

18 September 2013

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Perpetual Limited**
ACN 000 431 827

1 Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Perpetual Limited ACN 000 431 827 on behalf of itself and its subsidiaries (together referred to as **Perpetual** in this Undertaking).

2 Background

The Parties

- 2.1 Perpetual Limited is an ASX-listed financial services company which provides specialised investment management, wealth advice and corporate fiduciary services to individuals, families, financial advisors and institutions.
- 2.2 The Trust Company Limited (**The Trust Company**) is an ASX-listed company which provides a range of financial services across the personal wealth management, corporate and philanthropic sectors.
- 2.3 The Trust Company has a 13.4% interest in Equity Trustees Limited.
- 2.4 Equity Trustees Limited competes with Perpetual and The Trust Company in the supply of corporate trust services.

The Proposed Acquisition

- 2.5 Perpetual proposes to acquire the entire share capital of The Trust Company through a scheme of arrangement (**Proposed Acquisition**).

The ACCC's review

- 2.6 The ACCC commenced its public review of the Proposed Acquisition on 16 May 2013.
- 2.7 The ACCC has conducted market inquiries and considered information provided by Perpetual, industry participants and others. The purpose of the ACCC's inquiries was to assess whether or not the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.8 The ACCC has concluded that, in the absence of the Undertaking, the Proposed Acquisition may have the effect, or may be likely to have the effect, of substantially lessening competition in one or more relevant markets for the supply of corporate trust services.
- 2.9 In the absence of this Undertaking, the Proposed Acquisition would result in Perpetual owning a 13.4% interest in Equity Trustees Limited.
- 2.10 The ACCC was concerned that, in the absence of this Undertaking, Perpetual may have an increased ability and incentive to unilaterally raise prices since Perpetual, through the shareholding in Equity Trustees Limited, would be able to recoup part of any lost profit from any customer lost to Equity Trustees Limited through the dividends it would receive as a shareholder.
- 2.11 The ACCC was also concerned that the Proposed Acquisition, in the absence of this Undertaking, may result in Perpetual having the ability to influence or gain insight into the operations of Equity Trustees Limited, such as by using the shareholding to seek board representation.

The Undertaking remedy

- 2.12 Perpetual has, without admission, offered this Undertaking under section 87B of the Act to divest the 13.4% interest in Equity Trustees Limited, which it would acquire as a result of the Proposed Acquisition.
- 2.13 The objective of this Undertaking is to address the ACCC's competition concerns, which would otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by:
- (a) providing for Perpetual to divest the 13.4% interest in Equity Trustees Limited within a set timeframe;
 - (b) maintaining the independence of Equity Trustees Limited while Perpetual remains a shareholder by ensuring Perpetual does not seek representation on the board of Equity Trustees Limited or appoint any common directors;
 - (c) maintaining the economic viability and competitiveness of the Divestiture Shareholding prior to divestiture; and
 - (d) providing for the effective oversight of Perpetual's compliance with this Undertaking.

3 Commencement of this Undertaking

Commencement

- 3.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Perpetual; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

4 Cessation of Ongoing Obligations

Withdrawal

- 4.1 This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

Revocation

- 4.2 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied.

Completion

- 4.4 Clauses 1, 2, 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 17 survive completion of the obligations in clauses 5, 6, 9 and Confidential Schedule 4.

5 Divestiture of the Divestiture Shareholding

- 5.1 Perpetual must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Shareholding by the sale, assignment or transfer of the Divestiture Shareholding within the Sale Period, otherwise clause 10 applies.
- 5.2 Prior to the Commencement Date the ACCC approved IOOF as a purchaser of the Divestiture Shareholding.
- 5.3 Perpetual must not divest, or cause the divestiture of, the Divestiture Shareholding by the sale, assignment or transfer of the Divestiture Shareholding to a Related Body Corporate of either Perpetual or The Trust Company.
- 5.4 In the event that Perpetual proposes to divest, or cause the divestiture of, the Divestiture Shareholding other than, to IOOF or by way of an On-Market Transaction, then Perpetual must seek ACCC approval for a Proposed Purchaser in accordance with clause 9 of this Undertaking.

6 Board representation

- 6.1 Perpetual must not, in accordance with this Undertaking:
- (a) nominate, or seek to nominate a director for appointment to the board of directors of Equity Trustees Limited; or
 - (b) take steps to appoint (or cause the appointment) to the board of directors of Perpetual, a person who is at that time a director of Equity Trustees Limited, subject to Perpetual's obligation to accept nominations for election as a director of Perpetual at a general meeting, and Perpetual shareholders' right to appoint any person they wish as a director of Perpetual by ordinary resolution.

7 Confidential information

- 7.1 Subject to clause 7.2, Perpetual must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Shareholding gained through:
- (a) ownership and/or management of the Divestiture Shareholding; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.2 Clause 7.1 does not apply to information that Perpetual requires to use or disclose to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Perpetual who need to

know the information to carry out the permitted purpose.

8 Direction to personnel of Perpetual

- 8.1 As soon as practicable after the Commencement Date, Perpetual must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Perpetual's obligations under this Undertaking.

9 Purchaser approval process

Provision of a notice for a Proposed Purchaser

- 9.1 To seek approval for a Proposed Purchaser in accordance with clause 9.3, Perpetual must provide, or must procure that the Approved Divestiture Agent provides, the ACCC with a Proposed Purchaser Notice in the form prescribed in Schedule 3 to this Undertaking (**Proposed Purchaser Notice**).
- 9.2 In the event that clause 5.4 applies, the Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Sale Period.

Approval of a Proposed Purchaser

- 9.3 After receiving a Proposed Purchaser Notice, the ACCC must decide whether to:
- (a) approve the person named in the Proposed Purchaser Notice as the Approved Purchaser which includes approving the draft sale and purchase agreement attached to the Proposed Purchaser Notice; or
 - (b) not approve the person named in the Proposed Purchaser Notice as the Approved Purchaser.
- 9.4 Without limiting the ACCC's discretion, in making the decision described in clause 9.3, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase agreement is consistent with this Undertaking and otherwise acceptable to the ACCC;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) Proposed Purchaser is independent of, and has no direct or indirect interest in, Perpetual;
 - (d) divestiture of the Divestiture Shareholding to the Proposed Purchaser will address any competition concerns of the ACCC.
- 9.5 Within 10 Business Days after receiving a Proposed Purchaser Notice, the ACCC must notify Perpetual in writing of its decision made pursuant to clause 9.3.
- 9.6 The ACCC may extend the period within which it will provide the notice described in clause 9.5 by notifying Perpetual in writing of the extension within 10 Business Days after receiving the Proposed Purchaser Notice.

- 9.7 Any extension of time by the ACCC pursuant to clause 9.6 extends the Sale Period by the same length of time.
- 9.8 The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

10 Failure to divest the Divestiture Shareholding within the Sale Period

Divestiture of the Unsold Shares

- 10.1 In the event that there are any Unsold Shares at the end of the Sale Period, the provisions of clause 10 apply.

Obligation to appoint an Approved Divestiture Agent

- 10.2 From the end of the Sale Period, Perpetual must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Shares.
- 10.3 Without limiting its obligations in this Undertaking, Perpetual must from the end of the Sale Period:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
 - (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions, including:
 - (i) indemnifying the Approved Divestiture Agent for any expense, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expense, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent; and
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and Perpetual (but not fees contingent on the price to be obtained for the Unsold Shares);
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Perpetual within 15 Days after the end of the Sale Period, Perpetual agrees to pay such fees as are directed by the ACCC; and
 - (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
 - (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10; and
 - (ii) providing to the Approved Divestiture Agent any information, documents or other assistance requested by the Approved

Divestiture Agent that he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;

- (d) in the event that clause 10.15(e) applies, within three Business Days after receiving notice from the ACCC pursuant to clause 9.3, Perpetual must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Shares to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 9.3(a); and
- (e) other than in accordance with clause 10.3(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Shares.

Approval of the Approved Divestiture Agent

- 10.4 At least 15 Business Days prior to the end of the Sale Period, if there are any Unsold Shares, Perpetual must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 2 to this Undertaking (**Proposed Divestiture Agent Notice**).
- 10.5 After receiving a Proposed Divestiture Agent Notice, the ACCC must decide whether to:
 - (a) approve the appointment of the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent which includes approving the:
 - (i) terms of appointment attached to the Proposed Divestiture Agent Notice; and
 - (ii) draft marketing and sale plan attached to the Proposed Divestiture Agent Notice; or
 - (b) not approve the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent.
- 10.6 If clause 10.5(b) applies, the ACCC may, at its absolute discretion:
 - (a) direct Perpetual to submit a Proposed Divestiture Agent Notice that:
 - (i) names a person identified by the ACCC as the Proposed Divestiture Agent; and/or
 - (ii) includes attachments that:
 - (A) relate to the person identified by the ACCC under clause 10.6(a) (if applicable); and/or
 - (B) address any issues identified by the ACCC in relation to the terms of appointment, and/or draft marketing and sale plan; or
 - (b) identify and approve a person as the Approved Divestiture Agent together with the:
 - (i) terms of appointment; and/or
 - (ii) draft marketing and sale plan.
- 10.7 As soon as practicable, and within two Business Days after any direction by the ACCC under clause 10.6(a) Perpetual must submit a Proposed Divestiture Agent Notice in accordance with the direction.
- 10.8 Without limiting the ACCC's discretion, in making the decisions described in clause 10.5 or 10.6, the factors to which the ACCC may have regard include whether the:

- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
 - (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of Perpetual;
 - (c) terms of appointment and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) terms of appointment and draft marketing and sale plan are otherwise acceptable to the ACCC.
- 10.9 Within 10 Business Days after receiving a Proposed Divestiture Agent Notice, the ACCC must notify Perpetual in writing of its decisions and any direction made pursuant to clause 10.5 and/or 10.6 .
- 10.10 The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 10.9 by notifying Perpetual in writing of the extension within 10 Business Days after receiving the Proposed Divestiture Agent Notice.
- 10.11 Any extension of time by the ACCC under clause 10.10 extends the Sale Period by the same length of time.
- 10.12 If the Approved Divestiture Agent has not been appointed:
- (a) within 10 Business Days after the Divestiture Shareholding or part thereof becomes Unsold Shares;
 - (b) within 17 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 10.18, 10.19 or 10.20; or
 - (c) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 10.21;
- then the provisions of clause 10.13 apply.
- 10.13 If clause 10.12 applies, the ACCC may, at its absolute discretion:
- (a) identify and approve a person as the Approved Divestiture Agent;
 - (b) approve the terms of appointment of the Approved Divestiture Agent; and
 - (c) approve the draft marketing and sale plan.

Appointment of the Approved Divestiture Agent

- 10.14 After receiving notice from the ACCC of its decisions pursuant to clause 10.5, 10.6(b) or 10.13, Perpetual must within two Business Days:
- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment within one Business Day of execution.

Obligations and powers of the Approved Divestiture Agent

- 10.15 Perpetual must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:
- (a) maintain his or her independence from Perpetual, apart from appointment to the role of Approved Divestiture Agent, including not

form any relationship of the types described in paragraph 2(c) of Schedule 2 to this Undertaking with Perpetual for the period of his or her appointment;

- (b) not use any confidential information gained through the divestiture of the Unsold Shares other than for performing his or her functions as Approved Divestiture Agent;
- (c) follow the Approved Marketing and Sale Plan;
- (d) divest the Unsold Shares, with no obligation imposed by Perpetual to achieve a divestiture at a minimum price;
- (e) in the event that the Approved Divestiture Agent proposes to divest, or cause the divestiture of the Unsold Shares other than by way of an On-Market Transaction, seek approval for a Proposed Purchaser in accordance with clause 9;
- (f) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Shares as quickly as possible;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC (copied to Perpetual) which include:
 - (i) information regarding the implementation of the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.16(b));
 - (v) the efforts made to sell the Unsold Shares;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Shares; and
 - (viii) any other information required by the ACCC.
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Shares, provide a written report directly to the ACCC (copied to Perpetual) which includes a final accounting of:
 - (i) any monies derived from the divestiture of the Unsold Shares;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
 - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.16(b));
- (i) immediately inform the ACCC (and Perpetual) of:

- (i) any issues that arise in relation to the implementation of any Approved Marketing and Sale Plan;
 - (ii) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iii) any offers for the Unsold Shares; and
- (j) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.
- 10.16 Perpetual must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:
- (a) negotiate with purchasers to divest the Unsold Shares on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking; and
 - (b) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.
- 10.17 Any irrevocable power of attorney granted pursuant to clause 10.16 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 10.18, 10.19 and 10.20, or in the event that the Unsold Shares are divested in accordance with this Undertaking.

Resignation, revocation or termination of the Approved Divestiture Agent

- 10.18 Perpetual must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Shares.
- 10.19 The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.20 The ACCC may approve any proposal by, or alternatively may direct, Perpetual to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.
- 10.21 If clause 10.18, 10.19 or 10.20 applies then Perpetual must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days, otherwise clause 10.13 applies.

11 Reporting and provision of information

Reporting

- 11.1 Perpetual must provide a monthly written report to the ACCC within five Business Days from the end of each month following the Control Date, to confirm:
- (a) that its obligations under this Undertaking have been met at all times during the preceding month; and
 - (b) the number of shares in Equity Trustees Limited held by Perpetual at the end of the preceding month.

Information

- 11.2 Perpetual must notify the ACCC in writing of the proposed date of the Control Date at least five Business Days before it is proposed to occur.
- 11.3 Perpetual must notify the ACCC in writing of the occurrence of each of the following events within one Business Day after the date the event occurs:
- (a) the Control Date; and
 - (b) the final completion of the full divestiture of the Divestiture Shareholding.
- 11.4 The ACCC may direct Perpetual in respect of its compliance with this Undertaking to, and Perpetual must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Perpetual's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.5 Any direction made by the ACCC under clause 11.4 will be notified to Perpetual, in accordance with clause 16.2
- 11.6 In respect of Perpetual's compliance with this Undertaking or the Approved Divestiture Agent's compliance with its Approved Terms of Appointment, the ACCC may request the Approved Divestiture Agent to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Approved Divestiture Agent's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.7 Perpetual will use its best endeavours to ensure that the Approved Divestiture Agent complies with any request from the ACCC in accordance with clause 11.5.
- 11.8 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.9 The ACCC may in its discretion to be exercised in good faith:
- (a) advise the Approved Divestiture Agent of any request made by it under this clause 11; and/or
 - (b) provide copies to the Approved Divestiture Agent of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.10 Nothing in this clause 11 requires the provision of information or documents in respect of which Perpetual has a claim of legal professional or other privilege.

12 Disclosure of this Undertaking

- 12.1 Perpetual and the ACCC agree that Confidential Schedule 4 will remain confidential until after the completion of the divestiture of the Divestiture Shareholding.
- 12.2 Perpetual acknowledges that the ACCC may provide the Approved Divestiture Agent with a copy of this Undertaking which includes unredacted versions of Confidential Schedule 4.
- 12.3 Perpetual acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available; and
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 12.4 Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by s 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 12.5 Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13 Obligation to procure

- 13.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Perpetual to take or refrain from taking some action, Perpetual will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

14 No Derogation

- 14.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Perpetual of any term of this Undertaking.
- 14.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Perpetual does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

15 Costs

- 15.1 Perpetual must pay all of its own costs incurred in relation to this Undertaking.

16 Notices

Giving Notices

- 16.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Mergers and Adjudication Group

With a copy sent to: mergersucu@acc.gov.au
Director, Undertaking Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

- 16.2 Any notice or communication to Perpetual pursuant to this Undertaking must be sent to:

Name: Perpetual
Address: Angel Place, Level 12, 123 Pitt Street, Sydney NSW 2000
Email Address: joanne.hawkins@perpetual.com.au
Fax number: (02) 8256 1461
Attention: Joanne Hawkins, Company Secretary and General Manager Legal and Risk

With a copy sent to:

Name: Herbert Smith Freehills
Address: 161 Castlereagh Street, Sydney, NSW 2000
Email Address: patrick.gay@hsf.com
Attention: Patrick Gay

- 16.3 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 16.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 16.5 Perpetual or the ACCC must notify the other party of a change to its contact details within three Business Days.
- 16.6 Any notice or communication will be sent to the most recently advised contact details and subject to clause 16.3 and 16.4, will be taken to be received.

17 Defined terms and interpretation

Definitions In the Dictionary

- 17.1 A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 17.2 Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Perpetual Limited ACN 000 431 827 pursuant to section 127(1) of the Corporations Act 2001 by:

Signature of director



Name of director (print)

Date

18/9/13

Signature of a director/company secretary




Joanne Hawkins

Name of director/company secretary (print)

Date

18/9/13

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 on:



Date

18/9/13

And signed on behalf of the Commission:

Chairman

Date

Schedule 1

1 Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Divestiture Agent means the person appointed under clause 10.14 of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, as amended from time to time by ACCC direction given under clause 10.15(j) of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Shares.

Approved Purchaser means the person approved by the ACCC under clause 9.3 of this Undertaking.

Approved Terms of Appointment means the terms of appointment for the Approved Divestiture Agent, as approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Control Date means the date on which the Proposed Acquisition is completed.

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

Divestiture Shareholding means the shareholding of 13.4 per cent in Equity Trustees Limited held by Trust Company Limited.

Entities Connected has the meaning given by section 64B of the Corporations Act.

IOOF means IOOF Holdings Limited and its subsidiaries.

On-Market Transaction means a transaction that is "On-Market" as defined in section 9 of the Corporations Act.

Perpetual means the entity referred to in clause 1.1 of this Undertaking.

Proposed Acquisition is defined in clause 2.5 of this Undertaking.

Proposed Divestiture Agent means a person named in a Proposed Divestiture Notice.

Proposed Divestiture Agent Notice means a completed notice in the form of Schedule 2 to this Undertaking provided to the ACCC with all required attachments in relation to the Proposed Divestiture Agent.

Proposed Purchaser means a purchaser named in a Proposed Purchaser Notice.

Proposed Purchaser Notice means a completed notice in the form of Schedule 3 to this Undertaking provided to the ACCC with all required attachments in relation to the Proposed Purchaser.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Sale Period has the meaning given to it in clause 2 of Confidential Schedule 4 to this Undertaking.

Subsidiary has the meaning given by section 4A of the Act.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Appointment means the Approved Divestiture Agent.

Unsold Shares has the meaning given to it in clause 1 of Confidential Schedule 4 to this Undertaking.

2 Interpretation

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;

- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Perpetual will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;

- (q) a reference to:
- (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 – Undertaking Appointment

This form sets out the information required by the ACCC in relation to proposed appointment of the Divestiture Agent under the Undertaking (the **Undertaking Appointment**).

Please note in relation to information given on this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed Divestiture Agent Form* – [insert name of undertaking] to the below email addresses:

1) mergers@accc.gov.au

Attention: Executive General Manager
Mergers and Adjudication Group

2) **With a copy sent to:**

mergersucu@accc.gov.au
Attention: Director
Undertaking Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

Information Required

The ACCC requires the following information in order to assess a proposed Divestiture Agent (i.e. the relevant undertaking appointment).

1) Proposed Undertaking Appointment Details:

- (a) the name of the Proposed Undertaking Appointment; and
- (b) the name of the proposed Undertaking Appointment's employer and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.

2) A submission containing the following information:

- (a) details of [Undertaking Appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.

- (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer].
 - (c) details of any of the following types of relationships between Perpetual and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Perpetual and [the Undertaking Appointment's employer] are Associated Entities.
 - (ii) Perpetual is an Entity Connected with [the Undertaking Appointment's employer].
 - (iii) [The Undertaking Appointment's employer] is an Entity Connected with Perpetual.
 - (iv) Perpetual and [the Undertaking Appointment's employer] are Related Entities.
 - (v) Perpetual and [the Undertaking Appointment's employer] are Related Parties
 - (vi) any Related Party, Related Entity or Entity Connected with Perpetual is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment].
 - (vii) Perpetual and [the Undertaking Appointment] or [the Undertaking Appointment's employer] have a contractual relationship or had one within the past three years, other than those attached to this form.
 - (viii) [the Undertaking Appointment's employer] is a supplier of Perpetual or has been in the past three years.
 - (ix) Perpetual is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years.
 - (x) any other relationship between Perpetual and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other.
- 3) A document outlining the terms of appointment for the proposed Undertaking Appointment.

Specific Information required for Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

Proposed Divestiture Agent

- 1) The finalised draft share sale agreement drafted by the Proposed Divestiture Agent in consultation with Perpetual. The draft share sale agreement is to provide for the divestiture of the Unsold Shares.
- 2) The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Shares.

Schedule 3 – Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – [insert name of undertaking]
Address: mergers@accc.gov.au
Attention: Executive General Manager - Mergers and Adjudication Group

With an email copy sent to:

Address: mergersucu@accc.gov.au
Attention: Director, Undertaking Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

- 1) In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Contact name:
 - (d) Telephone number:
 - (e) Other contact details:
- 2) Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the [owner/s and the directors (delete any that do not apply)] of the Proposed Purchaser.
 - (d) a section addressing the factors set out in clause 10.4 of this Undertaking, including any information adverse to the Proposed Purchaser, in the power, possession or control of [Company].
 - (e) details of any of the following types of relationships between [Company] and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) [Company] and the Proposed Purchaser are Associated Entities;
 - (ii) [Company] is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with [Company];

- (iv) [Company] and the Proposed Purchaser are Related Entities;
- (v) [Company] and the Proposed Purchaser are Related Parties;
- (vi) any Related Party, Related Entity or Entity Connected with [Company] is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
- (vii) [Company] and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
- (viii) the Proposed Purchaser is a supplier of [Company] or has been in the past three years;
- (ix) [Company] is a supplier of the Proposed Purchaser or has been in the past three years; and
- (x) any other relationship between [Company] and the Proposed Purchaser that allows one to affect the business decisions of the other.

3) Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking; and
- (b) any documents required to support the information provided by [Company] pursuant to this form.

Confidential Schedule 4