



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 by:

Jeremy Michael Reid
85A Victoria Road, Bellevue Hill NSW 2023

1. Definitions

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

Act means the *Corporations Act 2001* (Cth).

AFSL means Australian Financial Services Licence.

ASIC means the Australian Securities and Investments Commission.

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

Commencement Date means the date of the acceptance of this enforceable undertaking by ASIC.

EBBIF means the Everest Babcock & Brown Income Fund ARSN 128 309 295.

Everest means Everest Capital Limited (now known as Redleaf Capital Limited) ACN 092 753 252.

Information Memorandum means the Information Memorandum for the EBBIF issued on 22 May 2006.

Investment Committee means the Investment Committee for the EBBIF.

Reid means Jeremy Michael Reid, of 85A Victoria Road Bellevue Hill NSW 2023, date of birth 23 July 1976.

Relevant Period means the period between 1 December 2007 and 23 June 2008.

2. ASIC's role

2.1 Pursuant to section 1 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.

3. Background

3.1. During the Relevant Period, Everest was the responsible entity of a number of managed investment schemes registered under the Act, including the EBBIF.

3.2. Everest was the holder of AFSL number 225102 which authorised it to operate those schemes as responsible entity.

- 3.3. EBBIF was registered as a managed investment scheme on 15 November 2007. As at 1 January 2008 EBBIF had 70 members holding approximately \$182 million in EBBIF units. Each unit was valued at \$1.00.
- 3.4. During the Relevant Period, Reid was:
- (a) a director of Everest;
 - (b) the Chief Executive Officer of Everest; and
 - (c) a member of Everest's Investment Committee.

4. Details of conduct

- 4.1 Pursuant to the terms of the EBBIF:
- (a) Members were entitled to apply, on 90 days' notice to Everest, to redeem their unitholding in EBBIF, effective as at 31 December each year commencing from 2007 (**Annual Redemption Request**).
 - (b) No more than 20% of issued units could be redeemed in any one calendar year (**Yearly Redemption Limit**). If redemption requests in the year exceeded 20% of issued units, redemptions would be paid on a pro-rata basis such that total redemptions paid in that year did not exceed the Yearly Redemption Limit.
 - (c) Members could also request an early redemption of their units, which could be accepted by Everest in its absolute discretion (**Discretionary Redemption Request**). Such redemptions would incur an early redemption fee of up to 5% of the value of the units redeemed, but that fee could be reduced or waived at the discretion of Everest.
 - (d) Members who sought to redeem were required do so in a form or manner and subject to any conditions as determined by Everest and be lodged or made at the place or address and in the manner determined by Everest.
- 4.2 During the Relevant Period, EBBIF had no formal policy for consideration of Discretionary Redemption Requests.
- 4.3 From time to time, EBBIF members would contact Reid and other Everest staff to informally enquire about a potential request to redeem units that the member was contemplating submitting to Everest in future (**Redemption Enquiry**). Occasionally a client would make a Redemption Enquiry but then not proceed with an Annual or Discretionary Redemption Request.
- 4.4 On 11 January 2008, Harsit Holdings Pty Ltd ACN 003 391 099 (**Harsit**), a member of the EBBIF holding 21.5 million units, submitted a Discretionary Redemption Request to Everest to redeem units to the value of \$5 million (**Harsit Redemption Request**). During the Relevant Period, Steven Eckowitz (**Eckowitz**) was the sole director and shareholder of Harsit. Eckowitz is Reid's father-in-law.
- 4.5 On 11 January 2008, Reid became aware that Everest was likely to grant the Harsit Redemption Request.

- 4.6 On 14 January 2008, the Investment Committee (excluding Reid) approved the Harsit Redemption Request and imposed a fee on Harsit of 2%.
- 4.7 On 14 January 2008, Reid notified the Head of Everest's Finance and Operations Department that he intended to make a Discretionary Redemption Request in respect of a proportion of the units held by Reidco Pty Ltd ACN 109 186 844 (**Reidco**), a member of the EBBIF holding 5.2 million units. Reid and his wife Tammi Reid are the shareholders of Reidco, which is the trustee of their family trust. Tammi Reid is the sole director of Reidco.
- 4.8 On 16 January 2008, Reid requested the Head of Everest's Finance and Operations Department to prepare the forms for a Discretionary Redemption of units to the value of \$4 million. On 21 January 2008, Reidco submitted its Discretionary Redemption form (**Reidco Redemption Request**).
- 4.9 On 22 January 2008, the Investment Committee (excluding Reid) approved the Reidco Redemption Request and imposed a fee on Reidco of 2%. The Reidco Redemption Request was considered alongside the already approved Harsit Redemption Request for calculation purposes.
- 4.10 On 25 January 2008, Everest paid the Harsit and Reidco Redemption Requests in full in the amounts of \$5 million and \$4 million respectively.
- 4.11 The payments to Harsit and Reidco were made from a debt facility that Everest had with the Commonwealth Bank of Australia (**CBA Facility**). On 22 January 2008, the CBA allowed EBBIF to draw down on the CBA Facility to fund the Harsit and Reidco Redemption Requests, but stated that this was to be a 'one-off'. This was on the basis that the funding of redemptions was not provided as a stated purpose under the CBA Facility.
- 4.12 The terms of the CBA Facility imposed a requirement that no more than 20% of units on issue be redeemed without CBA approval (meaning redemptions of between \$31 million to \$36 million for the 2008 calendar year), and accordingly, on the most conservative case, the Reidco/Harsit redemptions combined would represent, at the most, approximately 30% of this threshold. The combined Reidco/Harsit investment represented about 20% of the units in EBBIF and the Investment Committee approved the Reidco/Harsit redemptions on the basis that their decision would be different in relation to further redemption requests by Reidco/Harsit.
- 4.13 Between 16 and 23 January 2008, three other members of EBBIF (who were not related to or associated with Reid) made Redemption Enquiries with Reid about potential redemptions or refunds totaling up to \$34 million (collectively, **Unrelated Redemption Enquiries**).
- 4.14 At the time the Investment Committee gave its approval for the Reidco Redemption Request on 22 January 2008, two of the three Unrelated Redemption Enquiries had been made.
- 4.15 In respect of the first Unrelated Redemption Enquiry:
- (a) The member had earlier, on 26 August 2007, submitted an Annual Redemption Request form to redeem 6.5 million EBBIF units, which had not been processed by Everest. Any redemption would have been due to be paid by 31 January 2008.

- (b) On 17 January 2008, the member enquired about the status of the earlier redemption request with the Everest Finance Manager.
- (c) On 18 January 2008, Reid personally provided a guarantee to pay the difference between the total return on the EBBIF investment and the interest payable on the member's margin loan (**Performance Guarantee**).
- (d) On 18 January 2008, Reid requested that the member confirm the withdrawal of its Redemption Request in writing. On 21 January 2008, prior to the meeting of the Investment Committee on 22 January 2008, the member confirmed to Reid in writing that it would not seek redemption of any of its EBBIF units.
- (e) On 10 July 2008, Edgecliff Capital Pty Ltd, of which Reid was the sole director, gave the Performance Guarantee to the member.

4.16 In respect of the second Unrelated Redemption Enquiry, the member did not make a formal Discretionary Redemption Request. The relevant background is as follows:

- (a) On 16 January 2008, the member discussed redemptions over the phone with Everest's Finance Manager. The member accepts he may have been told that a fee would be payable if he was allowed to redeem.
- (b) On 18 January 2008, the member discussed redemptions over the phone with Reid. The member accepts Reid may have said that an exit fee would be payable if Everest approved the member's redemption outside the redemption periods.
- (c) In 2010, an Everest officer asked the member to confirm why he had not proceeded with his Redemption Enquiry. The member confirmed in response that he was not prepared to exit EBBIF if an exit fee was involved.

4.17 The third Unrelated Redemption Enquiry was made on 23 January 2008 (the day after the Investment Committee approved the Reidco Redemption Request but before the payment was actually made). The relevant background is as follows:

- (a) In January 2008, Reid was assisting the member with his margin loan from one financier.
- (b) Late on 23 January 2008, and after the Investment Committee meeting on 22 January 2008 and after CBA's decision to allow a 'one-off' drawdown, the member emailed Reid stating that one way Reid could assist the investor would be for EBBIF to refund all or part of his last \$25 million investment in EBBIF units which would release up to \$5 million in equity and help with his margin loan position.
- (c) Later on 23 January 2008, Reid responded by email to the member to advise that EBBIF could not release any funds under the CBA Facility until the end of the year.
- (d) On 4 February 2008, in an email chain between employees of Babcock & Brown Ltd ACN 108 614 955 (one of whom was an Investment Committee member) an employee stated that the member would not be going ahead with a sale of units they had arranged for him as he no longer needed the funds. The email chain shows the sale price for the relevant units was \$17.2 million.
- (e) The member did not make a Discretionary Redemption Request.

- 4.18 Following the payment by Everest of the Harsit and Reidco Redemption Requests and the Unrelated Redemption Enquiries, between March and June 2008 2 other members of EBBIF requested and were granted Discretionary Redemptions totaling approximately \$6 million.
- 4.19 Between March and June 2008, additional members also made Redemption Enquiries with Everest and were provided with and/or lodged a request form to redeem units effective as at 31 December 2008.
- 4.20 On 31 October 2008, Everest informed EBBIF members that all redemption requests received as at 30 October 2008 were being rejected, that EBBIF would pay a pro-rata cash distribution of capital to all members, ^{not} ~~or~~ just those seeking redemptions, and that future redemption requests would be suspended. *UW* *Geoffrey Stoddart*

5. ASIC's investigation and concerns

- 5.1 On 17 November 2010, ASIC commenced an investigation pursuant to section 13 of the ASIC Act into the conduct of the directors and officers of Everest, including Reid, during the Relevant Period in relation to suspected contraventions of the Act, including sections 601FC and 601FD concerning the duties of responsible entities and their officers (**Investigation**).
- 5.2 As a result of the Investigation, ASIC is concerned that:
- (a) Reid failed to disclose to the other directors and officers of Everest, including members of the Investment Committee, that Everest had received the Unrelated Redemption Enquiries from EBBIF members around the same time as parties related to or associated with Reid had also submitted Redemption Requests which were being considered by the Investment Committee.
 - (b) Reid was aware that had the three members who made the Unrelated Redemption Enquiries proceeded to formally request redemptions of their units, and had EBBIF approved the redemption of the holdings the subject of the Unrelated Redemption Enquiries, then these redemptions, in addition to the Harsit and Reidco Redemption Requests, would have brought the total value of redemptions to more than the Yearly Redemption Limit, which would:
 - (i) trigger the requirement in the Information Memorandum for any redemptions (including the Harsit and Reidco Redemptions) to be paid on a pro-rata basis, rather than in full, so as not to exceed that amount; and
 - (ii) require the approval of the CBA under the terms of the CBA Facility.
 - (c) Reid, on behalf of a private company of which he was the sole director, offered (and subsequently gave) a Performance Guarantee to a member of EBBIF in return for the member withdrawing its Annual Redemption Request, at a time when approval of the Reidco Redemption Request by the Investment Committee was pending.
- 5.3 ASIC is concerned that the conduct outlined in clause 4 and paragraph 5.2 above may constitute a breach by Reid of:

- (a) section 601FD(1)(c) of the Act, which requires an officer of a responsible entity of a registered scheme to act in the best interests of the members, and if there is a conflict between the members' interests and the interests of the responsible entity, give priority to the members' interests; and
- (b) section 601FD(1)(e) of the Act, which states that an officer of a responsible entity of a registered scheme must not make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme.

6. Acknowledgement of concerns

- 6.1 Reid acknowledges that ASIC holds the concerns as set out in clause 5 above, but this acknowledgement does not constitute any admission by Reid.
- 6.2 Reid acknowledges that it was reasonable of ASIC to conduct its Investigation in relation to the matters set out in clause 4 above and has offered an enforceable undertaking in the terms of paragraphs 7.2 to 7.8 below.

7. Undertakings

- 7.1 Under section 93AA of the ASIC Act, Reid has offered, and ASIC has agreed to accept as an alternative to exercising its power under section 920A of the Act to make a banning order against Reid, the undertakings set out at paragraphs 7.2 to 7.8 below.
- 7.2 For a period of 2 years from the Commencement Date, Reid will not:
 - (a) carry on a financial services business as defined in Part 7.1 Division 2 of the Act;
 - (b) provide any financial services as defined in section 766A of the Act;
 - (c) be an officer, employee, servant or agent of a corporation which carries on a financial services business within the meaning of Part 7.1 Division 2 of the Act, including but not limited to a corporation which holds an AFSL or acts as an authorised representative of an AFSL holder;
 - (d) hold himself out as:
 - (i) the holder of an AFSL;
 - (ii) an authorised representative of an AFSL holder; or
 - (iii) being in any way authorised to provide a financial service as defined in section 766A of the Act; or
 - (e) apply to ASIC for an AFSL under section 913A of the Act or to become an authorised representative of an AFSL holder pursuant to section 916A of the Act.
- 7.3 The undertakings in paragraph 7.2 do not apply in respect of Reid acting in the capacity of director or officer of:
 - (a) Redleaf Group Pty Ltd ACN 133 794 975;

- (b) Reicko Super Pty Ltd ACN 107 268 726; and
 - (c) Indigo Capital Partners Pty Ltd ACN 149 999 735.
- 7.4. The undertakings in paragraph 7.2 do not otherwise prevent Reid from being a director or officer of a corporation.
- 7.5. Within 14 days of the Commencement Date, Reid will:
- (a) resign as a director of Redleaf Capital Limited (formerly known as Everest Capital Limited) ACN 092 753 252 (**Redleaf**) and not consent to be reappointed as a director of Redleaf for a period of 2 years after the resignation is effective; or
 - (b) in the alternative to 7.5(a), cause Redleaf to apply to ASIC for the cancellation of its AFSL, and not apply for an AFSL for a period of at least 2 years after the cancellation is effective.
- 7.6. Within 14 days of the Commencement Date, Reid will:
- (a) resign as a director of Indigo Investment Management Pty Ltd ACN 112 731 978 (**Indigo**) and not consent to be re-appointed as a director of Indigo for a period of 2 years after the resignation is effective; or
 - (b) in the alternative to 7.6(a), cause Indigo to apply to ASIC for the cancellation of its AFSL, and not apply for an AFSL for a period of at least 2 years after the cancellation is effective.
- 7.7. Reid undertakes to pay the costs of compliance with this enforceable undertaking.
- 7.8. Reid will provide all documents and information requested by ASIC from time to time for the purpose of assessing Reid's compliance with the terms of this enforceable undertaking.

8. Acknowledgements

- 8.1. Reid acknowledges that ASIC:
- (a) may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution, although such release shall be consistent with the terms of this undertaking;
 - (b) may from time to time publicly refer to this undertaking; and
 - (c) will make this undertaking available for public inspection.
- 8.2. Further, Reid 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 contravention not the subject of ASIC's Investigation 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.

8.3. Reid acknowledges that this undertaking has no operative force until accepted by ASIC, and Reid and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.



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Jeremy Michael Reid

Dated: *14.6.2013*

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



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George Stogdale

Delegate of Australian Securities and Investments Commission

Dated: *27 June 2013*