



## ENFORCEABLE UNDERTAKING

### Australian Securities and Investments Commission Act 2001

#### Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission ("ASIC") by:

Transcomm Credit Co-operative Limited  
(ACN 087 651 750)  
99 King Street,  
Melbourne, VIC 3000

#### 1. BACKGROUND

- 1.1 ASIC is responsible for monitoring and promoting market integrity and consumer protection in the Australian financial system.
  - 1.2 Transcomm Credit Co-operative Limited (ACN 087 651 750) trading as Transcomm Credit Union ("**Transcomm**") operates a deposit taking business and holds an Australian Financial Services Licence (No 245606) ("**AFSL**") issued pursuant to section 913B of the Corporations Act 2001 ("**the Act**").
  - 1.3 Transcomm commenced in 1971 and is owned by its members, to whom it provides financial and other services.
  - 1.4 As an Approved Deposit Taking Institution ("**ADI**") Transcomm is also regulated by the Australian Prudential Regulation Authority ("**APRA**").
  - 1.5 During the period from October 2004 to 19 October 2005 ("**relevant period**") Transcomm:
    - (a) published advertisements about its Annuity Plus Reverse Mortgage product ("**the Reverse Mortgage product**") in the following publications:
      - the Council of the Ageing's bimonthly magazine, 'Cota News',
      - the 'Victorian Probian', and
      - Victorian Railways Institute Magazine
    - (b) issued various printed materials including loan contracts and a brochure for use by the borrowers of the Reverse Mortgage product; and
    - (c) caused statements promoting the Reverse Mortgage product to be posted on its website at [www.transcomm.com.au](http://www.transcomm.com.au).
  - 1.6 On 25 October 2005 ASIC commenced an investigation into suspected contraventions of sections 12CB, 12CC, 12DA and 12DB of the Australian Securities and Investments Commission Act 2001 ("**ASIC Act**") in connection with the promotion, marketing, advertising and sale of the Reverse Mortgage product ("**the Investigation**").
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- 1.7 As a result of the investigation, ASIC has concerns that Transcomm has made representations that are false, misleading or deceptive or likely to mislead or deceive in contravention of sections 12DA and 12DB of the ASIC Act. The details of those representations and ASIC's concerns are as follows:

1.8 **REPRESENTATIONS AND CONCERNS**

- (a) The advertisements and brochure each claim that the Reverse Mortgage product has "no impact on pension entitlements".

ASIC considers this claim is false. Under the Social Security Act 1991, lump sums obtained from home equity conversion loans or some items purchased with those funds can impact on borrowers' pension entitlements.

- (b) The advertisements and brochure each claim that the Reverse Mortgage product has "an inbuilt safety feature", or "built in safeguards to stop 'runaway' or 'negative' equity issues from occurring".

ASIC considers that the Reverse Mortgage product does not have any such safety features or safeguards.

ASIC is concerned that these representations are likely to mislead consumers into believing that:

- The features in the Reverse Mortgage product that are designed to minimise "runaway equity" will safeguard the borrower.

In fact, the product has a fixed term and allows Transcomm to reduce borrowers' monthly payments or compel full repayment of the loan in certain circumstances.

- The Reverse Mortgage product does not expose them to any 'negative equity' risk.

Unlike some other products, the Reverse Mortgage product does not have a 'no negative equity' or "non-recourse" guarantee which provides that if the loan exceeds the value of the property, the consumer will not be required to pay the difference.

- (c) The brochure claims that the Reverse Mortgage product is "designed so that the debt ceiling or final balance owed does not exceed 50% of the estimated future value of your property"

ASIC considers this is misleading because it is possible for the debt to exceed 50% of the future value of the property and the assumptions on which the future value of the property is estimated are not adequately qualified. The loan contract allows the debt to reach 80% of the value of the property before it must be repaid.

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- (d) The advertisements claim that the Reverse Mortgage product has "the most competitive interest rate of any reverse mortgage" and that the Reverse Mortgage product has "lower fees and charges"

ASIC is aware that one other reverse mortgage products has lower interest rates and some others have lower application and monthly fees.

- (e) The brochure states that, if a borrower dies, "the benefits pass to the surviving partner".

ASIC considers this statement could mislead consumers as it will only apply to a surviving partner who is both an owner of the property and a joint borrower.

- (f) The advertisements, printed materials and statements referred to in paragraph 1.5 above do not adequately qualify any statements that are based upon assumptions that the interest rate applicable to the loan (which is variable) will not change and that the value of the property will not decrease during the term of the loan.

1.9 In light of the matters outlined in clause 1.8 above, ASIC is concerned that Transcomm has not complied with sections 12DA and 12DB of the ASIC Act 2001.

1.10 Transcomm acknowledges ASIC's concerns and has offered ASIC this Enforceable Undertaking, which ASIC has agreed to accept.

## **2. UNDERTAKINGS**

Pursuant to Section 93AA of the ASIC Act, Transcomm has offered and ASIC has agreed to accept the following undertakings:

### **Disclosure and corrective action**

- 2.1 Transcomm will not use in any future advertising material the particular words or phrases objected to and set out in clauses 1.8 (a) to (d) unless they are true.
- 2.2 Transcomm will not use in any future advertising material the particular words or phrases objected to and set out in clause 1.8(b) without including clearly visible and legible statements, which describe:
- (a) the features or measures referred to in full.
  - (b) when and how the features or measures apply.
  - (c) the impact of the features or measures on consumers (including that payments to consumers may be reduced or the debt required to be repaid in full).
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- 2.3. Transcomm will not use in any future advertising or promotional material the particular words or phrases objected to and set out in clause 1.8(c) without including clearly visible and legible statements, which:
- (a) describe the circumstances in which the debt may exceed 50% of the future value of the property.
  - (b) adequately qualify the assumptions on which the future estimated value of the property is based.
- 2.4 Transcomm will not use in any future advertising material the particular words and/or phrases objected to and outlined in clause 1.8(e) without adequately explaining the circumstances in which that feature will apply.
- 2.5 Transcomm will qualify any assumptions described in clause 1.8(f) by including clearly visible and legible statements that the annual interest rate is likely to vary or the value of the property may decrease (whichever is relevant) and describing the impact of the relevant change.
- 2.6 Transcomm will within 14 days of acceptance of this undertaking by ASIC, place a corrective advertisement in the terms of Annexure A in a prominent position on the Internet homepage of the Transcomm website at [www.transcomm.com.au](http://www.transcomm.com.au). The corrective advertisement shall remain on the website for a period of not less than 90 days.
- 2.7 Transcomm will within 14 days of acceptance of this undertaking by ASIC write a letter in the form of the letter at Annexure B to each of the existing borrowers (up to the date of this enforceable undertaking) who have taken up the Reverse Mortgage product.
- 2.8 Transcomm will within 21 days of acceptance of this undertaking by ASIC provide ASIC with:
- (a) A report containing the names of the persons to whom the letter at Annexure B has been sent and the addresses to which they have been sent, and
  - (b) A statutory declaration signed by a director of Transcomm who has personal knowledge of Transcomm's compliance with this clause and stating that the report referred to in this clause is true and correct and not misleading or deceptive.
- 2.9 If Transcomm receives any complaint from a consumer for rescission or otherwise, Transcomm will consider the complaint and:
- (a) If Transcomm accepts that the complaint is valid, Transcomm will within 28 days of receiving the complaint, take action to place the claimant in the position they were in before the contract for the Reverse Mortgage product was entered into or otherwise compensate the claimant.
  - (b) If Transcomm does not accept that the complaint is valid, Transcomm will:
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- within 28 days of the complaint send a written notice to the claimant notifying them of the decision and their right to refer the matter to the Financial Co-operatives Disputes Resolution Scheme, and
  - provide the claimant with all reasonable assistance to facilitate the referral of the complaint to the Financial Co-operatives Disputes Resolution Scheme and take all reasonable steps to ensure that the referral proceeds expeditiously.
- 2.10 Transcomm will not be obliged to accept that a complaint is valid if it establishes any one or more of the following matters:
- (a) The representations were not made to the claimant.
  - (b) The claimant did not rely upon any of the representations.
- 2.11 Transcomm will within 120 days after the acceptance of this undertaking by ASIC provide ASIC with copies of:
- (a) All complaints it receives
  - (b) All documents that record Transcomm's response to any such complaints, and
  - (c) If Transcomm rejects any claims, all documents on which Transcomm has relied in reaching rejecting such claims

### **Compliance program**

- 2.12 Transcomm will implement within 30 days of acceptance of this undertaking by ASIC and maintain for a period of two years, a Compliance Program ("**compliance program**") which includes *inter alia*:
- (a) That all advertising material and legal documents (including but not limited to contracts) relating to the Reverse Mortgage Product to be used by Transcomm be reviewed by a lawyer prior to their use, publication, broadcast or display to ensure that the use of the advertising material and legal documents will not contravene Part 2, Division 2 of the ASIC Act.
  - (b) A documentary record of the review of all such advertising material and legal documents, which must include:
    - A copy of the advertising material and/or legal documents,
    - Written confirmation that the advertising material and/or legal documents were reviewed and approved for use, stating when and by whom the review was conducted, and
    - A written record of when the advertising material and/or legal documents were first used, and
  - (c) That all employees and agents of Transcomm involved in the preparation, distribution and/or sale of the Reverse Mortgage Product
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attend annual training sessions in relation to Part 2, Division 2 of the ASIC Act, such training to be conducted by a suitably qualified legal practitioner with experience in the ASIC Act. A record of all material used or distributed at the training session as well as the persons who conduct and attended each training session must be maintained for at least two years.

- 2.13 Transcomm will produce all documents in its possession that ASIC may request from time to time, relating to the procedures and program established in clauses 2.9 and 2.12.

### **Communication between ASIC and Transcomm**

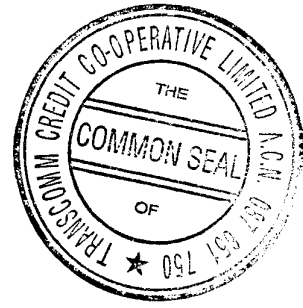
- 2.14 Any report or notification to be provided to ASIC in accordance with this enforceable undertaking is to be delivered to:

The Director  
Compliance & Campaigns  
Consumer Protection  
Australian Securities and Investments Commission

### **3. ACKNOWLEDGEMENTS**

- 3.1 Transcomm acknowledges ASIC's concerns set out in this enforceable undertaking.
- 3.2 Transcomm acknowledges that ASIC:
- (a) may issue a Media Release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this undertaking; and
  - (c) will make this undertaking available for public inspection.
- 3.3 Transcomm further acknowledges that:
- (a) this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this enforceable undertaking;
  - (b) ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary penalty order in relation to any or all of the conduct described in this enforceable undertaking, or any contravention arising from future conduct; and
  - (c) this enforceable undertaking has no operative force until accepted by ASIC.
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The Common Seal of Transcomm Credit Co-operative Limited ACN 087 651 750 was affixed in accordance with the Corporations Act 2001 on the 27<sup>th</sup> day of March 2006 in the presence of:



*[Handwritten Signature]*  
.....  
Director/Secretary

*[Handwritten Signature]*  
.....  
Director

*GRAEME ERNEST GEORGE SMITH*  
.....  
Print Name

*DIANNE GRANT*  
.....  
Print Name

ACCEPTED by the Australian Securities and Investments Commission under the ASIC Act section 93AA of the ASIC Act by its duly authorised delegate:

*[Handwritten Signature]*  
.....

Deputy Executive Director, Enforcement  
Australian Securities and Investments Commission

Dated this 28<sup>th</sup> day of March 2006

## ANNEXURE A

(as per clause 2.6 of the Enforceable Undertaking)

### CORRECTIVE ADVERTISING - INTERNET

One of the products Transcomm offers its customers is the Annuity Plus Reverse Mortgage product ("The Reverse Mortgage Product").

Between October 2004 and October 2005, Transcomm has run a promotional campaign for the Reverse Mortgage Product. As part of this promotional campaign, Transcomm made claims in published advertisements, a brochure and printed materials that :

- the product has "no impact on pensioner entitlements".
- the product has "an inbuilt safety measure" to guard against "runaway" or "negative equity".
- the product is "designed so that the debt ceiling - final balance owed will not exceed 50% of the estimated future value of your property".
- the product has "the most competitive interest rates of any reverse mortgage" and that it has "lower fees and charges.
- the benefits of the product pass to the surviving parties, if a borrower dies.

The Australian Securities and Investments Commission ("**ASIC**") raised concerns with Transcomm that these representations are false misleading or deceptive or likely to mislead or deceive.

Transcomm acknowledges ASIC's concerns and has entered into an Enforceable Undertaking with ASIC. [*insert a hyperlink to enable customers to view or download a copy of the Enforceable Undertaking*]

As part of this agreement, Transcomm has undertaken to notify its customers of the misrepresentations in its advertising and other material and to offer its customers the opportunity to terminate the agreement with Transcomm and/or seek compensation.

This notice has been placed pursuant to the terms of an enforceable undertaking offered by Transcomm and accepted by ASIC on [*insert date*].

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**ANNEXURE B**  
**(as per clause 2.7 of the Enforceable Undertaking)**

**NOTICE TO MEMBERS – ANNUITY PLUS REVERSE MORTGAGE**

According to our records you have taken up an Annuity Plus Reverse Mortgage with Transcomm Credit Co-Operative Ltd ("**Transcomm**").

Between October 2004 and October 2005, Transcomm ran a promotional campaign for the Reverse Mortgage Product. As part of this promotional campaign, Transcomm made claims in published advertisements, a brochure and printed materials that :

- the product has "no impact on pensioner entitlements".
- the product has "an inbuilt safety measure" to guard against "runaway" or "negative equity".
- the product is "designed so that the debt ceiling - final balance owed will not exceed 50% of the estimated future value of your property".
- the product has "the most competitive interest rates of any reverse mortgage" and that it has "lower fees and charges.
- the benefits of the product pass to the surviving parties, if a borrower dies.

Transcomm has been advised by the Australian Securities and Investments Commission ("ASIC") and we accept that a number of these representations are false, misleading or deceptive and/or are likely to mislead or deceive.

Transcomm has entered into an Enforceable Undertaking with ASIC, a copy of which is attached for your information. For more details about ASIC's concerns, please refer to the attached Enforceable Undertaking.

In light of ASIC's concerns, we recommend that you seek independent financial and legal advice. We also recommend that you speak to Centelink to see if the funds received under your loan have affected your pension entitlement.

If, as a consequence of the representations made by Transcomm, you:

- a. wish to terminate the loan agreement and repay the loan, Transcomm will agree to such termination if notice in writing of such termination is given to Transcomm within 90 days; or
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- b. believe you have suffered loss as a consequence of your reliance on any of the misrepresentations, you may be entitled to receive compensation, and in that case, you should write to Transcomm with details of the claim and how you say your reliance on the misrepresentation caused you loss.

Transcomm has agreed with ASIC to provide reasonable assistance to all Transcomm members who claim or inquire about any potential claim. Reasonable assistance includes:

- providing you with information about alternative or comparative financing options and/or,
- if Transcomm rejects your claim, referring the complaint to the Financial Cooperatives Dispute Resolution Scheme and taking all reasonable steps to ensure that the referral proceeds expeditiously.

If you would like to terminate your loan agreement with, and/or seek compensation from, Transcomm, please write to:

Attention: Compliance Manager  
Transcomm Credit Co-Operative Ltd  
6<sup>th</sup> Floor, King Street  
Melbourne 3000.

If you require further information please contact..... on ph.....

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