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ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Christopher Neville Whittingham
KPMG
10 Shelley Street
Sydney NSW 2000

1. Definitions

In addition to terms defined elsewhere in this enforceable undertaking, the following definitions are used:

| | |
|--------------------------------------|---|
| Allco | collectively, Allco Financial Group Limited ACN 077 721 129 and its controlled entities |
| ASIC Act | the <i>Australian Securities and Investments Commission Act 2001</i> (Cth) |
| Australian Auditing Standards | the auditing standards in force from time to time pursuant to s 336 of the Corporations Act |
| CALDB | Companies Auditors and Liquidators Disciplinary Board |
| Corporations Act | the <i>Corporations Act 2001</i> (Cth) |
| IBLs | Interest Bearing Loans |
| KPMG | the accounting practice KPMG, an Australian partnership a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity |
| 2007 Audit | the audit of Allco's financial report for the financial year 1 July 2006 to 30 June 2007 |
| 2007 Review | the review of the 31 December 2007 financial report of Allco |

2. ASIC's role

- 2.1 Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

- 2.2 ASIC is also responsible for the registration of company auditors under Part 9.2 of the Corporations Act. Auditors registered under Part 9.2 must satisfy specified educational and practical experience standards, and, in forming an opinion about whether financial statements audited by them comply with Australian Accounting Standards and present a true and fair view, must comply with Australian Auditing Standards and Professional Conduct Standards.
- 2.3 ASIC is empowered to bring disciplinary proceedings pursuant to s1292(1) of the Corporations Act in the CALDB against registered company auditors who have failed to adequately and properly carry out the duties of an auditor.

3. Details of Mr Whittingham

- 3.1 Mr Whittingham is, and has been continuously since 30 December 2002, registered as an auditor under the Corporations Act or corresponding previous legislation. Mr Whittingham's registration number is 224854.
- 3.2 Mr Whittingham was at all relevant times, and continues to be, a partner of KPMG.
- 3.3 Mr Whittingham is presently on secondment to KPMG Thailand from KPMG's Sydney office, acting as a consultant to the practice, on a number of specific projects, and in relation to clients. He is not registered to work as an auditor in Thailand. He commenced the secondment on 2 October 2009 and is due to return to KPMG Australia on 1 April 2012.

4. Role of Mr Whittingham

- 4.1 KPMG was the audit firm engaged by Allco at all material times.
- 4.2 Mr Whittingham was the lead auditor for the 2007 Audit and the 2007 Review.
- 4.3 Mr Whittingham was the KPMG partner who had conduct of the 2007 Audit for Allco and signed on 21 August 2007 an unqualified audit report on the financial statements of Allco for the year ended 30 June 2007.
- 4.4 S307A(2) of the Corporations Act provides that if an audit firm conducts an audit of the financial report for a financial year or a review of the financial report for a half year, the lead auditor must ensure that the audit or review is conducted in accordance with Australian Auditing Standards.

5. Allco

- 5.1 Allco was a fully integrated global financial services business, listed on the Australian Stock Exchange. It specialised in structured asset finance, funds management and debt and equity funding.
- 5.2 Allco's activities were split into various business segments: aviation, shipping, infrastructure, rail, financial services or wholesale financial services, specialized funds management and property.

6. ASIC's concerns

- 6.1 ASIC conducted an investigation under s13(1) of the ASIC Act in relation to the 2007 Audit.
- 6.2 As a result of its investigation, ASIC is concerned that Mr Whittingham failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292(1)(d)(i) of the Corporations Act.
- 6.3 ASIC's concerns arise from the fact that Allco's financial report for the financial year 1 July 2006 to 30 June 2007 contained a misclassification of IBLs as a non-current liability rather than a current liability in the amount of \$1,877,706,000.
- 6.4 ASIC is concerned that Mr Whittingham, as lead auditor of the 2007 Audit, failed to ensure that the 2007 Audit was conducted in accordance with Australian Auditing Standards as required by s307A of the Corporations Act and in particular that he failed to ensure that:
 - (a) sufficient appropriate audit evidence was obtained in relation to the classification of IBLs, or alternatively, the conflicting audit evidence which indicated a materially different classification of IBLs to that which appeared in Allco's financial report, was addressed;
 - (b) the audit work in relation to IBLs was conducted with an attitude of professional scepticism recognizing that circumstances may exist that cause the financial report to be materially misstated;
 - (c) a modified audit opinion was issued on account of non compliance with accounting standards relating to the presentation of financial statements in respect of the IBLs;
 - (d) an adequate understanding of the entity and its environment, including its internal control, sufficient to identify and assess the risks of material misstatement of the financial report whether due to fraud or error in relation to IBLs and sufficient to design and perform further audit procedures in relation to IBLs was obtained;
 - (e) the risk of material misstatement at the financial report level in relation to IBLs, and at the assertion level for classes of transactions account balances and disclosures of IBLs was adequately assessed;
 - (f) that adequate consideration was given to materiality and its relationship with audit risk in relation to IBLs;
 - (g) that adequate consideration was given to materiality when determining the nature, timing and extent of audit procedures in relation to IBLs; and/or
 - (h) the audit plan was adequately developed in order to reduce the audit risk to an acceptably low level in relation to disclosures associated with the IBLs;

or, alternatively, in respect of each of paragraphs (a) to (h) above, that the audit work performed to support the audit opinion in relation to disclosures associated with the IBLs was appropriately documented.

7 Acknowledgement of concerns

- 7.1 While Mr Whittingham disagrees with ASIC's concerns, he is mindful of and acknowledges the seriousness of these concerns. Mr Whittingham has offered, and ASIC has agreed to accept, the commitments in this enforceable undertaking.
- 7.2 In accepting the commitments contained in this enforceable undertaking ASIC notes that:
- a) Mr Whittingham acted swiftly once the error referred to in paragraph 6.3 came to his attention on 26 February 2008 and:
 - requested Allco to investigate and report to him as to how the misclassification had occurred;
 - advised Allco to reissue its half year financial report which included a footnote explaining the reasons for and details of the corrections, which Allco did on 27 February 2008;
 - issued a modified review report on the re-issued half year financial report of Allco on 27 February 2008 which included an emphasis of matter in relation to the misclassification issue;
 - based on the manner in which Allco had addressed the matter, issued a notice to ASIC under s311 of the Corporations Act on 4 March 2008; and
 - engaged in discussions with ASIC in March 2008;
 - b) the core team for the 2007 Audit consisted of over 20 KPMG professionals with approximately 100 KPMG employees being involved at various stages;
 - c) Mr Whittingham relied on the structure of the audit team and therefore relied on his managers for the aspects of the audit related to the classification of the IBLs, which was not considered a significant audit risk area; and
 - d) the misclassification of IBLs in the 2007 financial report had no bearing on the ultimate collapse of Allco.
- 7.3 In Mr Whittingham's view, although the quantum of the error is significant in dollar terms to the current/non-current classification of IBLs, the relevance of the error in terms of the financial report for the financial year 1 July 2006 to 30 June 2007 taken as a whole, and the impact on Allco shareholders, is relatively insignificant because:
- the statement of financial position is presented on a liquidity basis and there is no error in the quantum of total IBLs disclosed;
 - the IBLs were limited recourse to specific assets to which Allco shareholders had limited direct exposure; and
 - the IBLs and related assets resided entirely in entities which Allco managed. The IBLs did not represent debt of the parent entity.

8 Undertakings

Under s93AA of the ASIC Act, Mr Whittingham has offered, and ASIC has agreed to accept as an alternative to ASIC making an application to CALDB under s1292(1) of the Corporations Act, the following undertakings:

- a) that for a period of nine months ("period of suspension") commencing on the date of acceptance of this enforceable undertaking, he will not perform any duty or function which requires registration as an auditor under the Corporations Act and, for the avoidance of any doubt, this includes acting as a review auditor as defined in s324AF(2) of the Corporations Act;
- b) he will participate in an additional ten hours of continuing professional education on audit related matters during the period of suspension, in addition to the mandatory requirements of the Institute of Chartered Accountants in Australia;
- c) he will submit the first three audits conducted by him following the period of suspension that are required to be conducted by a registered company auditor under the Corporations Act, within fourteen days of completion of the relevant audit, for review by an ASIC approved KPMG registered company auditor, and confirmation that the audit has been conducted in accordance with Australian Auditing Standards and the KPMG Audit Manual effective as at the date of the relevant audit;
- d) he will provide the report and confirmation by the reviewer to ASIC within fourteen days of completion of the review, which must occur within sixty days of referral to the reviewer;
- e) within fourteen days after the conclusion of the period of suspension, he will provide ASIC with a statutory declaration that attests that he has not engaged in any activities during the period of suspension that require registration as an auditor under the Corporations Act and that he has fully complied with the undertaking contained in paragraph b) above;
- f) that he will provide all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking within fourteen days of receiving the request; and
- g) within fourteen days of the receipt of a copy of this enforceable undertaking accepted by ASIC and signed by an ASIC delegate, Mr Whittingham will pay the sum of \$10,000 to ASIC on account of its costs and disbursements associated with its investigation and the preparation of this enforceable undertaking.

9 Acknowledgements

9.1 Mr Whittingham acknowledges that ASIC:

- (a) may issue a media release upon acceptance 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 enforceable undertaking; and

- (c) will make this enforceable undertaking available for public inspection.

9.2 Further Mr Whittingham acknowledges that:

- (a) ASIC's acceptance of this 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 civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking;
- (b) 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 or arising from future conduct; and
- (c) this enforceable undertaking has no operative force until accepted by ASIC, and Mr Whittingham and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

9.3 Any written notification to ASIC pursuant to this enforceable undertaking is to be provided to:

The Senior Executive Leader, Accountants and Auditors Team
 ASIC
 Level 5, 100 Market Street
 SYDNEY NSW 2000.



Christopher Neville Whittingham

Dated: ...25...November 2010

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



Glen Unicomb

Delegate of Australian Securities and Investments Commission

Dated: 29 November 2010