

- a) 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 court enforceable undertaking or arising from future conduct; and
- b) 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.
- c) this court enforceable undertaking has no operative force until accepted by ASIC; and
- d) the date of the court enforceable undertaking is the date on which it is accepted by ASIC.




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Shivdeep Jaidka (in his personal capacity)

19 FEB 2024

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Date

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



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Tom O'Shea

Delegate of Australian Securities and Investments Commission

20 February 2024

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Date