

## **ENFORCEABLE UNDERTAKING**

Pursuant to section 46 of the Financial Markets Authority Act 2011

The undertaking is offered to the Financial Markets Authority for acceptance under section 46 of the Financial Markets Act 2011 by:

Mr Stephen Duff.

Date:

6<sup>th</sup> April 2016

**Parties:**

**MR STEPHEN DUFF, also known as MR NICK DUFF, of Auckland, New Zealand (Mr Duff);**

and

**THE FINANCIAL MARKETS AUTHORITY (the FMA).**

**Introduction**

The undertaking set out in this document is offered to the FMA by Mr Duff under section 46 of the Financial Markets Authority Act 2011 (the **FMA Act**).

**Background**

The FMA's role:

- A. Pursuant to section 8 of the FMA Act, the FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.
- B. Pursuant to section 9 of the FMA Act, one of the FMA's functions is to monitor and enforce compliance with financial markets legislation, including the Financial Advisers Act 2008 and the Financial Services Provider (Registration and Dispute Resolution) Act 2008.

Mr Duff's conduct:

- C. On 27 March 2011, Mr Duff (trading as Financial Vision Limited (**FVL**)) was registered on the Financial Service Providers Register (**FSPR**) to provide wholesale and/or generic financial adviser services. Mr Duff was classified as a registered financial adviser (**RFA**) and not an authorised financial adviser (**AFA**).
- D. Following two site visits to the FVL office, the FMA became concerned that Mr Duff was operating as an AFA without holding the designation and that his conduct was in breach of the Financial Advisers Act 2008 and the Financial Services Provider (Registration and Dispute Resolution) Act 2008.
- E. Mr Duff has accepted that he was not authorised to provide financial advice to retail customers.
- F. Through engagement with the FMA, Mr Duff agreed to provide undertakings relating to client instructions and client funds while the FMA's concerns were addressed.
- G. In 2014, Mr Duff agreed to retire from providing financial advice and he sold the FVL's client list to Newton Ross Limited, an AFA and a licensed DIMS provider.

- H. On 4 November 2014, FVL was placed into liquidation by special resolution of the shareholders (Mr Duff and Pam Riley). The liquidator appointed is Barry White of Fisher White & Associates Limited. The Liquidator's Six Monthly Report dated 2 November 2015 states that FVL was unable to continue trading as it was not registered as an AFA and it was unable to afford compliance costs to do so and was also unable to pay its debts when due.
- I. Mr Duff deregistered from the FSPR on 20 November 2014.

The FMA's concerns:

- J. The FMA considers that Mr Duff has likely breached the Financial Advisers Act 2008 and the Financial Services Provider (Registration and Disputes Resolution) Act 2008.
- K. In response to these likely breaches, Mr Duff has deregistered from the FSPR as a financial adviser, has transferred his client list and has effectively retired as a financial adviser. In addition, Mr Duff has offered to be subject to formal restrictions on his participation in the New Zealand financial markets.

#### **1. The Parties agree as follows:**

- 1.1. Under section 46 of the FMA Act, Mr Duff has offered, and the FMA has agreed to accept, the following undertaking from the execution of this Enforceable Undertaking.
- 1.2. Mr Duff undertakes that, for the next five years from the date of this Enforceable Undertaking, he will not:
- 1.2.1.1. Provide financial advice;
  - 1.2.1.2. Otherwise deal with client investments;
  - 1.2.1.3. Receive client money on behalf of clients or third parties; and/or
  - 1.2.1.4. Serve as a director (or carry out any management role) of any company involved in the provision of financial services or investment products.

#### **2. ACKNOWLEDGEMENTS**

2.1. Mr Duff acknowledges that:

- (a) The Undertaking is given pursuant to s46 of the FMA Act and may be enforced by the FMA pursuant to section 47 of the FMA Act;
- (b) Following the execution of the Enforceable Undertaking the FMA will publish the Enforceable Undertaking on its website together with a short statement explaining its content referring to its terms and to the FMA's concerns which led to its execution;
- (c) The FMA may from time to time publicly refer to the Enforceable Undertaking;
- (d) The FMA may make the Enforceable Undertaking available for public inspection;


- (e) In accepting the Undertaking, the FMA is not prevented from exercising its rights and powers under the Financial Markets legislation in relation to any contravention of the Undertaking or matter not the subject of the background section of these Enforceable Undertaking or arising from future conduct;
- (f) The Enforceable Undertaking in no way limits the rights and remedies available to any other person or entity arising from any conduct described in the Enforceable Undertakings or arising from future conduct; and
- (g) The Undertaking is legally enforceable at the date this document is executed by Mr Duff.

Signed by Mr Duff:



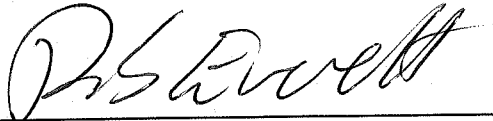
Stephen Duff

In the presence of:



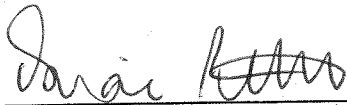
Name: ALFRED NARAYAN  
Occupation: ACCOUNTANT  
Address: 1/176 EAST COAST ROAD  
MILFORD AUCKLAND

The FMA accepts Mr Duff's Enforceable Undertaking, pursuant to section 46 of the FMA Act by its authorised delegate:



Rob Everett  
CEO of the FMA  
Delegate

In the presence of:



Name: Diane Petford  
Occupation: PA  
Address: Grey St, Wellington