



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:

Philip Brian Vernon King
(Mr King)

and

Regal Funds Management Pty Limited
ACN 107 576 821
Level 47, Gateway
1 Macquarie Place
Sydney NSW 2000
(Regal)

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 Regal 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

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

Angus 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.

2.7 Events on 21 May 2013

On 21 May 2013:

- (a) Mr King received an email from Mr Aitken which included information about the possible selling intentions of a client of Mr Aitken and Bell Potter in relation to TEN.
- (b) 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 King's conduct on 21 May 2013 in placing trades in TEN on behalf of Regal.

3. Details of Conduct

3.1 Relevant Events

- (a) 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.
- (b) In the afternoon on 21 May 2013, 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.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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(h).

- (j) 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:

$$\begin{array}{rcccccc}
 4,000,000 & \times & (0.28 & - & 0.26) & = & \$80,000.00 \\
 \text{Volume} & & \text{Sell Price} & & \text{Buy Price} & & \text{Gross Profit}
 \end{array}$$

- (k) Overall, on 21 May 2013:
- (i) 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;
 - (ii) Regal bought through a Market Participant unrelated to Bell Potter a further 3,624,460 TEN;
 - (iii) Regal sold through a market participant unrelated to Bell Potter a total of 6,095,165 TEN.

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) the Email Mr Aitken sent to Mr King included information concerning the possible selling intentions of another client of Bell Potter (who was, unbeknown to Mr King, client X);

- (e) Mr Aitken sent the Email to Mr King without client X's consent or knowledge;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) by virtue of his position and experience, in particular his dealings with Market Participants and his understanding of their obligation to keep client trading intentions confidential, Mr King knew, or ought reasonably to have known, that the information in the Email was, or may have been, confidential and that its dissemination, including to him, may have been contrary to the interests of Bell Potter's client X;
- (j) in the above circumstances, Mr King was obliged to avoid using the information he received from Mr Aitken and, in particular, to refrain from selling TEN;
- (k) Mr King instead caused Regal to short-sell approximately 4 million TEN:
 - (i) Regal's short-sale of TEN was, or may have been, against the interests of Bell Potter's client X whose indicated trading intentions were in the same direction;
 - (ii) Regal's short-sale of TEN was not conducted through Mr Aitken (or Bell Potter) but through another Market Participant;
 - (iii) Regal funds realised an approximate gross profit of \$80,000.00 from short-selling and subsequently buying TEN (see 3.1(j) above);
- (l) Mr King:
 - (i) may thereby have been involved in, and caused Regal to be involved in, 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;

- (ii) may thereby have been involved in, and caused Regal to be involved in, potential breaches by Bell Potter of its obligation under section 798H(1)(b) of the Corporations Act to comply with rule 2.5.1(2) of the Market Integrity Rules, namely its obligation to ensure that its Responsible Executives do not engage in unprofessional conduct; and
- (iii) 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 King and Regal 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 King has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action against Mr King in relation to the matters described in ASIC's concerns, the following undertakings:
- (a) Mr King 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 King 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 funds;
 - (b) Mr King undertakes to enrol and complete a course in business ethics agreed to by ASIC on or before 30 June 2016;
 - (c) Mr King undertakes to complete 20 hours of annual compliance and related training provided by Regal's compliance team or external providers as determined by Regal, in each of 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 King 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 Regal before 31 December 2018, unless the licensee first undertakes to comply with the undertakings in 4.2(h), (i) and (j)

below, substituting the licensee's name for Regal, or ASIC agrees in writing;

- (e) Mr King undertakes that he will pay the costs of his compliance with this enforceable undertaking; and
- (f) Mr King 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, Regal has offered, and ASIC has agreed to accept as an alternative to pursuing administrative action against Regal in relation to the matters described in ASIC's concerns set out in paragraph 3.2 above, the following undertakings:

- (a) Regal undertakes to engage an independent compliance expert acceptable to ASIC to review Regal's securities trading policies and procedures and prepare a report on the adequacy of these policies and procedures, within 120 days of the acceptance of the undertaking on terms to be agreed by ASIC;
- (b) Regal undertakes to provide the independent compliance expert engaged under 4.2(a) above with access to all records that are reasonably required in order to conduct the review;
- (c) Regal undertakes to provide the report of the independent compliance expert prepared under 4.2(a) above to ASIC within 7 days of it being finalised;
- (d) Regal undertakes, as soon as reasonably practicable, to implement any recommendations in the report of the independent compliance expert prepared under 4.2(a) above and any other reasonable recommendations made by ASIC arising out of that report;
- (e) Regal undertakes to engage the independent compliance expert referred to in 4.2(a) above, or another independent compliance expert agreed to by ASIC, to review the implementation of the recommendations referred to in 4.2(d) above and to prepare a report on that review by 30 September 2016 or other date agreed to by ASIC;
- (f) Regal undertakes to provide the independent compliance expert engaged under 4.2(e) above with access to all records that are reasonably required in order to conduct the review;
- (g) Regal undertakes to provide the report of the independent expert prepared under 4.2(e) above to ASIC within 7 days of it being finalised;
- (h) Regal undertakes to engage an independent compliance expert acceptable to ASIC to review:

- i. following the end of each month for the period to 30 June 2016, a sample of 20 of the trades conducted by Regal, including but not limited to trades conducted by Mr King, 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 conducted by Regal, including but not limited to trades conducted by Mr King, each month during the quarter,

and provide a report on each review to ASIC within 7 days of the review being finalised;

- (i) Regal undertakes to provide the independent compliance expert engaged under 4.2(h) above with access to all records that are reasonably required in order to conduct the reviews including, but not limited to, trading records and records of communication with Market Participants;
- (j) for each of the quarter year periods ending 31 March 2016, 30 June 2016, 30 September 2016, 31 December 2016 and 31 March 2017, Regal undertakes to notify ASIC, on or before the 15th day after the end of the period, of all dealings in shares and other financial products it has conducted through Mr Aitken and/or Bell Potter;
- (k) Regal undertakes that it will pay the costs of its compliance with this enforceable undertaking; and
- (l) Regal will provide all documents and information requested by ASIC from time to time for the purpose of assessing Regal's compliance with the terms of this enforceable undertaking.

- 4.3 Where Mr King and/or Regal 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 King or Regal 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 King and Regal 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 publish a summary of the expert reports prepared under 4.2(a), (e) and (h) above or a statement of the content of those reports.
- 5.2 Mr King and Regal 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 King or by Regal.
- 5.4 Mr King and Regal 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 King to ASIC; and
 - (b) an undertaking given by Regal to ASIC.

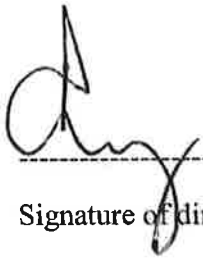
EXECUTED by PHILIP BRIAN)
VERNON KING)



21/12/2015

Date:

EXECUTED by REGAL FUNDS)
MANAGEMENT PTY LIMITED in)
accordance with s 127(1) of the)
Corporations Act 2001

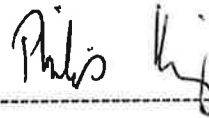
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Signature of director

ANDREW KING

Name of director

Date:

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Signature of director/company secretary

PHILIP KING

Name of director/company secretary

Date:

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


CHRISTOPHER SAVUNDRA

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: 22 DECEMBER 2015