

Enforceable Undertaking
Under section 38 of the Spam Act 2003 (Cth)

1. Definition and interpretation

This undertaking is given by Commonwealth Securities Limited ABN 60 067 254 399 (**Company**) to the Australian Communications and Media Authority (**the ACMA**) under section 38 of the Spam Act 2003 (**Spam Act**).

2. Commencement of this Undertaking

This Undertaking commences when (**Commencement Date**):

- (a) it has been executed by the Company; and
- (b) so executed, it has been accepted by the ACMA and written notification of that acceptance has been given to the Company.

3. Expiration of this undertaking

This enforceable undertaking will expire when all requirements of the Implementation Plan have been completed.

4. Background

4.1 The ACMA's Role

Under section 8 of the Australian Communications and Media Authority Act 2005, the ACMA is, among other things, responsible for performing functions under the Spam Act and the Telecommunications Act 1997 (**Telecommunications Act**) including, but not limited to, conducting investigations and taking civil action for the recovery of pecuniary penalties.

4.2 The Company

The Company is an online broking provider which in the course of its business sends commercial electronic messages to its customers.

4.3 The ACMA's Investigation

- (a) The Company has sent approximately 6.8 million commercial electronic messages to its customers in the last 12 months prior to the date of this undertaking.
- (b) The ACMA has received three complaints from customers of the Company alleging breaches of the Spam Act by the Company. The basis of these complaints was that the customers received emails which did not contain an unsubscribe facility as required by the Spam Act and/or that their

attempts to opt-out were not actioned. The Company regrets that the expectations of its customers were not met.

- (c) As a result, an internal investigation (**Internal Investigation**) was commenced by the Company into the effectiveness of its arrangements in relation to its compliance with the Spam Act, with a view to identifying improvement opportunities.
- (d) The Company believes that the complaints arose from unintentional conduct on behalf of the Company.
- (e) The ACMA commenced an investigation into these complaints. In light of the Company's early co-operation, the ACMA ended its investigation. The ACMA has not made a finding of contraventions of the Spam Act;
- (f) The openness and pro activity with which the Company has responded to these matters is recognised by the ACMA.

4.4 Acknowledgement of the ACMA's concerns

- (a) The ACMA had a reasonable basis for its concern that more people than the three complainants may have been effected by these issues.
- (b) The Company accepts the ACMA's concerns and has already taken action to address these concerns. The Company welcomes an independent review to ensure the completeness and adequacy of the Company's response to the ACMA's concerns.
- (c) In response to the ACMA's concerns regarding the Company's compliance with the Spam Act, but without any admission of contraventions of the Spam Act, the Company offers this Undertaking to the ACMA.

5 **Undertakings**

5.1 Undertaking to make payment

- (a) The Company undertakes to pay the ACMA \$55,000 in full and final settlement for alleged breaches of the Spam Act that were part of or related to ACMA's investigation or identified in the Internal Investigation and notified to ACMA.
- (b) The total amount is to be paid no later than 30 days after the Commencement Date.

5.2 Undertakings to improve internal compliance arrangements:

For the duration of this enforceable undertaking, the Company undertakes to complete the following initiatives in regard to the Spam Act:

- (a) Provide annual training, approved by the ACMA, to relevant staff and relevant contractors engaged by the Company.
- (b) Enhance quality assurance processes, to be approved by the ACMA, to ensure compliance with sections 16, 17 and 18 of the Spam Act.
- (c) Continue to ensure all complaints are managed appropriately, and transition to a complaints handling policy which complies with Australian Standards ISO 10002-2006.
- (d) Undertake a quarterly audit, for a period of 12 months from the Commencement date, of sample commercial electronic message campaigns to check for compliance with sections 16, 17 and 18 of the Spam Act.
- (e) Provide a report to the ACMA on a quarterly basis, for a period of 12 months from the Commencement date, on the results of the message audit and complaints handling relating to the Spam Act, within 20 days of the end of the quarter.

These initiatives will be incorporated into the Company's Implementation Plan (see paragraph 5.4 below).

5.3 Undertaking to engage an Independent Consultant

- (a) The Company will appoint an independent consultant (**Independent Consultant**) to review the completeness and adequacy of the Company's Internal Investigation and its policies and procedures in regard to the Spam Act.
- (b) The Company may invite parties to tender for the role of Independent Consultant and the Company may evaluate the tenders using its own criteria. The Company will not appoint the Independent Consultant without the ACMA's written approval.
- (c) The Company will appoint the Independent Consultant on terms which include the Terms of Reference (see Attachment to this Undertaking). Any additional terms must not conflict with the Terms of Reference of the requirements of this Undertaking.
- (d) The Company will seek the ACMA's approval of the Independent Consultant within 15 business days of the Commencement Date.
- (e) Should the ACMA choose not to approve the Independent Consultant, the Company will seek the ACMA's approval of an alternative Independent Consultant within 15 days of receiving the ACMA's refusal to approve.
- (f) The Company will appoint the approved Independent Consultant within 1 week of the ACMA's approval under paragraph (d) above.

- (g) The Company will provide the ACMA with a copy of the Independent Consultant's Report within 5 business days of receipt by the Company.
- (h) After receipt of the Report from the Company, the ACMA may notify the Company in writing whether the Report is approved in its current form, or requires further amendment.

5.4 Undertaking to prepare and act on an Implementation Plan


- (a) The Company will prepare an Implementation Plan in accordance with the timelines set out in the final Report, the requirements of this Undertaking and other matters as it sees fit.
- (b) The Implementation Plan will detail the steps that the Company has taken or intends to take to implement the recommendations in the Independent Consultant's Report or to rectify the issues which are the subject of the Report, with an accompanying timeline.
- (c) The Company will provide the ACMA with a copy of the Implementation Plan within 30 business days of the ACMA's approval of the Report.
- (d) After receipt of the Implementation Plan from the Company, the ACMA may notify the Company in writing whether the Implementation Plan is approved in its current form, or requires further amendment.
- (e) Once the Implementation Plan has been approved by the ACMA, the Company will notify the ACMA in writing at each deadline included in the Implementation Plan advising whether the deadline has been met and, if not, the steps being taken to ensure appropriate compliance.

6. Acknowledgements

- (a) The Company acknowledges that the ACMA may:
 - i) issue a media release on acceptance of this Undertaking referring to its terms;
 - ii) publish this undertaking or make this Undertaking available for public inspection; and
 - iii) refer to this Undertaking from time to time.
- (b) The Company acknowledges that acceptance of this undertaking does not affect the rights and remedies available to third parties arising from any conduct described in this undertaking or arising from future action.

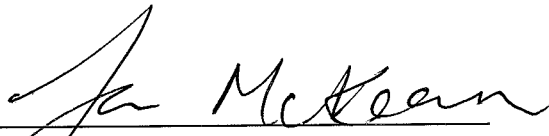
Signed on behalf of Commonwealth Securities Limited by:

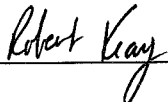
Matthew Conyn
Authorised representative (print name)


Signature

20 JANUARY 2010
Dated January 2010

This Undertaking is accepted by the Australian Communications and Media Authority pursuant to section 38(1) of the *Spam Act 2003* (Cth).

Julia Cornwell McKean 
Name Signature
Ag Executive Manager, Unsolicited Communications
Dated 21 January 2010 ACMA

ROBERT KEAY 
Witness

Annexure A – Independent Consultant Terms of Reference

1) Outline of Terms of Reference

Under these Terms of Reference:

- a) The Company will at its own cost appoint the Independent Consultant in accordance with these Terms of Reference;
- b) The Independent Consultant will review the scope of the Internal Investigation, as well as the adequacy and completeness of the Internal Investigation undertaken by the Company;
- c) Based on the review; the Independent Consultant will prepare a Report detailing its findings and recommendations to address any issues identified;

2) The Independent Consultant's Role

The Independent Consultant will:

- a) Review all background policies, procedures, reports, correspondence and supporting relevant material related to the matters subject of the undertaking;
- b) Review the internal Risk Review and scope of the Internal Investigation undertaken by the Company;
- c) Assess the adequacy and completeness of the scope of the Internal Investigation with particular emphasis on how the Company assessed its compliance with the Spam Act;
- d) Review the findings of the Internal Investigation and, on a sample basis, test elements of the Company's policies and processes relating to the Spam Act to confirm the effectiveness of the process improvements and controls;
- e) Assess the completeness and adequacy of actions initiated by the Company in response to the findings of the Internal Investigation;
- f) Document any findings and commensurate recommendations to respond to shortcomings identified in the Internal Investigation and relevant additional issues not previously identified by the Company;
- g) Prepare a Report within four months of the Independent Consultant's appointment that will include the scope, findings and recommendations made by the Independent Consultant.

3) Independent Consultant to comply with timeframes

The Independent Consultant will be required to meet all the timeframes set out in the Undertaking which includes these Terms of Reference, where applicable to the Independent Consultant.

4) Preparation of draft report

The Company will consult with the ACMA regarding the recommendations before they are finalised and, by agreement with the ACMA, this may involve

providing directions to the Independent Consultant as to how the recommendations are to be finalised.

5) Independent Consultant must be independent

By agreeing to the appointment in accordance with these Terms of Reference, the Independent Consultant warrants that the Independent Consultant is independent of the Company and its related companies, and will at all times be able to exercise objective and impartial judgement in all aspects of undertaking this review.

6) Independent Consultant may report to the ACMA

The Independent Consultant may report to the ACMA at any time about any matter relating to the appointment under the Undertaking. The Independent Consultant must report to the ACMA about any matter that is reasonably likely to adversely affect its independence as soon as possible after becoming aware of the matter and its potential effect on its independence.

7) Interpretation

Words and phrases used in these Terms of Reference have the same meaning as in the Undertaking.