

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY ('THE ACMA') BY WEBSAPL SECURITIES (AUSTRALIA) PTY. LTD. ('WSAPL') (ACN 654 849 457) UNDER SECTION 38 OF THE SPAM ACT 2003**

**1. Definitions**

- 1.1. In this Undertaking:
  - 1.1.1. **ACMA** means the Australian Communications and Media Authority.
  - 1.1.2. **Board** means WSAPL Board of Directors or equivalent management body.
  - 1.1.3. **WSAPL** means Webull Securities (Australia) Pty Ltd (ACN 654 849 457).
  - 1.1.4. **CEM** means commercial electronic message and has the same meaning as the Spam Act 2003.
  - 1.1.5. **CEM complaint** means a complaint to WSAPL that relates to a CEM sent, or alleged to have been sent, by WSAPL and includes complaints notified to WSAPL by the ACMA.
  - 1.1.6. **Commencement date** has the meaning given in clause 2.1.
  - 1.1.7. **independent consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance, and controls.
  - 1.1.8. **relevant period** means 9 January 2023 – 25 January 2023 inclusive.
  - 1.1.9. **report** means the report produced by the independent consultant referred to in clause 5.1.
  - 1.1.10. **Spam Act** means *Spam Act 2003* (Cth).

**2. Term of the Undertaking**

- 2.1. This Undertaking commences when:
  - 2.1.1. it has been executed by WSAPL.
  - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to WSAPL. (**Commencement date**).
- 2.2. This Undertaking continues for a period of 24 months from the Commencement date or until it is withdrawn by WSAPL, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.
- 2.3. This Undertaking may be varied by WSAPL, with the consent of the ACMA, pursuant to subsection 38(2) of the Spam Act.
- 2.4. Any notice or approval required or permitted to be given by the ACMA under this Undertaking must be in writing and may be given by any ACMA Authority member or by any ACMA staff member who is a member of the Senior Executive Service.

**3. Background**

- 3.1. The terms of this Undertaking were prepared after WSAPL performed a detailed investigation and analysis resulting in the identification of information which was provided to the ACMA on 7 July 2023.
- 3.2. In response to the ACMA's concerns regarding WSAPL's compliance with the Spam Act, WSAPL offers this Undertaking to the ACMA aimed at addressing future compliance with the Spam Act.

#### 4. Undertaking

- 4.1. WSAPL undertakes to take the following specified actions to ensure WSAPL complies with the Spam Act and does not contravene the Spam Act in the future.

#### 5. Independent consultant

- 5.1. WSAPL undertakes to appoint an independent consultant to:
- 5.1.1. review WSAPL's current procedures, policies, training, and systems relating to its compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:
- a. all ongoing CEMs are sent, or caused to be sent, by WSAPL with the consent of the relevant account holder;
  - b. WSAPL receives, records and actions all unsubscribe requests made to WSAPL within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect;
  - c. all CEMs sent, or caused to be sent, by WSAPL contain the information required by paragraphs 17(1)(a) and (b) of the Spam Act;
  - d. all CEMs sent, or caused to be sent, by WSAPL contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act;
  - e. WSAPL classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends (**systemic problems**).
- 5.1.2. produce a report (**the report**) making recommendations as to:
- a. ensuring WSAPL systems receive, record and action unsubscribe requests;
  - b. improvements to policies and procedures that ensure compliance with the Spam Act, including but not limited to:
    - i. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems;
    - ii. procedures for ensuring WSAPL personnel comply with policies and procedures;
    - iii. procedures for ensuring continued compliance when process or system changes are implemented;
  - c. ongoing training for WSAPL personnel on Spam Act compliance;
  - d. ongoing monitoring of Spam Act compliance measures;
  - e. ensuring WSAPL takes reasonable steps to address any identified systemic problems.
- 5.2. WSAPL undertakes to seek written approval from the ACMA for the appointment of the proposed independent consultant within 20 business days after the commencement

- of these undertakings. If the ACMA does not approve the choice of independent consultant, WSAPL will repeat this process until it has the ACMA's written approval.
- 5.3. WSAPL undertakes to appoint the independent consultant, and to provide written notification of that appointment to the ACMA, within 10 business days after the ACMA has given its written approval.
  - 5.4. The independent consultant will provide the report to WSAPL, and at the same time to the ACMA, within six months of their appointment.
  - 5.5. The ACMA may, at its discretion, require the independent consultant to conduct a subsequent review of the business' procedures, policies, training, and systems relating to its Spam Act compliance, if it deems necessary, and provide a second report to the business' board and at the same time the ACMA.
  - 5.6. Subject to the ACMA's written agreement, WSAPL may remove the independent consultant at any time and replace the independent consultant with a new independent consultant approved by the ACMA. If the ACMA does not approve the choice of independent consultant, WSAPL will repeat this process until it has the ACMA's approval.

## **6. Implementation Plan, Audit & Reporting**

- 6.1. Within 40 business days of receiving the report WSAPL will:
  - 6.1.1. develop an implementation plan setting out the steps WSAPL has taken, or will take, to implement all recommendations made by the independent consultant in the report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented)
  - 6.1.2. provide a copy of the Board-approved implementation plan to the ACMA.
- 6.2. WSAPL undertakes to comply with the approved implementation plan in accordance with the timeframes specified in the plan.
- 6.3. The implementation plan may be modified at any time subject to the ACMA's written approval.
- 6.4. For the duration of the Undertaking, every six months from the date the Board approved implementation plan is provided to the ACMA, WSAPL will provide a compliance report, approved by the Board, to the ACMA that covers the previous 6 months that includes:
  - 6.4.1. the status of actions it will take or has taken under the implementation plan;
  - 6.4.2. a report of all de-identified consumer complaints made to WSAPL about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint;
  - 6.4.3. action WSAPL has taken on each complaint the ACMA has notified WSAPL about or WSAPL has received directly from consumers.
- 6.5. For the duration of the Undertaking, WSAPL will report to the ACMA all identified instances of non-compliance with the Spam Act within 10 business days of identifying an instance of non-compliance, including the cause of any identified compliance issues and remediation action taken or proposed to be taken and applicable dates.

## **7. Training**

- 7.1. Within 30 business days of the commencement date, WSAPL undertakes to train all personnel that may be, or are currently responsible for creating or sending CEMs, and their direct line manager, to ensure compliance with the Spam Act.
- 7.2. WSAPL undertakes to provide training similar to that described in clause 7.1, for all new personnel that may be, or are currently responsible for creating or sending CEMs

within 6 weeks of their commencement in such roles.

- 7.3. WSAPL undertakes to repeat the training, described at clause 7.1, every 12 months after WSAPL has undertaken the training referred to in clause 7.1 for the term of this Undertaking.
- 7.4. WSAPL undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 7.1 and 7.3.

## **8. Record-keeping**

- 8.1. For the duration of the Undertaking, WSAPL undertakes to:
  - 8.1.1. keep accurate records of the consent given by electronic account-holders to the sending of CEMs by WSAPL to those account-holders, including any terms and conditions associated with that consent.
  - 8.1.2. keep accurate records of withdrawal of consent requests.
  - 8.1.3. keep accurate records of CEM complaints.
  - 8.1.4. provide copies of records referred to in this clause 8 to the ACMA upon request by the ACMA.

## **9. Acknowledgment of publication**

- 9.1. WSAPL acknowledges that the ACMA may publish these undertakings.

**Execution**


**Signed** for and on behalf Webull Securities (Australia) (ACN 654 849 457) Pty Ltd by its authorised representative:

Robert Talevski

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Name of authorised representative

Chief Executive Officer

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Title of authorised representative

  
\_\_\_\_\_  
Signature of authorised representative

31 August 2023


\_\_\_\_\_  
Date of signing

**Signed** for and on behalf of the **Australian Communications and Media Authority** by its authorised representative:

Tanya Farrell

\_\_\_\_\_  
Name of authorised representative

A/g Executive Manager, Unsolicited Communications Branch  
\_\_\_\_\_  
Title of authorised representative

  
\_\_\_\_\_  
Signature of authorised representative

11 September 2023

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Date of signing