

Deed Poll

Date 10 October 2023

Given by Commonwealth Bank of Australia (ABN 48 123 123 124) of Commonwealth Bank Place South, Level 1, 11 Harbour Street, Sydney NSW 2000 (CBA)

In favour of Affected Customers

Background

- A. Companies associated with CBA have engaged in the Relevant Conduct.
- B. CBA has implemented a number of remediation programs with respect to the Relevant Conduct.
- C. CBA, through this Deed Poll, wishes to give Affected Customers (with Remediation Sums of \$500 or more) rights to be paid liquidated sums in respect of the Relevant Conduct and, to the extent Remediation Sums have not been paid to the relevant Affected Customer on or prior to 31 December 2023, presently wishes to pay such amounts to the Commonwealth pursuant to section 69 of the *Banking Act 1959* (Cth) before 1 April 2024.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed Poll:

Affected Customer means each customer of a Relevant Licensee set out in the Schedule, except those customers in relation to which a Prior Payment has been paid.

Prior Payment means an amount equivalent to the Remediation Sum that has been paid by the Relevant Licensee, representative or CBA in respect of the Relevant Conduct (including to the customer, a representative or nominee of the customer, a trustee or financial product provider of a product currently or previously held by the customer) other than in respect of the rights set out in clause 2 of this Deed Poll.

Relevant Conduct means conduct of:

- (a) Financial Wisdom Limited (ABN 70 006 646 108) in respect of failure to provide ongoing services promised in exchange for ongoing remuneration, fee disclosure statement and renewal notice deficiencies, inappropriate advice and other matters the subject of remediation prior to the date of this Deed Poll;
- (b) Commonwealth Financial Planning Limited (ABN 65 003 900 169) in respect of failure to provide ongoing services promised in exchange for ongoing remuneration, inappropriate advice and other matters the subject of remediation prior to the date of this Deed Poll; and
- (c) Count Financial Limited (ABN 19 001 974 625) in respect of failure to provide ongoing services promised in exchange for ongoing remuneration, fee disclosure statement and

renewal notice deficiencies, inappropriate advice and other pre 1 October 2019 conduct the subject of remediation prior to the date of this Deed Poll; and

- (d) BW Financial Advice Pty Limited (ABN 97 097 084 878) in respect of failure to provide ongoing services promised in exchange for ongoing remuneration, inappropriate advice and other conduct the subject of remediation prior to the date of this Deed Poll,

or one of their respective representatives, which has resulted in CBA determining that the Affected Customers were entitled to the Remediation Sum.

Relevant Licensee means the Australian financial services licensee responsible for the Relevant Conduct.

Remediation Sum means the liquidated sum determined by CBA to be payable to an Affected Customer as compensation for the Relevant Conduct as set out in the Schedule.

Schedule means the schedule to this Deed Poll.

1.2 Interpretation

In this Deed Poll:

- (a) **(headings)**: headings and subheadings are for convenience only and do not affect interpretation;
- (b) **(number)**: a word importing the singular includes the plural and vice versa;
- (c) **(Deed Poll references)**: a reference to:
- (i) a party, clause, schedule, annexure or attachment is a reference to a party, clause, schedule, annexure or attachment of or to this Deed Poll; and
 - (ii) a section or part is a reference to a section or part of the schedule in which they are located,
- unless expressly provided otherwise;
- (d) **(document as amended)**: a reference to any deed, deed poll, agreement, document or instrument means a reference to such deed, deed poll, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, an entity and a trust;
- (g) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) **("includes")**: "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";
- (i) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (j) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;

- (k) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (l) **(replacement authorities)**: where there is a reference to an authority, institute, association or other body referred to in this Deed Poll which:
- (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed Poll (as applicable) is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed Poll (as applicable) is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity;
- (m) **(no bias against drafter)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proposed that provision;
- (n) **(currency)** a reference to \$ is to Australian currency, unless otherwise denominated; and
- (o) **(timing)** if an act under this Deed Poll is to be done by a party on or by a given day is done after 5:00pm on that day, it is taken to be done on the next day.

2. Payment

- (a) Subject to clause 2(b), CBA agrees to pay Affected Customers in respect of losses suffered as a result of the Relevant Conduct compensation up to the amount of the Remediation Sum by paying them the Remediation Sum. For the avoidance of doubt:
- (i) an Affected Customer is only entitled pursuant to this Deed Poll to be paid the Remediation Sum that is set out in the Schedule as being applicable to that Affected Customer; and
 - (ii) without limiting the operation of any statute, including section 69 of the *Banking Act 1959* (Cth), once an Affected Customer is paid the Remediation Sum, CBA's obligation under this clause 2(a) of this Deed Poll in respect of that Affected Customer is discharged.
- (b) An Affected Customer may only take proceedings to recover the Remediation Sum prior to and including 31 December 2023 and, for the avoidance of doubt, must not take proceedings to recover the Remediation Sum after and including 1 January 2024.
- (c) CBA will take all reasonable steps to pay prior to 1 April 2024 any Remediation Sum which remains unpaid as at 31 December 2023 to the Commonwealth pursuant to section 69 of the *Banking Act 1959* (Cth).

3. Binding effect of this Deed Poll

This Deed Poll operates as a deed poll and binds CBA.

4. General

4.1 Governing Law and jurisdiction

- (a) **(Governing Law)**: This Deed Poll is governed by, and must be construed according to, the Laws of New South Wales, Australia.
- (b) **(Jurisdiction)**: CBA irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from the courts of

New South Wales, with respect to any proceedings which may be brought in connection with this Deed Poll.

4.2 Waiver

- (a) **(Writing)**: Other than where the waiver is already given expressly in the terms of this Deed Poll, a waiver that may be given by a party under this Deed Poll is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) **(No waiver)**: A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by Law by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed Poll.
- (c) **(No waiver of another breach)**: No waiver of a breach of a term of this Deed Poll operates as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.

4.3 Amendments

- (a) Unless otherwise expressly provided in this Deed Poll, this Deed Poll may only be amended by a Deed Poll executed by or on behalf of CBA; and
- (b) without limiting the operation of clause 4.3(a) of this Deed Poll, CBA may amend this Deed Poll should ASIC not accept, or if ASIC rejects or returns, any amount paid or proposed to be paid by CBA as contemplated by clause 2(c) of this Deed Poll.

4.4 Severance

If, at any time, a provision of this Deed Poll is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

- (a) **(provisions)**: any other provision of this Deed Poll; or
- (b) **(other jurisdictions)**: that provision under the Law of any other jurisdiction.

Executed as a deed poll.

Schedule

Please contact our customer call centre on **1800 861 929** so that we can confirm whether or not you are one of the affected customers we have been unable to pay.