



9134

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:

Stephen John Cogle (Mr Cogle)
c/- PricewaterhouseCoopers, Freshwater Place, 2 Southbank Boulevard,
Southbank, Victoria

Definitions

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

2007 CNP Financial Report means the Financial Report of CNP for the financial year ended 30 June 2007 dated 6 September 2007

2007 CER Financial Report means the Financial Report of CER for the financial year ended 30 June 2007 dated 6 September 2007

Act means the *Corporations Act 2001* (Cth)

AASB Standards means Australian Accounting Standards Board's Accounting Standards

ASA means Australian Auditing Standards

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

Audits means the audits of the 2007 CNP Financial Report and the 2007 CER Financial Report

CALDB means the Companies Auditors and Liquidators Disciplinary Board

CER means the 'Centro Retail Group', comprising Centro MCS Manager Limited, Centro Retail Trust and Centro Retail Limited

CMCSM means Centro MCS Manager Limited ACN 051 908 984

CNP means the 'Centro Properties Group' comprising Centro Properties Limited, CPT Manager Ltd and Centro Properties Trust

CPL means Centro Properties Limited ACN 078 590 682

CPT means Centro Properties Trust ARSN 091 043 793

CPTM means CPT Manager Limited ACN 054 494 307

CRL means Centro Retail Limited ACN 114 757 783

CRT means Centro Retail Trust ARSN 104 931 928

Entities means CNP and CER and related entities

JPMorgan Adjustment means a journal entry in the books of CNP to reclassify a loan from JP Morgan in the amount of \$1.096 billion as at 30 June 2007 from a non-current liability to a current liability

Professional Conduct Standards means standards issued by the Accounting Professional & Ethical Standards Board

PwC means PricewaterhouseCoopers ABN 52 780 433 757

Reports means the 2007 CNP Financial Report and 2007 CER Financial Report

1. Background

1.1 ASIC's role

- 1.1.1 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.
- 1.1.2 ASIC is also responsible for the registration of company auditors under Part 9.2 of the Act.
- 1.1.3 Auditors registered under Part 9.2 of the Act must satisfy specified educational and practical experience standards and be otherwise a fit and proper person to be registered as an auditor and, in forming an opinion about whether financial statements comply with Australian Accounting Standards and present a true and fair view, must comply with the ASA and relevant Professional Conduct Standards.
- 1.1.4 ASIC is empowered to bring disciplinary proceedings pursuant to s1292(1)(d)(i) of the Act in the CALDB against registered company auditors who have failed to adequately and properly carry out the duties of an auditor.

1.2 Centro Companies

- 1.2.1 Centro Properties Limited (**CPL**) was at all material times:
 - (a) a company registered under the Act; and
 - (b) a disclosing entity, a listed disclosing entity and a public company within the meaning of the Act.
- 1.2.2 Centro Property Trust (**CPT**) was at all material times a managed investment scheme registered pursuant to Part 5C of the Act and a controlled entity of CPL.
- 1.2.3 CPT Manager Ltd (**CPTM**) was at all material times:

- (a) a company registered under the Act; and
- (b) the responsible entity of CPT.

1.2.4 At all material times:

- (a) each ordinary share in CPL was stapled to one ordinary unit in CPT; and
- (b) CPL and its controlled entities were known as and listed on the Australian Securities Exchange (ASX) as Centro Properties Group (CNP).

1.2.5 Centro Retail Limited (CRL) was at all material times:

- (a) a company registered under the Act; and
- (b) a disclosing entity, a listed disclosing entity and a public company within the meaning of the Act.

1.2.6 Centro Retail Trust (CRT) was at all material times a managed investment scheme registered pursuant to Part 5C of the Act and the controlling entity of CRL.

1.2.7 Centro MCS Manager Ltd (CMCSM) was at all material times:

- (a) a company registered under the Act; and
- (b) the responsible entity of CRT.

1.2.8 At all material times:

- (a) each ordinary share in CRL was stapled to one ordinary unit in CRT; and
- (b) CRT and its controlled entities were known as and listed on the ASX as Centro Retail Group (CER).

1.3 Stephen Cougle and Centro's financial statements

- 1.3.1 Mr Cougle is an auditor registered pursuant to s1280 of the Act. Mr Cougle was first registered with as an auditor on 10 February 1999; his registration number is 185720.
- 1.3.2 PricewaterhouseCoopers (PwC) is, and was at all material times, a partnership conducting business within Australia as accountants and auditors.
- 1.3.3 Mr Cougle is and was at all relevant times a partner of PwC.
- 1.3.4 PwC was an audit firm and the auditor, within the meaning of s324AA of the Act, of the 2007 CNP Financial Report and the 2007 CER Financial Report (**the Reports**).
- 1.3.5 Mr Cougle was the lead auditor, within the meaning of s324AF(1) of the Act, for the audits of the Reports (**the Audits**).
- 1.3.6 Section 307A(2) of the Act provides that if an audit firm conducts an audit of the financial report for a financial year, the lead auditor must ensure that the audit is conducted in accordance with the ASA.

1.3.7 The Reports were lodged with ASIC on 28 September 2007. Included in each report was an unqualified Independent Audit Report issued by PwC, signed by Mr Cogle and dated 6 September 2007.

1.3.8 There were material misstatements in the Reports as follows:

- (a) the 2007 CNP Financial Report failed to properly classify as current approximately A\$1.514 billion of interest-bearing liabilities disclosed in the 2007 CNP Financial Report as non-current liabilities, contrary to paragraph 60 of Australian Accounting Standard AASB 101 *Presentation of Financial Statements (AASB 101)*;
- (b) the 2007 CER Financial Report failed to properly classify as current approximately A\$600 million of interest-bearing liabilities disclosed in the 2007 CER Financial Report as non-current liabilities, contrary to paragraph 60 of AASB 101; and
- (c) the 2007 CNP Financial Report failed to disclose material events after the reporting date, namely that in August 2007 CNP had given substantial guarantees to lenders totalling in excess of US\$2.8 billion (**the After Balance Date Guarantees**), contrary to paragraph 21 of Australian Accounting Standard AASB 110 *Events After the Reporting Period (AASB 110)*.

1.4 ASIC's Investigation and Views

1.4.1 ASIC has undertaken an investigation into the circumstances surrounding the material misstatements in the Reports referred to in paragraph 1.3.8.

1.4.2 As a result of its investigation, ASIC has formed the view that the Audits were not conducted in accordance with the ASA by reason of the following matters:

- a) sufficient appropriate audit evidence in relation to the classification of interest-bearing liabilities in the Reports was not obtained, in accordance with paragraph 5 of Auditing Standard ASA 500 *Audit Evidence*;
- b) the effect of subsequent events, namely the After Balance Date Guarantees on the 2007 CNP Financial Report and on the auditor's report, was not adequately considered in accordance with paragraphs 5 and 12 of Auditing Standard ASA 560 *Subsequent Events*;
- c) the JPMorgan Adjustment was not communicated to those charged with governance of CNP, or if it was communicated, Mr Cogle failed to ensure that audit evidence was obtained that they were so appropriately informed or that any communication was documented, in accordance with paragraphs 5, 15, 22 and 26 of Auditing Standard ASA 260

Communication of Audit Matter with those charged with Governance;

- d) after the detection of the JP Morgan Adjustment by the audit team, Mr Cogle failed to ensure, with respect to the classification of other interest bearing liabilities, that:
 - i. the audit procedures originally planned to ensure sufficient appropriate audit evidence was obtained were sufficiently re-assessed in accordance with paragraph 5 of Auditing Standard ASA 500 *Audit Evidence*; and
 - ii. sufficient appropriate audit evidence was obtained to reduce to an acceptably low level the risk of material misstatement in the financial report (as required by paragraph 94 of Auditing Standard ASA 330 *The Auditor's Procedures in Response to Assessed Risks*); and
- e) in performing the evaluation of management's assessment of the entity's ability to continue as a going concern, in accordance with paragraph 22 of ASA 570 *Going Concern* and in concluding under paragraph 26 of ASA 570 that there was a history of profitable operations and a ready access to financial resources such that there was no need to perform more detailed procedures, Mr Cogle failed to ensure that specific consideration was given to management's plans for refinancing the \$1.1bn JPMorgan debt, being an event which may have cast doubt on CNP's ability to continue as a going concern.

1.4.3 ASIC has formed the view that, in respect of the Audits, Mr Cogle failed to carry out or perform adequately and properly the duties of an auditor within the meaning of s1292(1)(d)(i) of the Act.

1.5 Acknowledgement of Views

- 1.5.1 Mr Cogle admits that the Audits were not conducted in accordance with the relevant ASA by reason of the matters in paragraph 1.4.2 and acknowledges ASIC's views and that they are reasonably held. However, Mr Cogle states for the purposes of this Enforceable Undertaking that:
 - (a) In relation to 1.4.2 (a), he understood at the time of the conduct of the Audits that sufficient appropriate audit evidence had been obtained; and
 - (b) In relation to 1.4.2 (b), he was not aware of the existence of the After Balance Date Guarantees prior to the audit report being signed.
- 1.5.2 Mr Cogle does not admit paragraph 1.4.2 (c) insofar only as it relates to ASIC's concern that the JP Morgan Adjustment was not communicated to those charged with governance of CNP because he believes and has given sworn evidence (contrary to sworn evidence

given by CNP directors and employees) that the JP Morgan Adjustment was communicated to those charged with governance of CNP.

2. Undertakings

- 2.1 Under s93AA of the ASIC Act, Mr Cogle has offered, and ASIC has agreed to accept as an alternative to making an application to the CALDB under s1292(1) of the Act, the following undertakings:
- (a) that from the date of acceptance by ASIC of this enforceable undertaking until 30 June 2015 (**Period of Suspension**), Mr Cogle will not perform any duty or function which requires registration as an auditor under the Act and, for the avoidance of any doubt, this includes acting as a review auditor as defined in s324AF(2) of the Act;
 - (b) that during the Period of Suspension, prior to Mr Cogle being engaged by a potential client, either directly or via a new employer, to perform any audit and/or review work under any ASA outside of what only a registered auditor must perform, Mr Cogle will provide the potential client or the new employer, as the case may be, with a copy of this enforceable undertaking;
 - (c) that if, after acceptance by ASIC of this enforceable undertaking for the Period of Suspension, Mr Cogle is engaged during the Period of Suspension to perform any audit and/or review work under the Act outside of what only a registered auditor must perform, subject to satisfying any issues of confidentiality attaching to client information, Mr Cogle will provide to ASIC a written report at three monthly intervals, during the period of suspension, the first to be provided within three months of being engaged to perform such work. The report will specify (subject to satisfying any issues of confidentiality attaching to client information) the details of the audit and/or review work he has been engaged to perform during the previous three months, without specifying the entity or entities to which the work relates, but identifying the corporate type (eg proprietary company, public company, publicly listed company, etc) of the entity or entities to which the work relates as well as the industry or industries (eg retail, construction, aviation, etc) in which the entity/entities is/are primarily involved;
 - (d) that he will participate in an additional 20 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;
 - (e) that, subject to obtaining client consent, he will submit the first three audits conducted by him following the Period of Suspension that are required to be conducted by a registered auditor under the Act, within fourteen days of the finalisation and archiving of the audit file for each relevant audit, for review by a registered auditor approved by ASIC, such auditor to provide a statement in writing to Mr Cogle reporting whether in that person's opinion the relevant audit in question has been

conducted in accordance with the ASA as at the date of the relevant audit;

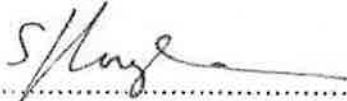
- (f) that he will provide the statement referred to in paragraph (e) above to ASIC within fourteen days of provision of the report to him, which must occur within sixty days of referral to the reviewer (although ASIC acknowledges the timing within which the reviewer will complete his or her work is not within Mr Cogle's control);
- (g) that on receipt of any report required by paragraph (e), he will take all reasonable steps to put into place any recommendations made in the report;
- (h) that within fourteen days after the conclusion of the Period of Suspension, Mr Cogle 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 Act and that he has fully complied with the undertakings contained in (b) and (d) above;
- (i) that, subject to obtaining client consent, he will provide all documents and information reasonably requested by ASIC from time to time for the purpose of assessing his compliance with the terms of this enforceable undertaking;
- (j) that in respect of undertakings (e) and (i), should any client refuse to provide their consent, Mr Cogle will notify ASIC of the details of the refusal as soon as practicable; and
- (k) that Mr Cogle will pay his costs of compliance with this enforceable undertaking, including but not limited to the costs of the reviews referred to in (e).

3. Acknowledgements

3.1 Mr Cogle acknowledges that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and to the views 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.

- 3.2 Further Mr Cogle acknowledges that:
- (a) ASIC's acceptance of this 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 matters that are not connected with the Audits or arising from future conduct; and
 - (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.
- 3.3 Mr Cogle acknowledges that this undertaking has no operative force until accepted by ASIC, and Mr Cogle and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.
- 3.4 Any written notification to ASIC pursuant to this enforceable undertaking is to be provided to the Senior Executive Leader, Financial Reporting and Audit.



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Stephen John Cogle

Dated: 12/11/2012

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:



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Christopher Savundra

Delegate of Australian Securities and Investments Commission

Dated: 19/11/2012