



## 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:

Angus William Napier Aitken  
(**Mr Aitken**)

*and*

Bell Potter Securities Limited  
ABN 25 006 390 772  
Level 38 Aurora Place  
88 Philip St Sydney NSW 2000  
(**Bell Potter**)

### 1. Definitions

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

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

**ASX** means the licensed financial market operated by ASX Limited.

**Bell Potter** means Bell Potter Securities Limited (ABN 25 006 390 772).

**Chi-X** means the licensed financial market operated by Chi-X Australia Pty Limited.

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

**Market Integrity Rules** means each of the *ASIC Market Integrity Rules (ASX Market) 2010* and the *ASIC Market Integrity Rules (Chi-X Australia Market) 2011*.

**Market Participant** means a participant within the meaning of paragraph (b) of the definition of "participant" under section 761A of the Corporations Act; also commonly referred to as a stockbroking firm.

**Professional Investor** means a professional investor as defined in section 9 of the Corporations Act.

**Review End Date** means 31 December 2017, or such earlier date notified by ASIC to Bell Potter in writing.

**TEN** means Ten Network Holdings Limited.

## 2. **Background**

### 2.1 **ASIC's role**

Under 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.

### 2.2 **Regal**

Regal is a funds manager and manages a variety of long-short equity funds, sometimes referred to as hedge funds. Regal is an Australian Financial Services Licensee holding licence number 277737 and is a Professional Investor.

### 2.3 **Mr King**

Philip King (**Mr King**) is a Director and the Chief Investment Officer of Regal. In his day to day role, Mr King makes investment decisions and conducts trades on behalf of Regal's funds. Regal's clients, the underlying investors in the funds, comprise a range of institutions, high net worth individuals and other investors.

### 2.4 **Bell Potter (Institutional Equities)**

Bell Potter is a Stockbroker which operates, among other Divisions servicing the financial sector, an Institutional Equities Desk in Sydney. The Sydney Institutional Equities Desk provides broking services to Institutional clients, who are Professional Investors. The Sydney Institutional Equities Desk operates independently of the Retail division within Bell Potter. Bell Potter holds Australian Financial Services Licence Number 243480. It is a Market Participant of ASX and Chi-X.

### 2.5 **Mr Aitken**

Mr Aitken is a Managing Director, Institutional Equities, at Bell Potter and sits on the Sydney Institutional Equities Desk. Mr Aitken is a Responsible Executive of the Bell Potter Institutional Equities Desk but is not a Director of Bell Potter.

### 2.6 **Other relevant persons**

X denotes an institutional client of Bell Potter.

Y denotes a portfolio manager employed by X.

### 2.7 **Events on 21 May 2013**

On 21 May 2013:

- (a) Mr Aitken received information from Y about X's possible trading intentions if the price of TEN fell below \$0.28.
- (b) Mr Aitken sent an email to Mr King based on his information about X's possible trading intentions.
- (c) Regal executed various trades in TEN. Mr King placed the orders for these trades.

This Enforceable Undertaking arises out of concerns ASIC has in relation to Mr Aitken's conduct on 21 May 2013 in sending the email to Mr King.

### 3. Details of Conduct

#### 3.1 Relevant Events

(a) X was a client of Bell Potter's Sydney Institutional Equities Desk. Business dealings between X and Bell Potter's Sydney Institutional Equities Desk generally occurred between Y on behalf of X and Mr Aitken on behalf of Bell Potter.

(b) Regal was a client of Bell Potter's Sydney Institutional Equities Desk. Business dealings between Regal and Bell Potter's Sydney Institutional Equities Desk generally occurred between Mr King on behalf of Regal and Mr Aitken on behalf of Bell Potter.

(c) In the afternoon on 21 May 2013, Mr Aitken and Y exchanged the following Bloomberg messages (**Bloomberg Messages**) in relation to TEN:

*Mr Aitken: my own view is TEN is cheap as you are backed by the TV licence and any slight turn in revenues..but if you disagree [...] ..happy to do biz either way!*

*Y: Call me if it breaks \$0.28*

*Mr Aitken: ie buy if they are sub 28c ..or hose them if they are breaking down*

*Y: Noop I will hose them if they break down*

*Mr Aitken: fair enough*

*Y: Slightly concerned about some the data I have looked at re structural issues.*

(d) The Bloomberg Messages from Y did not constitute an order to sell TEN, nor an indication of the volume and price limit of any order which might be placed in the future, and no mention was made of the size of X's shareholding.

(e) About an hour later, Mr Aitken sent an email to Mr King (**Email**) with the subject:

*TEN- you can create a stop loss and buy some cheapies .. i have a bloke who will dump 20m if they break 28c ... only 4m on the bid*

And the further text:

*If they break 28c he'll give me the order.*

(f) At the time the Email was sent:

(i) Regal had not traded TEN in the previous month, although it had traded TEN significantly before that date;

(ii) the last traded price for TEN was \$0.28, being the lowest price TEN had traded that month;

(iii) the total volume of TEN that had traded that day was approximately 3.3 million TEN;

(iv) the highest bid was \$0.28 and the lowest ask was \$0.285;

- (v) the volume of bids at \$0.28 was approximately 4 million TEN in the ASX market and approximately 350,000 TEN in the Chi-X market.
- (g) Approximately 17 minutes later, Mr King placed an order on behalf of Regal to short-sell 5 million TEN at \$0.28 in the ASX market through a Market Participant unrelated to Mr Aitken or Bell Potter. At this time:
- (i) the last traded price for TEN was \$0.28, having traded at \$0.28 and at \$0.285 in the time since Mr Aitken sent the Email to Mr King;
  - (ii) the total volume of TEN traded that day was approximately 3.6 million TEN;
  - (iii) the highest bid was \$0.28 and the lowest ask was \$0.285;
  - (iv) the volume of bids at \$0.28 was approximately 4 million TEN in the ASX market and 175,000 TEN in the Chi-X market.
- (h) The short-sell order placed by Mr King traded immediately with all of the displayed bids in the ASX market at \$0.28 (approximately 4 million TEN) and a small number of further bids at \$0.28 that were entered in the ASX market in the next quarter of a second. During the same period, unrelated sellers entered the Chi-X market and each of the bids at \$0.28 in the Chi-X market traded in full.
- (i) Approximately 3 seconds later, an unrelated seller placed an order to sell TEN in the Chi-X market at \$0.275, through a Market Participant other than Bell Potter. The order traded immediately in full and this was the first time TEN had traded below \$0.28 on 21 May 2013 and for the month.
- (j) Within the next few minutes, the price of TEN continued to fall, through unrelated trading that did not involve either Regal or Bell Potter, to \$0.255.
- (k) At the same time, Mr Aitken arranged a crossing transaction between Mr King (on behalf of Regal) and X under which Regal agreed to buy 10 million TEN at \$0.26.
- (l) A designated trading representative of Bell Potter then simultaneously entered a buy order on behalf of Regal and a sell order on behalf of client X in the ASX market for the crossing transaction at \$0.26. The orders traded immediately as an on-market priority crossing, giving effect to the transaction in 3.1(k).
- (m) In summary, in an approximate 7 minute period:
- (i) Regal short-sold approximately 4 million TEN at \$0.28;
  - (ii) Regal bought 10 million TEN at \$0.26;
  - (iii) Regal realised an approximate gross profit on the TEN it short-sold as follows:
- |           |   |            |   |           |   |              |
|-----------|---|------------|---|-----------|---|--------------|
| 4,000,000 | X | (0.28      | - | 0.26)     | = | \$80,000.00  |
| Volume    |   | Sell Price |   | Buy Price |   | Gross Profit |
- (n) Overall, on 21 May 2013, Regal bought through Bell Potter a total of 15 million TEN at \$0.26, 13,830,796 of which were crossed by Bell Potter with selling by X, which went on to sell on the day through Bell Potter a further 3,632,495 TEN at prices of \$0.265 and \$0.275.
- (o) Two days later, Mr King and Mr Aitken exchanged the following Bloomberg messages:

*Mr King: [...] sold some [TEN] at 28c which was lucky!*

*Mr Aitken: how they havent traded there today?*

*Mr King: duh! 3 days ago before I bought them through you. heard of shorting?*

- (p) As a result of the transaction referred to in paragraph 3.1(k) above and other TEN transactions for Regal and X on 21 May 2013 and over the following two days, Bell Potter earned brokerage of around \$29,965.84 exclusive of GST, of which Mr Aitken received around \$4,295.

### 3.2 ASIC's views concerning the conduct

ASIC is concerned that:

- (a) Mr Aitken was authorised to provide advice to institutional clients in relation to securities and to arrange for clients to deal in securities on behalf of Bell Potter. His conduct in carrying out these activities was taken to have been engaged in by Bell Potter pursuant to section 769B of the Corporations Act and rule 1.1.6 of the Market Integrity Rules;
- (b) Bell Potter was obliged under section 912A(1)(a) of the Corporations Act to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly;
- (c) Bell Potter was obliged under rule 2.1.5(2) of the Market Integrity Rules to ensure that its Responsible Executives do not engage in unprofessional conduct (as defined in the Market Integrity Rules);
- (d) by virtue of his position and experience, Mr Aitken knew, or ought reasonably to have known, that the information in the Bloomberg Messages was, or was likely to have been, confidential client information;
- (e) the Email Mr Aitken sent to Mr King included information based on the Bloomberg Messages concerning client X's possible selling intentions;
- (f) Mr Aitken sent the Email to Mr King without client X's consent or knowledge;
- (g) Mr Aitken's conduct in sending the Email may have been contrary to the interests of client X in that it advised Mr King of information concerning client X's possible trading intentions;
- (h) in sending the Email, Mr Aitken as Bell Potter's representative may have caused Bell Potter to contravene its obligation under section 912A(1)(a) of the Corporations Act to ensure that financial services covered by its licence were provided efficiently, honestly and fairly;
- (i) in sending the Email, Mr Aitken as Bell Potter's representative may have caused Bell Potter to contravene its obligation under section 798H(1)(b) of the Corporations Act to comply with rule 2.1.5(2) of the Market Integrity Rules, namely its obligation to ensure that its Responsible Executives do not engage in unprofessional conduct;
- (j) Mr Aitken:
  - (i) may have breached his obligations of confidence by sending the Email to Regal;

- (ii) may thereby have been involved in and caused potential breaches by Bell Potter of its obligation under section 912A(1)(a) of the Corporations Act to ensure that financial services covered by its licence were provided efficiently, honestly and fairly;
- (iii) may thereby have been involved in and caused potential breaches by Bell Potter of its obligation under section 798H(1)(b) of the Corporations Act to comply with rule 2.1.5(2) of the Market Integrity Rules, namely its obligation to ensure that its Responsible Executives do not engage in unprofessional conduct;
- (iv) may thereby have provided grounds upon which ASIC may have considered pursuing administrative action against him on the basis of involvement in contraventions of financial services laws by another person, namely Bell Potter, pursuant to section 920A(1)(g) of the Corporations Act.

### 3.3 Acknowledgement of ASIC's views

Mr Aitken and Bell Potter severally acknowledge ASIC's concerns in paragraph 3.2 above and that they are reasonably held.

## 4. Undertakings

4.1 Under section 93AA of the ASIC Act, Mr Aitken has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action against Mr Aitken in relation to the matters described in ASIC's concerns, the following undertakings:

- (a) Mr Aitken undertakes to make a payment of \$80,000 to, or as directed by, Financial Literacy Australia Limited within 30 days of the acceptance of this undertaking, or such other date as agreed by Mr Aitken and ASIC, for the advancement of financial literacy in Australia, such amount representing the approximate profit realised on Mr King's short sale of TEN on behalf of Regal;
- (b) Mr Aitken undertakes to enrol and complete a course in business ethics agreed to by ASIC on or before 30 June 2016;
- (c) Mr Aitken undertakes to complete 20 hours of annual compliance and related training provided by Bell Potter's Compliance Team or external providers, as determined by Bell Potter, in each of the calendar years 2016, 2017 and 2018 with details of the training programs and attendance dates to be provided to ASIC on, or before, the end of each of those years;
- (d) Mr Aitken undertakes not to become a director, officer, employee or other representative (within the meaning of section 910A of the Corporations Act) of any Australian financial services licensee except Bell Potter before 31 December 2018 unless the licensee first undertakes to comply with undertakings 4.2(a) to 4.2(d) below, substituting the licensee's name for Bell Potter, or ASIC agrees in writing;
- (e) Mr Aitken undertakes that he will pay the costs of his compliance with this enforceable undertaking; and
- (f) Mr Aitken 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.

4.2 Under section 93AA of the ASIC Act, Bell Potter has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action against Bell Potter in relation to the matters described in ASIC's concerns set out in paragraph 3.2 above, the following undertakings:

- (a) Bell Potter's Compliance Department shall review:
- (i) following the end of each month for the period to 30 June 2016, a sample of 20 of the trades executed by Mr Aitken during the month;
  - (ii) following the end of each calendar quarter for the period between 1 July 2016 and the Review End Date, a sample of 10 of the trades executed by Mr Aitken each month during the quarter,
- and the Order Records related to those trades and Mr Aitken's communications with his clients related to those Order Records and trades for the purpose of confirming Mr Aitken's compliance with his obligations in respect of confidential information, and provide a report on each review to ASIC within 7 days of the review being finalised;
- (b) Bell Potter will ensure that until the Review End Date;
- (i) telephone calls made to and from Mr Aitken's business landline phone are recorded;
  - (ii) Mr Aitken does not receive or make telephone calls on any mobile phone when present at the Sydney Institutional Equities Desk (but Mr Aitken may forward his mobile phone to his business landline phone and receive calls on his business landline phone during that time);
  - (iii) text messages sent to and from Mr Aitken's business mobile phone are electronically imaged, for the purpose of the monitoring referred to in paragraph 4.2(a) above;
- (c) Bell Potter will pay the costs of its compliance with this enforceable undertaking; and
- (d) Bell Potter will provide all documents and information requested by ASIC from time to time for the purpose of assessing its compliance with the terms of this enforceable undertaking.

4.3 Where Mr Aitken and/or Bell Potter are required or permitted under this undertaking to obtain ASIC's agreement in relation to any matter or to provide documents or information, agreement may be sought from and documents and information may be posted to:

The Senior Manager - Market Surveillance  
Market & Participant Supervision Team  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
SYDNEY NSW 2000

or by any other means agreed to by ASIC in writing.

4.4 ASIC may at any time release Mr Aitken or Bell Potter from any of the above undertakings where compliance would be impossible or becomes, in ASIC's opinion, unreasonable. A release on grounds of unreasonableness may be given absolutely or on conditions. Any release must be confirmed by ASIC in writing to be effective.


## 5. Acknowledgements

5.1 Mr Aitken and Bell Potter severally acknowledge that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms;

- (b) may from time to time publicly refer to this undertaking;
  - (c) may make this undertaking available for public inspection;
  - (d) may, following the Review End Date, publish a summary of the findings in the reports prepared under 4.2(a).
- 5.2 Mr Aitken and Bell Potter severally acknowledge 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 of laws administered by ASIC;
  - (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.
- 5.3 Nothing in this enforceable undertaking constitutes an admission by Mr Aitken and Bell Potter.
- 5.4 Mr Aitken and Bell Potter severally acknowledge that this undertaking has no operative force until accepted by ASIC, and that the date of the enforceable undertaking is the date on which it is accepted by ASIC.
- 5.5 This enforceable undertaking constitutes two separate undertakings:
- (a) An undertaking given by Mr Aitken to ASIC; and
  - (b) An undertaking given by Bell Potter to ASIC.

**EXECUTED by ANGUS WILLIAM  
NAPIER AITKEN**

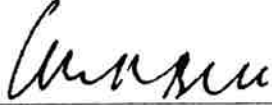


18/12/2015

Date:



**EXECUTED** by **BELL POTTER  
SECURITIES LIMITED** in accordance  
with s 127(1) of the *Corporations Act  
2001*



Signature of director

Colin Bell

Name

18 December 2015

Date



Signature of director/company secretary

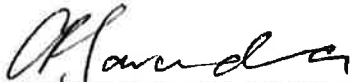
Ausstrik Provan

Name of director/company secretary

18/12/15

Date

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



CHRISTOPHER SAVUNDR

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: 22 DECEMBER 2015