

## Commonwealth Financial Planning Limited

### Additional licence conditions

#### ASIC Appointed Compliance Expert

22. The licensee will indemnify ASIC for the reasonable fees and expenses charged by a compliance expert ("Compliance Expert") engaged by ASIC (after consulting with the licensee as to the terms of such engagement) to undertake the following work:
- a. Review and compare the process steps for communicating with Affected Clients, and providing for their participation in both the review process and the decision making process applied:
    - i. to clients in Project Hartnett; and
    - ii. in the Compensation Program undertaken by the licensee with respect to clients of the Identified Former Representatives,and provide a written report to ASIC and the licensee ("Comparison Report") identifying any process steps applied in Project Hartnett that were not applied in the Compensation Program ("Additional Elements").
  - b. Review:
    - i. the steps that the licensee undertook to identify which of the clients of the Identified Former Representatives were Affected Clients and therefore assessed as part of the Compensation Program;
    - ii. the process the licensee undertook in or around July 2012 to identify representatives (other than the Identified Former Representatives) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice ("Potential At Risk Representatives"); and
    - iii. the additional processes that the licensee undertook to determine whether any of those Potential At Risk Representatives ought to have been assessed as part of the Compensation Program.
  - c. Provide a written report to ASIC and the licensee ("Identification Report") outlining the Compliance Expert's opinion as to:
    - i. whether there was a reasonable basis for the licensee adopting the:
      1. steps referred to in condition 22.b.i to identify which clients of the Identified Former Representatives ought to have been assessed as part of the Compensation Program; and
      2. processes referred to in conditions 22.b.ii and 22.b.iii to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.
    - ii. to the extent that the Compliance Expert forms the opinion that there was not a reasonable basis for adopting the steps referred to in condition 22.b.i, what revised steps should reasonably be implemented to identify which clients of the Identified Former Representatives ought to have been assessed as part of the Compensation Program ("Revised Steps"); and

- iii. to the extent that the Compliance Expert forms the opinion that there was not a reasonable basis for adopting the processes referred to in condition 22.b.ii or 22.b.iii, what additional processes should reasonably be implemented to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program (“Additional Processes”);
  - d. Review the licensee’s compliance with conditions 23 to 30.a and provide a written report to ASIC and the licensee outlining the Compliance Expert’s opinion as to whether the licensee has complied with the conditions (“Compliance Report”).
23. The licensee must use all reasonable efforts to provide access to its books, officers, employees, advisors, agents and independent contractors requested by the Compliance Expert to complete the work set out in condition 22.

### **Remediation Program**

24. Following the provision by the Compliance Expert of the Comparison Report to the licensee, the licensee must:
- a. within 30 days of the date of receipt, apply the Additional Elements to applicable Affected Clients unless otherwise agreed to by ASIC; and
  - b. within 30 days of the date of receipt, communicate in writing, in a form or forms agreed with ASIC, with each of the Affected Clients.

The written communication must include:

- c. an explanation of the processes applied to the Affected Client under the Compensation Program including details of any assessment that was undertaken of the advice provided to the Affected Client, the reason for the assessment, the outcome of the assessment and how the Affected Client can access documents constituting or relating to the advice;
  - d. an offer to pay up to \$5,000 towards the cost of the Affected Client seeking advice from a licensed financial advisor, lawyer or accountant ("Independent Advisor") about the advice that they received from the licensee and/or its representative, the position taken by the licensee following its assessment of the advice, any offer of compensation made by the licensee following that assessment and any avenues of redress available to the Affected Client;
  - e. an explanation of the matters contained in conditions 25, 26 and 27; and
  - f. an explanation that the Affected Client may (but is not required to), as an alternative or in addition to the matters set out in these conditions, have access to the Open Advice Review Program.
25. If an Affected Client seeks advice from an Independent Advisor the licensee will, on request, provide the Independent Advisor with access to information available to the licensee which is reasonably sufficient to assist the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the licensee and/or its representative, the licensee’s assessment of that advice and the basis upon which any offer of compensation was made. Such information must be provided as soon as practicable after the request but in any case no later than 14 days after the request.

26. If, within 120 days of the licensee issuing a communication referred to in condition 24.b., an Affected Client has notified the licensee in writing of their view (whether or not they took up the offer to obtain advice from an Independent Advisor, and regardless of the content of that advice) that the original assessment of the advice given to the Affected Client by the licensee and/or its representative was inadequate ("Notification"), the licensee must:
- a. review its original assessment of that case ("Further Licensee Review"); and
  - b. in conducting the Further Licensee Review (which will be conducted as soon as practicable, but completed no later than 90 days following the receipt of a Notification), apply the Additional Elements together with the process and methodology applied in the relevant Compensation Program.
27. Within 30 days of the completion of the Further Licensee Review, the licensee must write to the Affected Client detailing the outcome of the Further Licensee Review and informing them that if they are unsatisfied with the outcome (or in any event if the matter remains unresolved), then they have the right to:
- a. lodge a dispute with the Financial Ombudsman Service ("FOS") and that if the Affected Client lodges a dispute with FOS the licensee will:
    - i. not take any objection to FOS considering the dispute;
    - ii. not rely on any release that the Affected Client has given to the licensee; and
    - iii. where FOS considers that the appropriate compensation is in excess of that able to be awarded under FOS' Terms of Reference, agree to resolve the dispute with the Affected Client on the basis of a settlement in the amount that FOS decides is appropriate.
  - b. pursue a claim against the licensee arising from the advice received from the representative either:
    - i. as an alternative to lodging a dispute with FOS; or
    - ii. after receiving a FOS determination.
- The licensee must also notify the Affected Client that if they pursue a claim, the licensee will release the Affected Client from the terms of any release that the Affected Client has given to the licensee on the condition that the Affected Client repays any final settlement sum (including any interest component) it received from the licensee in respect of the subject matter of the Further Licensee Review. The licensee must not require the Affected Client to pay the licensee any interest on the amount repaid by the Affected Client.
28. After receiving the Identification Report provided under condition 22.c., the licensee will within timeframes agreed with ASIC:
- a. implement the Additional Processes (if any);

- b. in relation to additional Potential At Risk Representatives identified as a result of condition 28.a. implement the processes referred to in 22.b.iii and any relevant Additional Process; and
  - c. in relation to any representatives who are identified as a result of 28.a and 28.b, commence implementation of the Compensation Program and the Additional Elements in relation to Other Affected Clients including applying the same process steps as set out in conditions 24.b to 27 (in accordance with revised timeframes agreed with ASIC) as though Affected Clients included the Other Affected Clients; and
  - d. apply the Revised Steps (if any) to the clients of the Identified Former Representatives and in relation to any additional clients identified as a consequence, commence implementation of the Compensation Program and the Additional Elements in relation to those additional clients including applying the same process steps as set out in conditions 24.b to 27 (in accordance with revised timeframes agreed with ASIC).
29. The licensee will provide a status report to ASIC on a monthly basis, commencing one month after conditions 22 to 32 come into effect and concluding one month after the steps specified in conditions 24 to 28 have been completed, such report to include:
- a. the number of clients it has communicated with in accordance with condition 24 and 28;
  - b. the number of clients who sought advice from an Independent Advisor;
  - c. the number of requests for a Further Licensee Review received and the number of Further Licensee Review's completed by the licensee; and
  - d. the number of claims lodged by Affected Clients with FOS following the licensee undertaking a Further Licensee Review;
  - e. the number of additional representatives and Other Affected Clients identified by operation of condition 28; and
  - f. any other information ASIC specifically requests in writing under this condition 29.f relating to the licensee's compliance with conditions 22 to 30.
30. The licensee must arrange for the inclusion of:
- a. the imposition of conditions 22 to 31 on the agenda of and in the papers for the next scheduled board meeting of the Commonwealth Bank of Australia after these conditions come into effect or if this is not practicable, the following scheduled board meeting; and
  - b. the Compliance Expert's reports referred to in condition 22 on the agenda of and in the papers for the next scheduled board meeting of the Commonwealth Bank of Australia after the reports are received by the licensee or if this is not practicable, the following scheduled board meeting.
31. When it considers that it is in a position to do so, the board of the licensee must confirm in writing to ASIC that in its opinion the licensee has complied with conditions 22 to 30.

32. Where conditions 24 to 29 provide that the licensee must perform an act within a specified timeframe, the licensee will perform that act within the specified timeframe or such longer time agreed to by ASIC where the licensee can demonstrate an extension is reasonable in the circumstances.

### **Terms and Definitions**

Add the following definitions:

**Affected Clients** mean clients of Identified Former Representatives except for:

- a. clients where the licensee has no record of advice having been provided;
- b. groups of clients of Identified Former Representatives as agreed with ASIC where it is not necessary to contact those clients for valid reasons (for example, where the only record of a client relationship involves a client having insurance cover that appears to have been obtained prior to the Identified Former Representative giving advice);
- c. clients where returned mail is received, and after making appropriate efforts to contact the Affected Clients, the licensee was unable to do so; or
- d. clients who were not included in the Compensation Program as result of analysis conducted by the licensee which indicated that clients did not receive the type of advice from the Identified Former Representative that was the subject of concern.

**Compensation Program** means the review and compensation activities undertaken by the licensee which:

- a. were designed to identify whether inappropriate advice was provided to a client resulting in the need for compensation, and if so, restore that Affected Client of an Identified Former Representative to the position they would have been in had they received appropriate advice;
- b. were based on the process methodology developed for Project Hartnett and extended to address additional client, product and advice attributes; and
- c. commenced or concluded during the period from 25 October 2011 (being the date on which the CFP Enforceable Undertaking took effect) until 30 June 2013,

but does not include the review and compensation activities conducted under Project Hartnett.

**Identified Former Representatives** mean those former representatives of the licensee that the licensee has, at the date these conditions were imposed, informed ASIC were identified by the licensee as representatives whose advice needed to be reviewed, and one or more of their Affected Clients compensated, under the Compensation Program.

**Other Affected Clients** mean clients of relevant representatives identified by operation of condition 28.a. or 28.b. except for:

- a. clients where the licensee has no record of advice having been provided;

- b. groups of clients of the relevant representatives where it is not necessary to contact those clients for valid reasons (for example, where the only record of a client relationship involves a client having insurance cover that appears to have been obtained prior to the relevant representative giving advice);
- c. clients where returned mail is received, and after making appropriate efforts to contact the Other Affected Clients, the licensees are unable to do so; or
- d. clients who will not be included in the Compensation Program as result of analysis conducted by the licensee, in accordance with the Revised Steps (if any), which indicates that clients did not receive the type of advice from the Potential At Risk Representative that was the subject of concern.

**Open Advice Review Program** means the advice review program announced by Commonwealth Bank Group on 3 July 2014 in respect of advice provided by representatives of the licensee during the period 1 September 2003 to 1 July 2012.

**Project Hartnett** means the process and methodology set out in the Nguyen Methodology Document and the Awkar Client Remediation Process Document (provided to ASIC on 29 May 2014) and implemented by the licensee to compensate clients who suffered losses as a result of inappropriate advice provided by two former representatives of the licensee.

**Representative** includes past representative.