



30 January 2018

BY EMAIL: FSRCSolicitor@royalcommission.gov.au

Mr K M Hayne AC QC
Royal Commission into Misconduct
in the Banking, Superannuation and
Financial Services Industry

Dear Mr Hayne

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Thank you for your letter dated 15 December 2017.

The answers to the questions asked in your letter are set out in the appendix to this letter.

I should mention that, in the short time available and owing to the interruptions caused by the festive season, it has not been possible to complete our response. We will supplement this submission later this week.

Yours sincerely

A handwritten signature in black ink that reads "Mark Bouris".

Mark Bouris
Executive Chairman

Yellow Brick Road Wealth Management Pty Limited | ABN 93 128 650 037 | AFSL 323 825

Investment, Superannuation, and Insurance services and advice are provided by Yellow Brick Road Wealth Management Pty Limited and its authorised representatives

APPENDIX

General

1. **The questions asked**
 - 1.1 **Question 1:** The entity has identified misconduct by authorised representatives of its subsidiaries which occurred since 1 January 2008. Particulars, including answers to question 3 of the Commissioner's letter appear below, under the heading "Particulars of Misconduct".
 - 1.2 **Question 2:** The entity has identified a number of instances of conduct which it considers to have fallen below community expectations. Particulars, including answers to question 3 of the Commissioner's letter appear below, under the heading "Particulars of Conduct Below Community Expectations".
 - 1.3 **Question 3:** See above.
 - 1.4 **Question 4:** Yellow Brick Road Wealth Management Pty Ltd, a subsidiary of the entity, promotes a superannuation fund called "YellowBrickRoad Super". The trustee of the fund is MAP Funds Management Ltd, which is not related to the entity. Neither the entity, nor any of its subsidiaries, have any management control of the fund.

Particulars of Misconduct

2. [REDACTED]
- 2.1 [REDACTED] was a finance broker and the principal of [REDACTED]. That company was not related in any way to the entity but was authorised to use the "Yellow Brick Road" brand and carried on business as a finance broker in [REDACTED]. [REDACTED] terminated [REDACTED] licence agreement before any of the claims outlined below were made against Yellow Brick Road Wealth Management or any related corporation.
- 2.2 The entity believes that while purporting to represent Yellow Brick Road, [REDACTED] engaged in a fraud together with a [REDACTED] who claimed to be a director of the trustee of a property trust known as the [REDACTED].
- 2.3 The alleged fraud involved:
 - (a) Falsely representing to potential clients that [REDACTED] was able to arrange the sale by third parties of units in the trust to those potential clients.
 - (b) Inducing the potential clients to borrow money to purchase fictitious units by arranging for the clients' home loan to be refinanced.
 - (c) Misappropriating the money (or some part of it).
- 2.4 The victims of the alleged fraud were:
 - (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED].

each of whom commenced proceedings against a number of defendants, including a bank, solicitors, [REDACTED] and subsidiaries of the entity. Each of the proceedings were settled on confidential terms, pursuant to which the victims were compensated for their loss.

2.5 In answer to **question 3**:

- (a) The conduct was the subject of civil proceedings which have been settled (see above).
- (b) The entity does not attribute the conduct to any culture or governance practice of the entity. [REDACTED] was engaged in a frolic of his own.
- (c) The entity does not consider the conduct to be attributable to a broader cultural practice in the finance broking industry.
- (d) The entity does not consider the conduct to result from other practices.
- (e) The entity has notified [REDACTED] new employer about the matters outlined above.

3. [REDACTED]

3.1 [REDACTED] was a credit representative of Yellow Brick Road Finance Pty Ltd, the holder of an Australian Credit Licence. He operated the company's [REDACTED] Branch as a franchisee. He was not an employee of the company, but operated pursuant to a franchise agreement with the company.

3.2 Following a tip off from another financial institution, an audit was conducted of [REDACTED] files. The entity suspects that [REDACTED] possibly with the assistance of others in his team, lodged applications for finance which contained false or misleading information in relation to the intending borrowers' affairs. He may also have fraudulently altered client documents or forged documents to be submitted to a lender.

3.3 On 13 September 2017, Yellow Brick Road Finance:

- (a) terminated [REDACTED] credit authorisation and his agreement with the company;
- (b) reported the matter to ASIC;
- (c) reported the matter to the NSW police.

3.4 In answer to **question 3**:

- (a) To the best of the entity's knowledge, the conduct in question is the subject of an investigation by ASIC and by the NSW police.
- (b) The entity does not attribute the conduct to any culture or governance practice of the entity. The entity conducts audits and "shadow shopping" surveillance (where individuals hired by an external entity contracted by Yellow Brick Road pose as borrowers) to monitor the conduct of those holding its credit authorisations. It also provides training to ensure that its agents understand their obligations.
- (c) The entity does not consider the conduct to be attributable to a broader cultural practice in the finance broking industry.
- (d) The entity does not consider the conduct to result from other practices.
- (e) The entity has notified ASIC about [REDACTED] misconduct.

4.

4.1 [REDACTED] (who uses the name [REDACTED]) was the principal of [REDACTED] (trading as [REDACTED]), the holder of an Australian Credit Licence. [REDACTED] was a finance broker in the Vow Financial network, using Vow for its aggregation services. Vow Financial Pty Ltd is a subsidiary of the entity.

4.2 The entity initiated an investigation in response to a complaint by [REDACTED] in relation to financial advice provided by [REDACTED] [REDACTED] alleged that:

- (a) [REDACTED] fraudulently obtained access to [REDACTED] bank account and transferred funds belonging to [REDACTED] to [REDACTED] business account;
- (b) the explanation given by [REDACTED] for the withdrawal of funds, namely that the money had been invested on [REDACTED] behalf in a "Smarter Money" account, was false;
- (c) various documents, including bank statements and a solicitor's letter sent to [REDACTED] had been forged;
- (d) some of the funds repaid by [REDACTED] to [REDACTED] were drawn on an account with a bank not associated with Smarter Money; and
- (e) [REDACTED] had been charged for services she had not commissioned.

4.3 When interviewed, [REDACTED] gave an explanation for her conduct but some of the documentation she submitted to corroborate her account did not appear genuine.

4.4 Vow Financial subsequently:

- (a) reported the matter to ASIC;
- (b) reported the matter to the Victorian police;
- (c) terminated [REDACTED] arrangement with Vow.

4.5 On [REDACTED] [REDACTED] was issued a permanent banning order by ASIC on the basis that she was not a fit and proper person. The grounds included matters reported by Vow Financial to ASIC.

4.6 In answer to **question 3**:

- (a) To the best of the entity's knowledge, the conduct in question and other matters are under investigation by the Victorian police and ASIC has issued a banning order.
- (b) The entity does not attribute the conduct to any culture or governance practice of the entity. Indeed, it is not clear that [REDACTED] was at the time purporting to act on behalf of Vow Financial. None of her activities constituted a financial service she was authorised to offer under [REDACTED] Australian Credit Licence.
- (c) The entity does not consider the conduct to be attributable to a broader cultural practice in the finance broking industry.
- (d) The entity does not consider the conduct to result from other practices.

(e) The entity reported the matter to ASIC and to the Victorian police. Ms Snoeks is subject to a permanent banning order and criminal charges may follow.

5. [REDACTED]
- 5.1 [REDACTED] was the principal of [REDACTED], a loan mortgage broker. That company was a credit representative of Vow Financial Pty Ltd, the holder of an Australian Credit Licence and a subsidiary of the entity. [REDACTED] as [REDACTED] principal, was authorised to conduct credit activities in relation to home and car loans.
- 5.2 [REDACTED] submitted loan applications through Pepper Money (one of the lenders on Vow's lending panel).
- 5.3 In September 2016, Pepper informed Vow Financial that it suspected that [REDACTED] was submitting fraudulent car loan applications to Pepper. Apparently, the applications contained false information and Pepper had engaged a fraud investigator to investigate the matter and also notified the police.
- 5.4 Vow Financial then investigated [REDACTED] affairs, including by conducting an audit. Some of the documentation (for example, payslips) submitted by [REDACTED] to home loan lenders proved to contain false or misleading information. Vow Financial also concluded that [REDACTED] verification processes for information supplied by his clients were poor or non-existent. As a result, it was not clear whether [REDACTED] was himself involved in the frauds or whether he was only guilty of failing to exercise appropriate care and diligence in checking his clients' loan applications.
- 5.5 Vow Financial was subsequently informed by Pepper Money that the fraud investigator and police had not been able to prove that [REDACTED] was involved in submitting false or misleading information to lenders.
- 5.6 Although Vow Financial was unable to prove that [REDACTED] had acted fraudulently, it nonetheless concluded that his conduct of [REDACTED] broking business was not satisfactory. Vow Financial terminated its agreement with that company.
- 5.7 In answer to **question 3**:
- (a) The entity does not know whether the police investigations are ongoing.
 - (b) The entity does not attribute the conduct to any culture or governance practice of the entity.
 - (c) The entity does not consider the conduct to be attributable to a broader cultural practice in the finance broking industry.
 - (d) The entity does not consider the conduct to result from other practices.
 - (e) The entity has terminated its relationship with [REDACTED]

Particulars of Conduct Below Community Expectations

6. [REDACTED]
- 6.1 In September 2013, a complaint was made to ASIC about advice given by [REDACTED] the owner of the entity's [REDACTED] ASIC declined to provide details of the nature of the client and the complaint.

- 6.2 The entity conducted an investigation into the matter, including auditing [REDACTED] files. It was discovered that correct processes had not been followed in providing advice. In particular, advice had been given to clients of the branch by persons who were neither employed by the holder of an Australian Financial Services Licence nor authorised representatives of a holder of an Australian Financial Services Licence.
- 6.3 The audit did not, however, uncover any instances of misconduct or fraud, and the advice given appeared to be appropriate to the relevant clients' needs. No client appeared to have suffered a loss as a result of the advice given.
- 6.4 It was proposed to place the branch under heightened supervision by the entity's head office staff but [REDACTED] threatened legal proceedings alleging breach of the franchise agreement. Ultimately, a settlement on confidential terms was reached. A subsidiary of the entity has purchased and is directly managing the branch.
- 6.5 In answer to **question 3**:
- (a) A report into the outcome of the investigation and audit was provided to ASIC by the entity. The entity is not aware of any further investigation to be conducted by ASIC.
 - (b) The entity does not attribute the conduct to any culture or governance practice of the entity. The risk of similar conduct was considered and the entity concluded that the contraventions had taken place as a result of the particular circumstances of that branch (geographical remoteness and lack of qualifications).
 - (c) The entity does not consider the conduct to be attributable to a broader cultural practice in the financial services industry.
 - (d) The entity does not consider the conduct to result from other practices.
 - (e) The entity acquired the branch from the existing owner following a dispute and is managing the branch itself.

7. **Superannuation advice given by accountants**

- 7.1 In March 2017 ASIC issued a section 33 notice to Yellow Brick Road Wealth Management Pty Ltd calling for the files for certain clients in relation to advice given on self-managed superannuation funds ('SMSF'). The notice was issued as part of ASIC's surveillance of the industry to monitor compliance with Chapter 7 of the *Corporations Act*. The relevant files were held by representatives ('relevant accountants') operating within the Yellow Brick Road network as authorised representatives of Yellow Brick Road Wealth Management.
- 7.2 In the course of complying with the notice Yellow Brick Road Wealth Management arranged for both external and internal auditors to conduct a compliance audit of four representatives. The audit revealed:
- (a) the relevant accountants had purported to give advice in relation to the setting up of SMSFs in circumstances where they were not authorised under YBR's AFSL to do so;
 - (b) proper statements of advice considering the suitability of a SMSF to the particular client's position had not been prepared;
 - (c) the particular clients' financial positions did not justify the setting up of a SMSF.

7.3 Remedial action was taken in the form of proper statements of advice being prepared (at no charge) by senior financial planners employed by Yellow Brick Road Wealth Management. No client suffered a financial loss as a result of the advice given.

7.4 The entity has since:

- (a) reported the matter to ASIC;
- (b) communicated with accountants operating in the Yellow Brick Road network to remind them of their obligations with respect to advising on and establishing SMSFs;
- (c) conducted checks to ensure only representatives adequately accredited to advise in relation to superannuation are giving such advice;
- (d) conducted a programme of "shadow shopping" and audits to monitor compliance (which programme is continuing);
- (e) conducted counselling sessions with the representatives who failed the shadow shopping check;
- (f) conducted mandatory SMSF training for all authorised representatives in the network—the training will be implemented on an ongoing basis;
- (g) changed the minimum qualification for members of the Yellow Brick Road network from Diploma of Financial Planning to Advanced Diploma of Financial Planning; and
- (h) reported to ASIC on the steps taken.

7.5 In answer to **question 3**:

- (a) The matter is the subject of an ASIC investigation.
- (b) The entity does not attribute the conduct to any culture or governance practice of the entity.
- (c) The entity considers that parts of the SMSF industry may lack proper training or qualifications to be giving advice to retail clients about SMSFs.
- (d) The entity does not consider the conduct to result from other practices.
- (e) The entity has undertaken the remediation and risk management steps outlined above.

8. **Opt in fee arrangements**

8.1 Under s962K of the *Corporations Act*, the recipient of fees under a recurrent fee arrangement must give the client a renewal notice and a fee disclosure statement within 60 days of the renewal date. If the client does not elect to renew the arrangement, the arrangement terminates and s962P prohibits the recipient from charging a fee.

8.2 In November 2017, while conducting an internal reconciliation process, the entity discovered that fees were still being received in relation to approximately 450 clients whose arrangements had terminated.

8.3 The errors were due to a fault in Yellow Brick Road Wealth Management's internal systems. As a result, some terminations of ongoing fee arrangements were not properly recorded in some cases, while in others some third party suppliers were not notified. In some other cases, third party

payers who had failed to update their systems and continued to pay Yellow Brick Road Wealth Management and the fact that those payments related to terminated fee arrangements were not noticed.

8.4 After identifying the failure, Yellow Brick Road Wealth Management:

- (a) Are arranging for the reimbursement of its former clients, together with interest;
- (b) notified ASIC of the contravention of s962P;
- (c) re-engineered its internal systems (including by putting in place new reporting software) and its arrangements with third party suppliers to avoid repetition of the contravention.

8.5 In answer to **question 3**:

- (a) The matter has been notified to ASIC and ASIC has been kept updated. The entity expects to have further discussions with ASIC about its monitoring and compliance systems.
- (b) The entity believes that the contravention was the result of weaknesses in the entity's systems, which weaknesses have been identified as part of its compliance program and subsequently addressed.
- (c) The entity believes that there are other organisations in the industry which have similar weaknesses in their systems.
- (d) The entity does not believe that the conduct results from other practices.
- (e) The entity is undertaking the remediation steps outlined above.