

## ENFORCEABLE UNDERTAKING

*Australian Securities Investments Commission Act 2001 (Cth)*

Section 93AA

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

**EverBlu Capital Pty Ltd**

**ACN 612 793 683**

**Australian Financial Services Licence No. 499601**

*Sydney, New South Wales*

and

**Adam Blumenthal**

*Sydney, New South Wales*

## DEFINITIONS

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

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

**AFCA** means the Australian Financial Complaints Authority.

**AFSL** means Australian financial services licence.

**Authorised Representative** has the meaning given by section 916A of the Corporations Act.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth). **Business Purchase Agreement** means the Business Purchase Agreement entered into between EverBlu, Mr Blumenthal and the Buyer dated 3 December 2023.

**Buyer** means the entity defined as the Buyer in the Business Purchase Agreement.

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

**EverBlu** means EverBlu Capital Pty Ltd (ACN 612 793 683).

**EverBlu's AFSL** means AFSL number 499601 held by EverBlu.

**Financial Service** has the meaning given by Division 4 of Part 7.1 of the Corporations Act.

**Financial Services Law** has the meaning given by section 761A of the Corporations Act.

**Financial Services Licensee** has the meaning given by section 761A of the Corporations Act.

**Mr Blumenthal** means Adam Blumenthal.

**Relevant Period** means 18 March 2021 to 15 November 2021.

**Responsible Manager** means an individual nominated by an Australian Financial Services Licensee in accordance with ASIC RG105.

**Suspense Account** means the EverBlu account designated 'SUSP\_EVB'.

## ASIC'S ROLE

2. 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.

## BACKGROUND

3. EverBlu was incorporated on 3 June 2016. Mr Blumenthal is the part owner and controlling mind of EverBlu.
4. EverBlu holds AFSL number 499601 and has been operating under this AFSL since 2 September 2017. EverBlu provides research, corporate advisory and stockbroking services.
5. Mr Blumenthal is the chairman, director, Authorised Representative and Responsible Manager of EverBlu and during the Relevant Period oversaw and was involved in the corporate advisory and stockbroking services provided by EverBlu.
6. Mr Blumenthal is the sole director and shareholder of Anglo Menda Pty Ltd (**Anglo Menda**), which is an Authorised Representative of EverBlu.
7. During the Relevant Period, Mr Blumenthal was a non-executive director, substantial shareholder and the chairman of Creso Pharma Limited ACN 609 406 911 (**Creso**). As at 28 February 2021, Mr Blumenthal's total shareholding in Creso was valued at approximately \$30 million. Creso was listed on the Australian Stock Exchange (**ASX**) from 20 October 2016 to 12 June 2023 under the code 'CPH'. EverBlu led Creso's Initial Public Offering.
8. From at least July 2017, EverBlu provided corporate advisory services to Creso.

## EverBlu's AFSL

9. EverBlu's AFSL authorises it to carry on a Financial Services business to:
  - 9.1. provide general financial product advice for basic deposit products and securities;
  - 9.2. deal in a financial product by:
    - 9.2.1. issuing, applying for, acquiring, varying or disposing of securities;
    - 9.2.2. applying for, acquiring, varying or disposing of basic deposit products and securities;
    - 9.2.3. underwriting an issue of securities;to retail and wholesale clients.
10. The conditions of EverBlu's AFSL include that EverBlu must:
  - 10.1. establish and maintain compliance measures that ensure, as far as is reasonably practicable, that EverBlu complies with the provisions of the Financial Services Law; and
  - 10.2. (for any natural person who provides financial product advice to retail clients on behalf of EverBlu) among other things, implement procedures for continuing training.

## Relevant EverBlu policies

11. During the Relevant Period, EverBlu maintained a number of policies that governed how EverBlu's representatives were to conduct themselves while working for EverBlu, including:
  - 11.1. *Conflicts of Interest Policy* (version 4), dated May 2020 (**Conflicts of Interest**

**Policy**), which outlined EverBlu's policies and procedures for managing conflicts of interest and provided a framework to identify, evaluate, monitor, manage and disclose conflicts of interests and required all EverBlu Representatives (as defined in the Conflicts of Interest Policy) to, among other things:

- 11.1.1. direct financial product advice at the best interests of the recipient, which should be placed ahead of the interests of the Representatives, with the advice to be based solely on the merits of the security being evaluated and not based on any other relationship that EverBlu or its Representatives may have with that security;
  - 11.1.2. be aware of and identify conflicts of interest in relation to a Representative's employment with EverBlu;
  - 11.1.3. disclose any pecuniary interest which relates to the provision of a financial service by EverBlu as soon as practicable after the earlier of the Representative becoming aware of the financial service or the pecuniary interest;
  - 11.1.4. immediately inform the Head of Compliance or Conflict Manager if they have or become aware of a conflict of interest in relation to their employment with EverBlu; and
  - 11.1.5. establish, prior to providing any financial service, that no 'Strong Conflict' exists (as defined in the Conflicts of Interest Policy).
- 11.2. *Personal Dealing Policy* (version 4), dated May 2020 (**Personal Dealing Policy**), which required the directors, officers, representatives, Authorised Representatives and employees of EverBlu to notify EverBlu of certain intended transactions involving themselves, or associated parties, prior to the transaction and receive authorisation before the transaction was entered into, and prohibited EverBlu from providing credit to its employees or their associates;
- 11.3. *Dealing Manual* (version 4), dated March 2020 (**Dealing Manual**), which outlined the prescribed procedures for receiving, recording and executing client orders and specified the information that must be collected in relation to client orders. The Dealing Manual included a procedure that established "Chinese Walls" to restrict communication of, and access to, information that was not publicly available to EverBlu's representatives who were involved in EverBlu's dealing services; and
- 11.4. *Document Retention Policy* (version 4), dated May 2020 (**Document Retention Policy**), which outlined the obligations that applied to all representatives of EverBlu in relation to the management, retention, retrieval and destruction of documents and required copies of all documents relating to customer records and transactions be retained for the life of the client relationship and an additional seven years from the date EverBlu ceases to provide Financial Services to the customer, including files notes and recordings of meetings and telephone calls.

#### **Use of the Suspense Account**

12. Suspense accounts are typically used for the temporary entry of orders and/or transactions in circumstances where there is incomplete or missing information to properly assign the order or transaction to a client's account. During the Relevant Period, the Suspense Account was used to trade Creso securities and other Division 3 Financial Products. Mr Blumenthal instructed EverBlu's designated trading representative (**DTR**) to use the Suspense Account to enter orders (in particular, buy

orders or 'bids') into the market throughout the day and to purchase Creso shares, without always identifying to the DTR the particular EverBlu client whose trade instructions were being provided.

13. During the Relevant Period, the Suspense Account came to be used more frequently for trades where Mr Blumenthal instructed the DTR to place the orders and was predominately used for trading in Creso shares.

#### **Restrictions on Mr Blumenthal dealing in Creso shares**

14. On 12 August 2020, Mr Blumenthal, in his capacity as EverBlu's delegate, along with EverBlu's Responsible Manager - Head of Wealth Management and EverBlu's Head of Compliance, signed the EverBlu Capital Delegation and Attestation Business Continuity Plan in respect of Mr Blumenthal (**Attestation**) which provided that Mr Blumenthal must not provide general advice or accept a client instruction:
  - 14.1. in relation to a company of which he is a director; and
  - 14.2. for a company under 'Restriction'.
15. During the Relevant Period, Mr Blumenthal was a director of Creso, which was also a company under 'Restriction'.
16. On 23 March 2021, Mr Blumenthal was added to the 'Chinese Wall' Register in respect of Creso by EverBlu's Head of Compliance. The addition of Mr Blumenthal to that register generated an automated 'Chinese Walls Register Entry Acknowledgement', which noted that Mr Blumenthal electronically acknowledged he had read and understood these requirements. The addition of Mr Blumenthal to Creso's 'Chinese Wall' Register meant that he was required, under the Dealing Manual, not to (in respect of non-public information):
  - 16.1. act on that information personally;
  - 16.2. communicate that information to anyone other than EverBlu Capital Compliance;
  - 16.3. participate in any Research committees (or similar bodies); or
  - 16.4. engage in any activities involving providing advice in relation to securities (e.g. publishing research reports), or in relation to any securities whose market price is likely to be affected by the disclosure of that information.

#### **Mr Blumenthal's dealing in Creso shares**

17. Despite being subject to the limitations and restrictions detailed at paragraphs 14 to 16 above, Mr Blumenthal used his position at EverBlu during the Relevant Period to:
  - 17.1. personally enter, amend and cancel client orders for Creso shares directly through client accounts;
  - 17.2. direct the DTR to enter, amend and cancel client orders for Creso shares on client accounts;
  - 17.3. direct the DTR to:
    - 17.3.1. enter, amend and cancel client orders for Creso shares through the Suspense Account; and
    - 17.3.2. subsequently book resulting trades from the Suspense Account to client accounts, each of which were accounts held in the name of individuals known to Mr Blumenthal.
18. During the Relevant Period, EverBlu accounted for approximately 27% of all market volume trading in Creso shares. Approximately 75% of that trading was done via the Suspense Account.

19. **Table 1** below shows that:

- 19.1. Creso shares bought or sold through the Suspense Account were allocated to one or more of six client accounts, which together purchased 378 million shares and sold 271 million shares; and
- 19.2. only 45 million of those shares were purchased directly through the respective clients' accounts and only 121 million of those shares were sold directly through the respective clients' accounts.

**Table 1 – Trading in Creso shares**

Client Account	Total volume bought/sold via Suspense A/c, then allocated to Client Account			Total volume bought/sold directly via Client Account	
	Buy Volume	Sell Volume	% of Allocation from Suspense	Buy Volume	Sell Volume
Tyson Scholz	129,230,266	85,062,464	33%	26,226,438	34,250,000
Client 1	96,375,000	89,747,954	29%	4,000,000	9,627,046
Client 2	68,293,581	31,798,084	15%	5,000,000	39,517,287
Client 3	55,726,658	35,638,674	14%	10,464,224	26,560,133
Client 4	20,400,000	21,424,052	6%	Nil	11,756,346
Client 5	8,138,598	8,138,598	3%	Nil	Nil
<b>Total</b>	<b>378,154,103</b>	<b>271,809,826</b>	<b>100%</b>	<b>45,460,662</b>	<b>121,710,812</b>

20. A substantial portion of the trades in **Table 1** occurred as a consequence of Mr Blumenthal instructing the DTR to place the orders and took place during the period Mr Blumenthal was on the 'Chinese Wall' Register.
21. When Mr Blumenthal received client orders to trade in Creso shares, he did not follow EverBlu's prescribed procedures for receiving, recording and executing client orders, and he did not retain sufficient records of client orders and trades as required by the Dealing Manual and Document Retention Policy.
22. Specifically, with respect to EverBlu's prescribed procedures for recording client orders and maintaining records as set out in the Document Retention Policy, Mr Blumenthal did not retain notebooks that contemporaneously recorded the client instructions that he received during 2021.
23. The platform used by Market Operators (e.g. ASX) for the trading of listed securities displays buy and sell orders on the basis that the identity of the broker and/or underlying buyers and sellers is anonymised. Any person viewing the market for Creso shares can only see the number of bidders (and sellers) and the respective volumes and prices.
24. On the following occasions, Mr Blumenthal disaggregated single client orders to purchase Creso shares by either: (i) placing himself; or (ii) directing the DTR to place, two bids through the Suspense Account and/or client's account, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed so as to create, or cause the creation of, a false or misleading appearance with respect to the market for Creso shares. This conduct was likely to have had the effect of creating, or causing the creation of, a misleading appearance with respect to the number of market participants actively trading Creso shares.

**Table 2 – Disaggregated bids in Creso and bids in Creso shares through multiple accounts**

Date	Time	Account used to enter Bid	Price	Volume	Aggregate size	Relevant Client
18/03/2021	10:40:57	Suspense	\$0.2000	600,000	1,000,000	Client 4
18/03/2021	10:41:00	Suspense	\$0.2000	400,000		
19/03/2021	15:31:40	Suspense	\$0.2200	600,000	1,000,000	Client 3
19/03/2021	15:31:49	Suspense	\$0.2200	400,000		
09/04/2021	10:02:12	Suspense	\$0.2050	750,000	1,070,000	Client 3
09/04/2021	10:03:18	Suspense	\$0.2050	320,000		
18/05/2021	10:16:38	Suspense	\$0.1600	500,000	800,000	Client 4
18/05/2021	10:16:56	Suspense	\$0.1600	300,000		
17/06/2021	10:55:37	Suspense	\$0.1800	600,000	1,100,000	Client 1
17/06/2021	10:56:00	Suspense	\$0.1800	500,000		
10/08/2021	10:03:40	Tyson Scholz	\$0.1250	650,000	1,250,000	Scholz
10/08/2021	10:08:39	Suspense	\$0.1250	600,000		
10/08/2021	10:56:15	Tyson Scholz	\$0.1250	770,000	1,170,000	
10/08/2021	10:56:42	Tyson Scholz	\$0.1250	400,000		
08/10/2021	10:18:13	Tyson Scholz	\$0.1150	500,000	750,000	Scholz
08/10/2021	10:18:24	Tyson Scholz	\$0.1150	250,000		
25/10/2021	10:10:10	Suspense	\$0.1150	500,000	800,000	Scholz
25/10/2021	10:11:27	Suspense	\$0.1150	300,000		
25/10/2021	11:01:31	Suspense	\$0.1150	500,000	1,250,000	
25/10/2021	11:02:26	Tyson Scholz	\$0.1150	750,000		
01/11/2021	10:02:45	Suspense	\$0.1200	500,000	750,000	Scholz
01/11/2021	10:02:52	Suspense	\$0.1200	250,000		
01/11/2021	10:45:23	Suspense	\$0.1300	300,000	500,000	
01/11/2021	10:47:52	Suspense	\$0.1300	200,000		
01/11/2021	16:09:54	Suspense	\$0.1300	250,000	500,000	
01/11/2021	16:10:10	Suspense	\$0.1300	250,000		
09/11/2021	10:03:59	Suspense	\$0.1500	500,000	750,000	Client 2
09/11/2021	10:04:52	Suspense	\$0.1500	250,000		

25. At the time of receiving client orders in relation to the trades in **Table 2**, Mr Blumenthal had sought and obtained from the EverBlu clients their authorisation to execute the orders in a manner that he considered appropriate.

**Loans to EverBlu clients for trading in Creso shares**

26. During the Relevant Period, Anglo Menda was an Authorised Representative of EverBlu. Mr Blumenthal was the sole director and shareholder of Anglo Menda.
27. During the Relevant Period, Anglo Menda loaned funds to certain EverBlu clients to fund trading by those clients in Creso shares, including:

**Table 3 – Anglo Menda loans to EverBlu clients**

Client	Amount loaned
Client 5	\$975,000.00
Tyson Scholz	\$7,125,460.04
Client 1	\$5,226,850.00

28. Mr Blumenthal facilitated these loans from Anglo Menda to the clients set out in **Table 3** above. The loans to Client 5 (also a Corporate Authorised Representative of EverBlu) and Client 1 (a close friend of Mr Blumenthal) were not on commercial terms. While the loan to Mr Scholz included the payment of interest, it was not documented until 12 January 2022 and the loan was unsecured. Under the Personal Dealing Policy, Mr Blumenthal was required to inform and obtain approval from EverBlu's Head of Compliance prior to Anglo Menda providing each of the loans set out in **Table 3**. He failed to do so.

**Engagement of consultant by Creso**

29. In or around March 2021, Mr Blumenthal caused Creso to engage a consultant to provide Creso with consultancy, promotional and marketing services, including the provision of market data, market research and market intelligence (which was to be provided by the consultant to Mr Blumenthal), as well as promoting Creso to potential investors via the consultant's professional and social media network. The consultant was subsequently engaged by Creso. The consultant and his main trading entity, Client 3, were also clients of EverBlu.
30. The agreement between Creso and the consultant was not in writing and the consultant did not provide Mr Blumenthal with any formal reports documenting the services that he was providing to Creso.
31. During the Relevant Period, the consultant issued Creso with invoices totalling \$1,237,500, via one of the consultant's trading entities, which were paid by Creso.

### Engagement of Tyson Scholz by Creso

32. In March 2021, Mr Blumenthal caused Creso to engage Tyson Scholz to provide marketing and promotional services for Creso. Mr Scholz is a known market "influencer"<sup>1</sup> and was also an EverBlu client.
33. During the Relevant Period, Mr Scholz's companies, SV4T Investments Pty Ltd and EWOLF Enterprises Pty Ltd, issued Creso with invoices totalling \$2,013,000, which were paid by Creso.
34. As noted above, from May 2021 to November 2021, Mr Blumenthal caused Anglo Menda to loan Mr Scholz \$7,125,460 for the purpose of trading Creso shares. Mr Blumenthal charged Mr Scholz interest of \$712,546.

### DETAILS OF CONDUCT

35. As a result of ASIC's investigation into EverBlu and Mr Blumenthal pursuant to section 13 of the ASIC Act, ASIC is satisfied that:
  - 35.1. Mr Blumenthal accepted client instructions for a substantial proportion of the trading in Creso shares as set out in **Table 1**, in breach of his obligations under the Attestation and 'Chinese Wall' Register;
  - 35.2. EverBlu failed to properly monitor and control the use of the Suspense Account, so as to ensure that client orders facilitated through the Suspense Account complied with EverBlu's Dealing Manual;
  - 35.3. EverBlu and Mr Blumenthal failed to follow the procedure prescribed in the Dealing Manual to receive client orders, execute client orders and record client orders, and failed to maintain records of client orders and trades in accordance with the Document Retention Policy, particularly where orders were facilitated through the Suspense Account;
  - 35.4. Mr Blumenthal failed to maintain contemporaneous records of client instructions he received for orders and trades in Creso shares contrary to the Document Retention Policy;
  - 35.5. EverBlu failed, in accordance with the Conflicts of Interest Policy, to identify and manage actual or potential conflicts of interest that arose out of:
    - 35.5.1. Mr Blumenthal's concurrent roles with, and interest in, Creso and EverBlu, in circumstances where Mr Blumenthal facilitated trading in Creso shares by EverBlu's clients; and
    - 35.5.2. Mr Blumenthal's concurrent roles with Anglo Menda and EverBlu, in circumstances where Anglo Menda provided loans to EverBlu clients to facilitate their trading in Creso shares which took place through the clients' accounts held with EverBlu as set out in **Table 3** above;
  - 35.6. Mr Blumenthal failed to comply with the Conflicts of Interest Policy in respect of the actual or potential conflicts of interest that arose out of the matters set out in paragraphs 35.5.1 and 35.5.2 above, including by failing to first identify and then

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<sup>1</sup> A finfluencer is a person who uses social media platforms that are publicly available to influence the financial decision-making of others through promotions or recommendations.



to inform EverBlu's Head of Compliance of such conflicts of interest as soon as he became aware of them;

- 35.7. Mr Blumenthal facilitated the lending of funds by Anglo Menda to EverBlu's clients to fund trading in Creso shares in breach of the Personal Dealing Policy;
  - 35.8. EverBlu failed to establish and maintain compliance measures to ensure that, as far as reasonably practical, EverBlu and its representatives complied with the provisions of the Financial Services Law;
  - 35.9. EverBlu and Mr Blumenthal failed to comply with the Compliance Framework and ensure that EverBlu adhered to its compliance obligations, including under EverBlu's AFSL and also failed to take necessary and appropriate corrective action to remedy breaches, including recording breaches and incidents within EverBlu's Breaches and Incidents Register; and
  - 35.10. EverBlu failed to put in place adequate processes and controls to monitor compliance with the Dealing Manual.
36. By directing or causing bids of significant volume from a single client to be submitted through both the client account and the Suspense Account, as outlined in paragraphs 23 to 25 and **Table 2** above, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed, Mr Blumenthal's conduct was likely to have had the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for Creso shares.

#### **ASIC'S CONCERNS**

37. As a result of the matters referred to in paragraph 35 and 36 above, ASIC is concerned that:
- 37.1. EverBlu, during the Relevant Period, breached its general obligations as a Financial Services Licensee under s 912A of the Corporations Act to:
    - 37.1.1. do all things necessary to ensure that the Financial Services provided under the licence are provided efficiently and fairly pursuant to s 912A(1)(a) of the Corporations Act;
    - 37.1.2. have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of Financial Services as part of the Financial Services business of the licensee or the representative pursuant to s 912A(1)(aa) of the Corporations Act;
    - 37.1.3. comply with the conditions on its licence pursuant to s 912A(1)(b) of the Corporations Act;
    - 37.1.4. comply with the Financial Services Laws pursuant to s 912A(1)(c) of the Corporations Act;
    - 37.1.5. take reasonable steps to ensure that its representatives comply with the Financial Services Laws pursuant to s 912A(1)(ca) of the Corporations Act; and

- 37.1.6. ensure that its representatives, including Mr Blumenthal, were adequately trained, and were competent, to provide those Financial Services pursuant to s 912A(1)(f) of the Corporations Act;
- 37.2. Mr Blumenthal, during the Relevant Period, was involved in EverBlu's breaches of its general obligations set out in paragraph 37.1 above (s 920A(1)(g) of the Corporation Act);
- 37.3. Mr Blumenthal is not adequately trained to:
- 37.3.1. provide one or more Financial Services; or
  - 37.3.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.3.3. carry on a Financial Services business, (s 920A(1)(da) of the Corporations Act);
- 37.4. Mr Blumenthal is not a fit and proper person to:
- 37.4.1. provide one or more Financial Services; or
  - 37.4.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.4.3. carry on a Financial Services business, (ss 920A(1)(d) and 913BB(2)(k) of the Corporations Act); and
- 37.5. Mr Blumenthal has contravened a Financial Services Law, being s 1041B of the Corporations Act (s 920A(1)(e) of the Corporations Act).

#### **ADMISSIONS OF WRONGDOING**

38. EverBlu admits the conduct identified in paragraph 35 above and admits each and every contravention identified in paragraph 37.1 above.
39. Mr Blumenthal admits the conduct identified in paragraphs 35 and 36 above and admits each and every contravention identified in paragraphs 37.2 to 37.5 above.

#### **UNDERTAKINGS**

40. Under section 93AA of the ASIC Act, EverBlu and Mr Blumenthal have offered, and ASIC has agreed to accept as an alternative to ASIC taking administrative action, the undertakings in paragraphs 41 to 55 below.

##### **Undertakings given by EverBlu**

###### *Cease to provide Financial Services*

41. EverBlu undertakes that, immediately on the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will cease offering any Financial Services to any new clients and will only provide Financial Services to existing clients that are necessary for the orderly cessation of EverBlu's Financial Services business, which are to be completed by no later than eight weeks after the Acceptance Date.

###### *Cancellation of EverBlu's AFSL*

42. EverBlu undertakes that, within eight weeks of the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will lodge an application with

ASIC requesting the immediate cancellation of EverBlu's AFSL, with payment of the prescribed fee.

43. EverBlu undertakes that it will comply with the steps (where applicable) listed on ASIC's website on the webpage "Cancelling your AFS licence".

*AFCA membership*

44. EverBlu undertakes that it will maintain membership with AFCA for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Professional indemnity insurance*

45. EverBlu undertakes that it will maintain professional indemnity insurance for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Costs of compliance*

46. EverBlu undertakes that it will pay all costs associated with its compliance with this enforceable undertaking.

*Provision of documents*

47. EverBlu undertakes that it will provide all documents and information requested by ASIC from time to time for the purpose of assessing EverBlu's compliance with the terms of this enforceable undertaking within 10 business days after receiving a request from ASIC.

**Undertakings given by Mr Blumenthal**

*Cease to provide Financial Services*

48. Mr Blumenthal undertakes that, from the Acceptance Date, he will not:

- 48.1. provide Financial Services;
- 48.2. carry on a Financial Services business; or
- 48.3. perform any function involved in the carrying on of a Financial Services business including as an officer, manager, employee, contractor or a Responsible Manager of an entity carrying on a Financial Services business,

for a period of five years.

49. The undertaking given by Mr Blumenthal in paragraph 48 of this enforceable undertaking does not preclude Mr Blumenthal facilitating (in his capacity as the sole director of EverBlu)—for a period of eight weeks from the Acceptance Date (or within such longer period that may be agreed by ASIC and Mr Blumenthal)—EverBlu's compliance with:

- 49.1. paragraphs 41 to 45 of this enforceable undertaking; and
- 49.2. EverBlu's obligations under the Business Purchase Agreement,

on the basis that Mr Blumenthal resigns as a director of EverBlu as and from the date EverBlu's AFSL is cancelled (and appoints an alternate director to EverBlu as and from that date for the purposes of facilitating EverBlu's ongoing compliance with paragraphs 44 and 45 of this enforceable undertaking).

50. For the avoidance of doubt, paragraph 49 of this enforceable undertaking does not permit Mr Blumenthal to facilitate (in his capacity as the sole director of EverBlu)—as and from the Acceptance Date—EverBlu offering and/or providing Financial Services to any new clients and has been offered to ASIC on the basis that (pursuant to the terms of the Business Purchase Agreement):

- 50.1. EverBlu's contractors providing Financial Services to EverBlu's clients prior to the Acceptance Date will have had (as at the Acceptance Date) their contracts novated to

the Buyer, such that EverBlu will have no employees or contractors providing Financial Services to clients as and from the Acceptance Date; and

- 50.2. As and from the Acceptance Date, EverBlu will have no active clearing and settlement facility accounts available to it, rendering it incapable of providing Financial Services to clients.

#### *Training*

51. In the event that Mr Blumenthal intends to re-enter the Financial Services industry after the five year period referred to in paragraph 48 of this enforceable undertaking has elapsed, Mr Blumenthal undertakes to (prior to doing so) complete further professional training in areas deemed appropriate by ASIC.
52. In the event that Mr Blumenthal has not successfully completed the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to not provide Financial Services until such courses are successfully completed.
53. As soon as practicable following the completion of the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to provide ASIC with documents substantiating successful completion of that training.

#### *Costs of compliance*

54. Mr Blumenthal undertakes that he will pay all costs associated with his compliance with this enforceable undertaking.

#### *Provision of documents*

55. Mr Blumenthal undertakes 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 10 business days after receiving a request from ASIC.

### **ACKNOWLEDGEMENTS**

56. EverBlu and Mr Blumenthal acknowledge that ASIC:
- 56.1. may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- 56.2. may from time to time publicly refer to this enforceable undertaking;
- 56.3. will from time to time publicly report about compliance with this enforceable undertaking; and
- 56.4. will make this enforceable undertaking available for public inspection.
57. EverBlu and Mr Blumenthal acknowledge that:
- 57.1. 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 to seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- 57.2. 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;
- 57.3. this enforceable undertaking has no operative force until accepted by ASIC; and
- 57.4. the date of the enforceable undertaking is the date on which it is accepted by

ASIC.

Executed by EverBlu Capital Pty Ltd )  
ACN 612 793 683 in accordance with )  
section 127 of the Corporations Act 2001  
(Cth)

.....  
Sole Director / Company Secretary

Adam Blumenthal  
.....  
Name of Sole Director / Company  
Secretary (print)

14/12/23  
.....  
Date

Executed by Adam Blumenthal (in his )  
individual capacity) in the presence of: )

.....  
14/12/23  
.....  
Date

.....  
Witness

Elan Sasson  
.....  
Name of Witness (print)

14 December 2023.  
.....  
Date

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

.....  
Brendan Caridi

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC 14 December 2023 .....



## ENFORCEABLE UNDERTAKING

*Australian Securities Investments Commission Act 2001 (Cth)*

Section 93AA

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

**EverBlu Capital Pty Ltd**

**ACN 612 793 683**

**Australian Financial Services Licence No. 499601**

*Sydney, New South Wales*

and

**Adam Blumenthal**

*Sydney, New South Wales*

## DEFINITIONS

1. In addition to the terms defined elsewhere in this enforceable undertaking, the following definitions are used:
  - Acceptance Date** means the date of acceptance by ASIC of this enforceable undertaking.
  - AFCA** means the Australian Financial Complaints Authority.
  - AFSL** means Australian financial services licence.
  - Authorised Representative** has the meaning given by section 916A of the Corporations Act.
  - ASIC** means the Australian Securities and Investments Commission.
  - ASIC Act** means the *Australian Securities and Investments Commission Act 2001 (Cth)*.
  - Business Purchase Agreement** means the Business Purchase Agreement entered into between EverBlu, Mr Blumenthal and the Buyer dated 3 December 2023.
  - Buyer** means the entity defined as the Buyer in the Business Purchase Agreement.
  - Corporations Act** means the *Corporations Act 2001 (Cth)*.
  - EverBlu** means EverBlu Capital Pty Ltd (ACN 612 793 683).
  - EverBlu's AFSL** means AFSL number 499601 held by EverBlu.
  - Financial Service** has the meaning given by Division 4 of Part 7.1 of the Corporations Act.
  - Financial Services Law** has the meaning given by section 761A of the Corporations Act.
  - Financial Services Licensee** has the meaning given by section 761A of the Corporations Act.
  - Mr Blumenthal** means Adam Blumenthal.
  - Relevant Period** means 18 March 2021 to 15 November 2021.
  - Responsible Manager** means an individual nominated by an Australian Financial Services Licensee in accordance with ASIC RG105.
  - Suspense Account** means the EverBlu account designated 'SUSP\_EVB'.

## ASIC'S ROLE

2. 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.

## BACKGROUND

3. EverBlu was incorporated on 3 June 2016. Mr Blumenthal is the part owner and controlling mind of EverBlu.
4. EverBlu holds AFSL number 499601 and has been operating under this AFSL since 2 September 2017. EverBlu provides research, corporate advisory and stockbroking services.
5. Mr Blumenthal is the chairman, director, Authorised Representative and Responsible Manager of EverBlu and during the Relevant Period oversaw and was involved in the corporate advisory and stockbroking services provided by EverBlu.
6. Mr Blumenthal is the sole director and shareholder of Anglo Menda Pty Ltd (**Anglo Menda**), which is an Authorised Representative of EverBlu.
7. During the Relevant Period, Mr Blumenthal was a non-executive director, substantial shareholder and the chairman of Creso Pharma Limited ACN 609 406 911 (**Creso**). As at 28 February 2021, Mr Blumenthal's total shareholding in Creso was valued at approximately \$30 million. Creso was listed on the Australian Stock Exchange (**ASX**) from 20 October 2016 to 12 June 2023 under the code 'CPH'. EverBlu led Creso's Initial Public Offering.
8. From at least July 2017, EverBlu provided corporate advisory services to Creso.

## EverBlu's AFSL

9. EverBlu's AFSL authorises it to carry on a Financial Services business to:
  - 9.1. provide general financial product advice for basic deposit products and securities;
  - 9.2. deal in a financial product by:
    - 9.2.1. issuing, applying for, acquiring, varying or disposing of securities;
    - 9.2.2. applying for, acquiring, varying or disposing of basic deposit products and securities;
    - 9.2.3. underwriting an issue of securities;to retail and wholesale clients.
10. The conditions of EverBlu's AFSL include that EverBlu must:
  - 10.1. establish and maintain compliance measures that ensure, as far as is reasonably practicable, that EverBlu complies with the provisions of the Financial Services Law; and
  - 10.2. (for any natural person who provides financial product advice to retail clients on behalf of EverBlu) among other things, implement procedures for continuing training.

## Relevant EverBlu policies

11. During the Relevant Period, EverBlu maintained a number of policies that governed how EverBlu's representatives were to conduct themselves while working for EverBlu, including:
  - 11.1. *Conflicts of Interest Policy* (version 4), dated May 2020 (**Conflicts of Interest**



**Policy**), which outlined EverBlu's policies and procedures for managing conflicts of interest and provided a framework to identify, evaluate, monitor, manage and disclose conflicts of interests and required all EverBlu Representatives (as defined in the Conflicts of Interest Policy) to, among other things:

- 11.1.1. direct financial product advice at the best interests of the recipient, which should be placed ahead of the interests of the Representatives, with the advice to be based solely on the merits of the security being evaluated and not based on any other relationship that EverBlu or its Representatives may have with that security;
  - 11.1.2. be aware of and identify conflicts of interest in relation to a Representative's employment with EverBlu;
  - 11.1.3. disclose any pecuniary interest which relates to the provision of a financial service by EverBlu as soon as practicable after the earlier of the Representative becoming aware of the financial service or the pecuniary interest;
  - 11.1.4. immediately inform the Head of Compliance or Conflict Manager if they have or become aware of a conflict of interest in relation to their employment with EverBlu; and
  - 11.1.5. establish, prior to providing any financial service, that no 'Strong Conflict' exists (as defined in the Conflicts of Interest Policy).
- 11.2. *Personal Dealing Policy* (version 4), dated May 2020 (**Personal Dealing Policy**), which required the directors, officers, representatives, Authorised Representatives and employees of EverBlu to notify EverBlu of certain intended transactions involving themselves, or associated parties, prior to the transaction and receive authorisation before the transaction was entered into, and prohibited EverBlu from providing credit to its employees or their associates;
- 11.3. *Dealing Manual* (version 4), dated March 2020 (**Dealing Manual**), which outlined the prescribed procedures for receiving, recording and executing client orders and specified the information that must be collected in relation to client orders. The Dealing Manual included a procedure that established "Chinese Walls" to restrict communication of, and access to, information that was not publicly available to EverBlu's representatives who were involved in EverBlu's dealing services; and
- 11.4. *Document Retention Policy* (version 4), dated May 2020 (**Document Retention Policy**), which outlined the obligations that applied to all representatives of EverBlu in relation to the management, retention, retrieval and destruction of documents and required copies of all documents relating to customer records and transactions be retained for the life of the client relationship and an additional seven years from the date EverBlu ceases to provide Financial Services to the customer, including files notes and recordings of meetings and telephone calls.

#### **Use of the Suspense Account**

12. Suspense accounts are typically used for the temporary entry of orders and/or transactions in circumstances where there is incomplete or missing information to properly assign the order or transaction to a client's account. During the Relevant Period, the Suspense Account was used to trade Creso securities and other Division 3 Financial Products. Mr Blumenthal instructed EverBlu's designated trading representative (**DTR**) to use the Suspense Account to enter orders (in particular, buy

orders or 'bids') into the market throughout the day and to purchase Creso shares, without always identifying to the DTR the particular EverBlu client whose trade instructions were being provided.

13. During the Relevant Period, the Suspense Account came to be used more frequently for trades where Mr Blumenthal instructed the DTR to place the orders and was predominately used for trading in Creso shares.

#### **Restrictions on Mr Blumenthal dealing in Creso shares**

14. On 12 August 2020, Mr Blumenthal, in his capacity as EverBlu's delegate, along with EverBlu's Responsible Manager - Head of Wealth Management and EverBlu's Head of Compliance, signed the EverBlu Capital Delegation and Attestation Business Continuity Plan in respect of Mr Blumenthal (**Attestation**) which provided that Mr Blumenthal must not provide general advice or accept a client instruction:
  - 14.1. in relation to a company of which he is a director; and
  - 14.2. for a company under 'Restriction'.
15. During the Relevant Period, Mr Blumenthal was a director of Creso, which was also a company under 'Restriction'.
16. On 23 March 2021, Mr Blumenthal was added to the 'Chinese Wall' Register in respect of Creso by EverBlu's Head of Compliance. The addition of Mr Blumenthal to that register generated an automated 'Chinese Walls Register Entry Acknowledgement', which noted that Mr Blumenthal electronically acknowledged he had read and understood these requirements. The addition of Mr Blumenthal to Creso's 'Chinese Wall' Register meant that he was required, under the Dealing Manual, not to (in respect of non-public information):
  - 16.1. act on that information personally;
  - 16.2. communicate that information to anyone other than EverBlu Capital Compliance;
  - 16.3. participate in any Research committees (or similar bodies); or
  - 16.4. engage in any activities involving providing advice in relation to securities (e.g. publishing research reports), or in relation to any securities whose market price is likely to be affected by the disclosure of that information.

#### **Mr Blumenthal's dealing in Creso shares**

17. Despite being subject to the limitations and restrictions detailed at paragraphs 14 to 16 above, Mr Blumenthal used his position at EverBlu during the Relevant Period to:
  - 17.1. personally enter, amend and cancel client orders for Creso shares directly through client accounts;
  - 17.2. direct the DTR to enter, amend and cancel client orders for Creso shares on client accounts;
  - 17.3. direct the DTR to:
    - 17.3.1. enter, amend and cancel client orders for Creso shares through the Suspense Account; and
    - 17.3.2. subsequently book resulting trades from the Suspense Account to client accounts, each of which were accounts held in the name of individuals known to Mr Blumenthal.
18. During the Relevant Period, EverBlu accounted for approximately 27% of all market volume trading in Creso shares. Approximately 75% of that trading was done via the Suspense Account.

19. **Table 1** below shows that:

- 19.1. Creso shares bought or sold through the Suspense Account were allocated to one or more of six client accounts, which together purchased 378 million shares and sold 271 million shares; and
- 19.2. only 45 million of those shares were purchased directly through the respective clients' accounts and only 121 million of those shares were sold directly through the respective clients' accounts.

**Table 1 – Trading in Creso shares**

Client Account	Total volume bought/sold via Suspense A/c, then allocated to Client Account			Total volume bought/sold directly via Client Account	
	Buy Volume	Sell Volume	% of Allocation from Suspense	Buy Volume	Sell Volume
Tyson Scholz	129,230,266	85,062,464	33%	26,226,438	34,250,000
Client 1	96,375,000	89,747,954	29%	4,000,000	9,627,046
Client 2	68,293,581	31,798,084	15%	5,000,000	39,517,287
Client 3	55,726,658	35,638,674	14%	10,464,224	26,560,133
Client 4	20,400,000	21,424,052	6%	Nil	11,756,346
Client 5	8,138,598	8,138,598	3%	Nil	Nil
<b>Total</b>	<b>378,164,103</b>	<b>271,809,826</b>	<b>100%</b>	<b>45,480,662</b>	<b>121,710,812</b>

20. A substantial portion of the trades in **Table 1** occurred as a consequence of Mr Blumenthal instructing the DTR to place the orders and took place during the period Mr Blumenthal was on the 'Chinese Wall' Register.
21. When Mr Blumenthal received client orders to trade in Creso shares, he did not follow EverBlu's prescribed procedures for receiving, recording and executing client orders, and he did not retain sufficient records of client orders and trades as required by the Dealing Manual and Document Retention Policy.
22. Specifically, with respect to EverBlu's prescribed procedures for recording client orders and maintaining records as set out in the Document Retention Policy, Mr Blumenthal did not retain notebooks that contemporaneously recorded the client instructions that he received during 2021.
23. The platform used by Market Operators (e.g. ASX) for the trading of listed securities displays buy and sell orders on the basis that the identity of the broker and/or underlying buyers and sellers is anonymised. Any person viewing the market for Creso shares can only see the number of bidders (and sellers) and the respective volumes and prices.
24. On the following occasions, Mr Blumenthal disaggregated single client orders to purchase Creso shares by either: (i) placing himself; or (ii) directing the DTR to place, two bids through the Suspense Account and/or client's account, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed so as to create, or cause the creation of, a false or misleading appearance with respect to the market for Creso shares. This conduct was likely to have had the effect of creating, or causing the creation of, a misleading appearance with respect to the number of market participants actively trading Creso shares.

**Table 2 – Disaggregated bids in Creso and bids in Creso shares through multiple accounts**

Date	Time	Account used to enter Bid	Price	Volume	Aggregate size	Relevant Client
18/03/2021	10:40:57	Suspense	\$0.2000	600,000	1,000,000	Client 4
18/03/2021	10:41:00	Suspense	\$0.2000	400,000		
19/03/2021	15:31:40	Suspense	\$0.2200	600,000	1,000,000	Client 3
19/03/2021	15:31:49	Suspense	\$0.2200	400,000		
09/04/2021	10:02:12	Suspense	\$0.2050	750,000	1,070,000	Client 3
09/04/2021	10:03:18	Suspense	\$0.2050	320,000		
18/05/2021	10:16:38	Suspense	\$0.1600	500,000	800,000	Client 4
18/05/2021	10:16:56	Suspense	\$0.1600	300,000		
17/06/2021	10:55:37	Suspense	\$0.1800	600,000	1,100,000	Client 1
17/06/2021	10:56:00	Suspense	\$0.1800	500,000		
10/08/2021	10:03:40	Tyson Scholz	\$0.1250	650,000	1,250,000	Scholz
10/08/2021	10:08:39	Suspense	\$0.1250	600,000		
10/08/2021	10:56:15	Tyson Scholz	\$0.1250	770,000	1,170,000	
10/08/2021	10:56:42	Tyson Scholz	\$0.1250	400,000		
08/10/2021	10:18:13	Tyson Scholz	\$0.1150	500,000	750,000	Scholz
08/10/2021	10:18:24	Tyson Scholz	\$0.1150	250,000		
25/10/2021	10:10:10	Suspense	\$0.1150	500,000	800,000	Scholz
25/10/2021	10:11:27	Suspense	\$0.1150	300,000		
25/10/2021	11:01:31	Suspense	\$0.1150	500,000	1,250,000	
25/10/2021	11:02:26	Tyson Scholz	\$0.1150	750,000		
01/11/2021	10:02:45	Suspense	\$0.1200	500,000	750,000	Scholz
01/11/2021	10:02:52	Suspense	\$0.1200	250,000		
01/11/2021	10:45:23	Suspense	\$0.1300	300,000	500,000	
01/11/2021	10:47:52	Suspense	\$0.1300	200,000		
01/11/2021	16:09:54	Suspense	\$0.1300	250,000	500,000	
01/11/2021	16:10:10	Suspense	\$0.1300	250,000		
09/11/2021	10:03:59	Suspense	\$0.1500	500,000	750,000	Client 2
09/11/2021	10:04:52	Suspense	\$0.1500	250,000		

25. At the time of receiving client orders in relation to the trades in **Table 2**, Mr Blumenthal had sought and obtained from the EverBlu clients their authorisation to execute the orders in a manner that he considered appropriate.

**Loans to EverBlu clients for trading in Creso shares**

26. During the Relevant Period, Anglo Menda was an Authorised Representative of EverBlu. Mr Blumenthal was the sole director and shareholder of Anglo Menda.
27. During the Relevant Period, Anglo Menda loaned funds to certain EverBlu clients to fund trading by those clients in Creso shares, including:

**Table 3 – Anglo Menda loans to EverBlu clients**

Client	Amount loaned
Client 5	\$975,000.00
Tyson Scholz	\$7,125,460.04
Client 1	\$5,226,850.00

28. Mr Blumenthal facilitated these loans from Anglo Menda to the clients set out in **Table 3** above. The loans to Client 5 (also a Corporate Authorised Representative of EverBlu) and Client 1 (a close friend of Mr Blumenthal) were not on commercial terms. While the loan to Mr Scholz included the payment of interest, it was not documented until 12 January 2022 and the loan was unsecured. Under the Personal Dealing Policy, Mr Blumenthal was required to inform and obtain approval from EverBlu's Head of Compliance prior to Anglo Menda providing each of the loans set out in **Table 3**. He failed to do so.

**Engagement of consultant by Creso**

29. In or around March 2021, Mr Blumenthal caused Creso to engage a consultant to provide Creso with consultancy, promotional and marketing services, including the provision of market data, market research and market intelligence (which was to be provided by the consultant to Mr Blumenthal), as well as promoting Creso to potential investors via the consultant's professional and social media network. The consultant was subsequently engaged by Creso. The consultant and his main trading entity, Client 3, were also clients of EverBlu.
30. The agreement between Creso and the consultant was not in writing and the consultant did not provide Mr Blumenthal with any formal reports documenting the services that he was providing to Creso.
31. During the Relevant Period, the consultant issued Creso with invoices totalling \$1,237,500, via one of the consultant's trading entities, which were paid by Creso.

### Engagement of Tyson Scholz by Creso

32. In March 2021, Mr Blumenthal caused Creso to engage Tyson Scholz to provide marketing and promotional services for Creso. Mr Scholz is a known market "influencer"<sup>1</sup> and was also an EverBlu client.
33. During the Relevant Period, Mr Scholz's companies, SV4T Investments Pty Ltd and EWOLF Enterprises Pty Ltd, issued Creso with invoices totalling \$2,013,000, which were paid by Creso.
34. As noted above, from May 2021 to November 2021, Mr Blumenthal caused Anglo Menda to loan Mr Scholz \$7,125,460 for the purpose of trading Creso shares. Mr Blumenthal charged Mr Scholz interest of \$712,546.

### DETAILS OF CONDUCT

35. As a result of ASIC's investigation into EverBlu and Mr Blumenthal pursuant to section 13 of the ASIC Act, ASIC is satisfied that:
  - 35.1. Mr Blumenthal accepted client instructions for a substantial proportion of the trading in Creso shares as set out in **Table 1**, in breach of his obligations under the Attestation and 'Chinese Wall' Register;
  - 35.2. EverBlu failed to properly monitor and control the use of the Suspense Account, so as to ensure that client orders facilitated through the Suspense Account complied with EverBlu's Dealing Manual;
  - 35.3. EverBlu and Mr Blumenthal failed to follow the procedure prescribed in the Dealing Manual to receive client orders, execute client orders and record client orders, and failed to maintain records of client orders and trades in accordance with the Document Retention Policy, particularly where orders were facilitated through the Suspense Account;
  - 35.4. Mr Blumenthal failed to maintain contemporaneous records of client instructions he received for orders and trades in Creso shares contrary to the Document Retention Policy;
  - 35.5. EverBlu failed, in accordance with the Conflicts of Interest Policy, to identify and manage actual or potential conflicts of interest that arose out of:
    - 35.5.1. Mr Blumenthal's concurrent roles with, and interest in, Creso and EverBlu, in circumstances where Mr Blumenthal facilitated trading in Creso shares by EverBlu's clients; and
    - 35.5.2. Mr Blumenthal's concurrent roles with Anglo Menda and EverBlu, in circumstances where Anglo Menda provided loans to EverBlu clients to facilitate their trading in Creso shares which took place through the clients' accounts held with EverBlu as set out in **Table 3** above;
  - 35.6. Mr Blumenthal failed to comply with the Conflicts of Interest Policy in respect of the actual or potential conflicts of interest that arose out of the matters set out in paragraphs 35.5.1 and 35.5.2 above, including by failing to first identify and then

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<sup>1</sup> A finfluencer is a person who uses social media platforms that are publicly available to influence the financial decision-making of others through promotions or recommendations.

to inform EverBlu's Head of Compliance of such conflicts of interest as soon as he became aware of them;

- 35.7. Mr Blumenthal facilitated the lending of funds by Anglo Menda to EverBlu's clients to fund trading in Creso shares in breach of the Personal Dealing Policy;
  - 35.8. EverBlu failed to establish and maintain compliance measures to ensure that, as far as reasonably practical, EverBlu and its representatives complied with the provisions of the Financial Services Law;
  - 35.9. EverBlu and Mr Blumenthal failed to comply with the Compliance Framework and ensure that EverBlu adhered to its compliance obligations, including under EverBlu's AFSL and also failed to take necessary and appropriate corrective action to remedy breaches, including recording breaches and incidents within EverBlu's Breaches and Incidents Register; and
  - 35.10. EverBlu failed to put in place adequate processes and controls to monitor compliance with the Dealing Manual.
36. By directing or causing bids of significant volume from a single client to be submitted through both the client account and the Suspense Account, as outlined in paragraphs 23 to 25 and **Table 2** above, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed, Mr Blumenthal's conduct was likely to have had the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for Creso shares.

#### **ASIC'S CONCERNS**

37. As a result of the matters referred to in paragraph 35 and 36 above, ASIC is concerned that:
- 37.1. EverBlu, during the Relevant Period, breached its general obligations as a Financial Services Licensee under s 912A of the Corporations Act to:
    - 37.1.1. do all things necessary to ensure that the Financial Services provided under the licence are provided efficiently and fairly pursuant to s 912A(1)(a) of the Corporations Act;
    - 37.1.2. have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of Financial Services as part of the Financial Services business of the licensee or the representative pursuant to s 912A(1)(aa) of the Corporations Act;
    - 37.1.3. comply with the conditions on its licence pursuant to s 912A(1)(b) of the Corporations Act;
    - 37.1.4. comply with the Financial Services Laws pursuant to s 912A(1)(c) of the Corporations Act;
    - 37.1.5. take reasonable steps to ensure that its representatives comply with the Financial Services Laws pursuant to s 912A(1)(ca) of the Corporations Act; and

- 37.1.6. ensure that its representatives, including Mr Blumenthal, were adequately trained, and were competent, to provide those Financial Services pursuant to s 912A(1)(f) of the Corporations Act;
- 37.2. Mr Blumenthal, during the Relevant Period, was involved in EverBlu's breaches of its general obligations set out in paragraph 37.1 above (s 920A(1)(g) of the Corporation Act);
- 37.3. Mr Blumenthal is not adequately trained to:
- 37.3.1. provide one or more Financial Services; or
  - 37.3.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.3.3. carry on a Financial Services business, (s 920A(1)(da) of the Corporations Act);
- 37.4. Mr Blumenthal is not a fit and proper person to:
- 37.4.1. provide one or more Financial Services; or
  - 37.4.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.4.3. carry on a Financial Services business, (ss 920A(1)(d) and 913BB(2)(k) of the Corporations Act); and
- 37.5. Mr Blumenthal has contravened a Financial Services Law, being s 1041B of the Corporations Act (s 920A(1)(e) of the Corporations Act).

#### **ADMISSIONS OF WRONGDOING**

38. EverBlu admits the conduct identified in paragraph 35 above and admits each and every contravention identified in paragraph 37.1 above.
39. Mr Blumenthal admits the conduct identified in paragraphs 35 and 36 above and admits each and every contravention identified in paragraphs 37.2 to 37.5 above.

#### **UNDERTAKINGS**

40. Under section 93AA of the ASIC Act, EverBlu and Mr Blumenthal have offered, and ASIC has agreed to accept as an alternative to ASIC taking administrative action, the undertakings in paragraphs 41 to 55 below.

##### **Undertakings given by EverBlu**

###### *Cease to provide Financial Services*

41. EverBlu undertakes that, immediately on the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will cease offering any Financial Services to any new clients and will only provide Financial Services to existing clients that are necessary for the orderly cessation of EverBlu's Financial Services business, which are to be completed by no later than eight weeks after the Acceptance Date.

###### *Cancellation of EverBlu's AFSL*

42. EverBlu undertakes that, within eight weeks of the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will lodge an application with



ASIC requesting the immediate cancellation of EverBlu's AFSL, with payment of the prescribed fee.

43. EverBlu undertakes that it will comply with the steps (where applicable) listed on ASIC's website on the webpage "Cancelling your AFS licence".

*AFCA membership*

44. EverBlu undertakes that it will maintain membership with AFCA for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Professional indemnity insurance*

45. EverBlu undertakes that it will maintain professional indemnity insurance for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Costs of compliance*

46. EverBlu undertakes that it will pay all costs associated with its compliance with this enforceable undertaking.

*Provision of documents*

47. EverBlu undertakes that it will provide all documents and information requested by ASIC from time to time for the purpose of assessing EverBlu's compliance with the terms of this enforceable undertaking within 10 business days after receiving a request from ASIC.

**Undertakings given by Mr Blumenthal**

*Cease to provide Financial Services*

48. Mr Blumenthal undertakes that, from the Acceptance Date, he will not:

- 48.1. provide Financial Services;
- 48.2. carry on a Financial Services business; or
- 48.3. perform any function involved in the carrying on of a Financial Services business including as an officer, manager, employee, contractor or a Responsible Manager of an entity carrying on a Financial Services business,

for a period of five years.

49. The undertaking given by Mr Blumenthal in paragraph 48 of this enforceable undertaking does not preclude Mr Blumenthal facilitating (in his capacity as the sole director of EverBlu)—for a period of eight weeks from the Acceptance Date (or within such longer period that may be agreed by ASIC and Mr Blumenthal)—EverBlu's compliance with:

- 49.1. paragraphs 41 to 45 of this enforceable undertaking; and
- 49.2. EverBlu's obligations under the Business Purchase Agreement,

on the basis that Mr Blumenthal resigns as a director of EverBlu as and from the date EverBlu's AFSL is cancelled (and appoints an alternate director to EverBlu as and from that date for the purposes of facilitating EverBlu's ongoing compliance with paragraphs 44 and 45 of this enforceable undertaking).

50. For the avoidance of doubt, paragraph 49 of this enforceable undertaking does not permit Mr Blumenthal to facilitate (in his capacity as the sole director of EverBlu)—as and from the Acceptance Date—EverBlu offering and/or providing Financial Services to any new clients and has been offered to ASIC on the basis that (pursuant to the terms of the Business Purchase Agreement):

- 50.1. EverBlu's contractors providing Financial Services to EverBlu's clients prior to the Acceptance Date will have had (as at the Acceptance Date) their contracts novated to

the Buyer, such that EverBlu will have no employees or contractors providing Financial Services to clients as and from the Acceptance Date; and

- 50.2. As and from the Acceptance Date, EverBlu will have no active clearing and settlement facility accounts available to it, rendering it incapable of providing Financial Services to clients.

#### *Training*

51. In the event that Mr Blumenthal intends to re-enter the Financial Services industry after the five year period referred to in paragraph 48 of this enforceable undertaking has elapsed, Mr Blumenthal undertakes to (prior to doing so) complete further professional training in areas deemed appropriate by ASIC.
52. In the event that Mr Blumenthal has not successfully completed the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to not provide Financial Services until such courses are successfully completed.
53. As soon as practicable following the completion of the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to provide ASIC with documents substantiating successful completion of that training.

#### *Costs of compliance*

54. Mr Blumenthal undertakes that he will pay all costs associated with his compliance with this enforceable undertaking.

#### *Provision of documents*

55. Mr Blumenthal undertakes 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 10 business days after receiving a request from ASIC.

### **ACKNOWLEDGEMENTS**

56. EverBlu and Mr Blumenthal acknowledge that ASIC:
- 56.1. may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- 56.2. may from time to time publicly refer to this enforceable undertaking;
- 56.3. will from time to time publicly report about compliance with this enforceable undertaking; and
- 56.4. will make this enforceable undertaking available for public inspection.
57. EverBlu and Mr Blumenthal acknowledge that:
- 57.1. 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 to seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- 57.2. 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;
- 57.3. this enforceable undertaking has no operative force until accepted by ASIC; and
- 57.4. the date of the enforceable undertaking is the date on which it is accepted by

ASIC.

Executed by EverBlu Capital Pty Ltd )  
ACN 612 793 683 in accordance with )  
section 127 of the Corporations Act 2001  
(Cth)

  
Sole Director / Company Secretary

Adam Blumenthal  
Name of Sole Director / Company  
Secretary (print)

14/12/23  
Date

Executed by Adam Blumenthal (in his )  
individual capacity) in the presence of: )

  
14/12/23  
Date

  
Witness

Elan Sasson  
Name of Witness (print)

14 December 2023.  
Date

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

  
Brendan Caridi

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC 14 December 2023



## ENFORCEABLE UNDERTAKING

*Australian Securities Investments Commission Act 2001 (Cth)*

Section 93AA

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

**EverBlu Capital Pty Ltd**

**ACN 612 793 683**

**Australian Financial Services Licence No. 499601**

*Sydney, New South Wales*

and

**Adam Blumenthal**

*Sydney, New South Wales*

## DEFINITIONS

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

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

**AFCA** means the Australian Financial Complaints Authority.

**AFSL** means Australian financial services licence.

**Authorised Representative** has the meaning given by section 916A of the Corporations Act.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth). **Business Purchase Agreement** means the Business Purchase Agreement entered into between EverBlu, Mr Blumenthal and the Buyer dated 3 December 2023.

**Buyer** means the entity defined as the Buyer in the Business Purchase Agreement.

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

**EverBlu** means EverBlu Capital Pty Ltd (ACN 612 793 683).

**EverBlu's AFSL** means AFSL number 499601 held by EverBlu.

**Financial Service** has the meaning given by Division 4 of Part 7.1 of the Corporations Act.

**Financial Services Law** has the meaning given by section 761A of the Corporations Act.

**Financial Services Licensee** has the meaning given by section 761A of the Corporations Act.

**Mr Blumenthal** means Adam Blumenthal.

**Relevant Period** means 18 March 2021 to 15 November 2021.

**Responsible Manager** means an individual nominated by an Australian Financial Services Licensee in accordance with ASIC RG105.

**Suspense Account** means the EverBlu account designated 'SUSP\_EVB'.

## ASIC'S ROLE

2. 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.

## BACKGROUND

3. EverBlu was incorporated on 3 June 2016. Mr Blumenthal is the part owner and controlling mind of EverBlu.
4. EverBlu holds AFSL number 499601 and has been operating under this AFSL since 2 September 2017. EverBlu provides research, corporate advisory and stockbroking services.
5. Mr Blumenthal is the chairman, director, Authorised Representative and Responsible Manager of EverBlu and during the Relevant Period oversaw and was involved in the corporate advisory and stockbroking services provided by EverBlu.
6. Mr Blumenthal is the sole director and shareholder of Anglo Menda Pty Ltd (**Anglo Menda**), which is an Authorised Representative of EverBlu.
7. During the Relevant Period, Mr Blumenthal was a non-executive director, substantial shareholder and the chairman of Creso Pharma Limited ACN 609 406 911 (**Creso**). As at 28 February 2021, Mr Blumenthal's total shareholding in Creso was valued at approximately \$30 million. Creso was listed on the Australian Stock Exchange (**ASX**) from 20 October 2016 to 12 June 2023 under the code 'CPH'. EverBlu led Creso's Initial Public Offering.
8. From at least July 2017, EverBlu provided corporate advisory services to Creso.

## EverBlu's AFSL

9. EverBlu's AFSL authorises it to carry on a Financial Services business to:
  - 9.1. provide general financial product advice for basic deposit products and securities;
  - 9.2. deal in a financial product by:
    - 9.2.1. issuing, applying for, acquiring, varying or disposing of securities;
    - 9.2.2. applying for, acquiring, varying or disposing of basic deposit products and securities;
    - 9.2.3. underwriting an issue of securities;to retail and wholesale clients.
10. The conditions of EverBlu's AFSL include that EverBlu must:
  - 10.1. establish and maintain compliance measures that ensure, as far as is reasonably practicable, that EverBlu complies with the provisions of the Financial Services Law; and
  - 10.2. (for any natural person who provides financial product advice to retail clients on behalf of EverBlu) among other things, implement procedures for continuing training.

## Relevant EverBlu policies

11. During the Relevant Period, EverBlu maintained a number of policies that governed how EverBlu's representatives were to conduct themselves while working for EverBlu, including:
  - 11.1. *Conflicts of Interest Policy* (version 4), dated May 2020 (**Conflicts of Interest**

**Policy**), which outlined EverBlu's policies and procedures for managing conflicts of interest and provided a framework to identify, evaluate, monitor, manage and disclose conflicts of interests and required all EverBlu Representatives (as defined in the Conflicts of Interest Policy) to, among other things:

- 11.1.1. direct financial product advice at the best interests of the recipient, which should be placed ahead of the interests of the Representatives, with the advice to be based solely on the merits of the security being evaluated and not based on any other relationship that EverBlu or its Representatives may have with that security;
  - 11.1.2. be aware of and identify conflicts of interest in relation to a Representative's employment with EverBlu;
  - 11.1.3. disclose any pecuniary interest which relates to the provision of a financial service by EverBlu as soon as practicable after the earlier of the Representative becoming aware of the financial service or the pecuniary interest;
  - 11.1.4. immediately inform the Head of Compliance or Conflict Manager if they have or become aware of a conflict of interest in relation to their employment with EverBlu; and
  - 11.1.5. establish, prior to providing any financial service, that no 'Strong Conflict' exists (as defined in the Conflicts of Interest Policy).
- 11.2. *Personal Dealing Policy* (version 4), dated May 2020 (**Personal Dealing Policy**), which required the directors, officers, representatives, Authorised Representatives and employees of EverBlu to notify EverBlu of certain intended transactions involving themselves, or associated parties, prior to the transaction and receive authorisation before the transaction was entered into, and prohibited EverBlu from providing credit to its employees or their associates;
- 11.3. *Dealing Manual* (version 4), dated March 2020 (**Dealing Manual**), which outlined the prescribed procedures for receiving, recording and executing client orders and specified the information that must be collected in relation to client orders. The Dealing Manual included a procedure that established "Chinese Walls" to restrict communication of, and access to, information that was not publicly available to EverBlu's representatives who were involved in EverBlu's dealing services; and
- 11.4. *Document Retention Policy* (version 4), dated May 2020 (**Document Retention Policy**), which outlined the obligations that applied to all representatives of EverBlu in relation to the management, retention, retrieval and destruction of documents and required copies of all documents relating to customer records and transactions be retained for the life of the client relationship and an additional seven years from the date EverBlu ceases to provide Financial Services to the customer, including files notes and recordings of meetings and telephone calls.

#### **Use of the Suspense Account**

12. Suspense accounts are typically used for the temporary entry of orders and/or transactions in circumstances where there is incomplete or missing information to properly assign the order or transaction to a client's account. During the Relevant Period, the Suspense Account was used to trade Creso securities and other Division 3 Financial Products. Mr Blumenthal instructed EverBlu's designated trading representative (**DTR**) to use the Suspense Account to enter orders (in particular, buy

orders or 'bids') into the market throughout the day and to purchase Creso shares, without always identifying to the DTR the particular EverBlu client whose trade instructions were being provided.

13. During the Relevant Period, the Suspense Account came to be used more frequently for trades where Mr Blumenthal instructed the DTR to place the orders and was predominately used for trading in Creso shares.

#### **Restrictions on Mr Blumenthal dealing in Creso shares**

14. On 12 August 2020, Mr Blumenthal, in his capacity as EverBlu's delegate, along with EverBlu's Responsible Manager - Head of Wealth Management and EverBlu's Head of Compliance, signed the EverBlu Capital Delegation and Attestation Business Continuity Plan in respect of Mr Blumenthal (**Attestation**) which provided that Mr Blumenthal must not provide general advice or accept a client instruction:
  - 14.1. in relation to a company of which he is a director; and
  - 14.2. for a company under 'Restriction'.
15. During the Relevant Period, Mr Blumenthal was a director of Creso, which was also a company under 'Restriction'.
16. On 23 March 2021, Mr Blumenthal was added to the 'Chinese Wall' Register in respect of Creso by EverBlu's Head of Compliance. The addition of Mr Blumenthal to that register generated an automated 'Chinese Walls Register Entry Acknowledgement', which noted that Mr Blumenthal electronically acknowledged he had read and understood these requirements. The addition of Mr Blumenthal to Creso's 'Chinese Wall' Register meant that he was required, under the Dealing Manual, not to (in respect of non-public information):
  - 16.1. act on that information personally;
  - 16.2. communicate that information to anyone other than EverBlu Capital Compliance;
  - 16.3. participate in any Research committees (or similar bodies); or
  - 16.4. engage in any activities involving providing advice in relation to securities (e.g. publishing research reports), or in relation to any securities whose market price is likely to be affected by the disclosure of that information.

#### **Mr Blumenthal's dealing in Creso shares**

17. Despite being subject to the limitations and restrictions detailed at paragraphs 14 to 16 above, Mr Blumenthal used his position at EverBlu during the Relevant Period to:
  - 17.1. personally enter, amend and cancel client orders for Creso shares directly through client accounts;
  - 17.2. direct the DTR to enter, amend and cancel client orders for Creso shares on client accounts;
  - 17.3. direct the DTR to:
    - 17.3.1. enter, amend and cancel client orders for Creso shares through the Suspense Account; and
    - 17.3.2. subsequently book resulting trades from the Suspense Account to client accounts, each of which were accounts held in the name of individuals known to Mr Blumenthal.
18. During the Relevant Period, EverBlu accounted for approximately 27% of all market volume trading in Creso shares. Approximately 75% of that trading was done via the Suspense Account.



19. **Table 1** below shows that:

- 19.1. Creso shares bought or sold through the Suspense Account were allocated to one or more of six client accounts, which together purchased 378 million shares and sold 271 million shares; and
- 19.2. only 45 million of those shares were purchased directly through the respective clients' accounts and only 121 million of those shares were sold directly through the respective clients' accounts.

**Table 1 – Trading in Creso shares**

Client Account	Total volume bought/sold via Suspense A/c, then allocated to Client Account			Total volume bought/sold directly via Client Account	
	Buy Volume	Sell Volume	% of Allocation from Suspense	Buy Volume	Sell Volume
Tyson Scholz	129,230,266	85,062,464	33%	26,226,438	34,250,000
Client 1	96,375,000	89,747,954	29%	4,000,000	9,627,046
Client 2	68,293,581	31,798,084	15%	5,000,000	39,517,287
Client 3	55,726,658	35,638,674	14%	10,464,224	26,560,133
Client 4	20,400,000	21,424,052	6%	Nil	11,756,346
Client 5	8,138,598	8,138,598	3%	Nil	Nil
<b>Total</b>	<b>378,154,103</b>	<b>271,809,826</b>	<b>100%</b>	<b>45,460,662</b>	<b>121,710,812</b>

20. A substantial portion of the trades in **Table 1** occurred as a consequence of Mr Blumenthal instructing the DTR to place the orders and took place during the period Mr Blumenthal was on the 'Chinese Wall' Register.
21. When Mr Blumenthal received client orders to trade in Creso shares, he did not follow EverBlu's prescribed procedures for receiving, recording and executing client orders, and he did not retain sufficient records of client orders and trades as required by the Dealing Manual and Document Retention Policy.
22. Specifically, with respect to EverBlu's prescribed procedures for recording client orders and maintaining records as set out in the Document Retention Policy, Mr Blumenthal did not retain notebooks that contemporaneously recorded the client instructions that he received during 2021.
23. The platform used by Market Operators (e.g. ASX) for the trading of listed securities displays buy and sell orders on the basis that the identity of the broker and/or underlying buyers and sellers is anonymised. Any person viewing the market for Creso shares can only see the number of bidders (and sellers) and the respective volumes and prices.
24. On the following occasions, Mr Blumenthal disaggregated single client orders to purchase Creso shares by either: (i) placing himself; or (ii) directing the DTR to place, two bids through the Suspense Account and/or client's account, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed so as to create, or cause the creation of, a false or misleading appearance with respect to the market for Creso shares. This conduct was likely to have had the effect of creating, or causing the creation of, a misleading appearance with respect to the number of market participants actively trading Creso shares.

**Table 2 – Disaggregated bids in Creso and bids in Creso shares through multiple accounts**

Date	Time	Account used to enter Bid	Price	Volume	Aggregate size	Relevant Client
18/03/2021	10:40:57	Suspense	\$0.2000	600,000	1,000,000	Client 4
18/03/2021	10:41:00	Suspense	\$0.2000	400,000		
19/03/2021	15:31:40	Suspense	\$0.2200	600,000	1,000,000	Client 3
19/03/2021	15:31:49	Suspense	\$0.2200	400,000		
09/04/2021	10:02:12	Suspense	\$0.2050	750,000	1,070,000	Client 3
09/04/2021	10:03:18	Suspense	\$0.2050	320,000		
18/05/2021	10:16:38	Suspense	\$0.1600	500,000	800,000	Client 4
18/05/2021	10:16:56	Suspense	\$0.1600	300,000		
17/06/2021	10:55:37	Suspense	\$0.1800	600,000	1,100,000	Client 1
17/06/2021	10:56:00	Suspense	\$0.1800	500,000		
10/08/2021	10:03:40	Tyson Scholz	\$0.1250	650,000	1,250,000	Scholz
10/08/2021	10:08:39	Suspense	\$0.1250	600,000		
10/08/2021	10:56:15	Tyson Scholz	\$0.1250	770,000	1,170,000	
10/08/2021	10:56:42	Tyson Scholz	\$0.1250	400,000		
08/10/2021	10:18:13	Tyson Scholz	\$0.1150	500,000	750,000	Scholz
08/10/2021	10:18:24	Tyson Scholz	\$0.1150	250,000		
25/10/2021	10:10:10	Suspense	\$0.1150	500,000	800,000	Scholz
25/10/2021	10:11:27	Suspense	\$0.1150	300,000		
25/10/2021	11:01:31	Suspense	\$0.1150	500,000	1,250,000	
25/10/2021	11:02:26	Tyson Scholz	\$0.1150	750,000		
01/11/2021	10:02:45	Suspense	\$0.1200	500,000	750,000	Scholz
01/11/2021	10:02:52	Suspense	\$0.1200	250,000		
01/11/2021	10:45:23	Suspense	\$0.1300	300,000	500,000	
01/11/2021	10:47:52	Suspense	\$0.1300	200,000		
01/11/2021	16:09:54	Suspense	\$0.1300	250,000	500,000	
01/11/2021	16:10:10	Suspense	\$0.1300	250,000		
09/11/2021	10:03:59	Suspense	\$0.1500	500,000	750,000	Client 2
09/11/2021	10:04:52	Suspense	\$0.1500	250,000		

25. At the time of receiving client orders in relation to the trades in **Table 2**, Mr Blumenthal had sought and obtained from the EverBlu clients their authorisation to execute the orders in a manner that he considered appropriate.

**Loans to EverBlu clients for trading in Creso shares**

26. During the Relevant Period, Anglo Menda was an Authorised Representative of EverBlu. Mr Blumenthal was the sole director and shareholder of Anglo Menda.
27. During the Relevant Period, Anglo Menda loaned funds to certain EverBlu clients to fund trading by those clients in Creso shares, including:

**Table 3 – Anglo Menda loans to EverBlu clients**

Client	Amount loaned
Client 5	\$975,000.00
Tyson Scholz	\$7,125,460.04
Client 1	\$5,226,850.00

28. Mr Blumenthal facilitated these loans from Anglo Menda to the clients set out in **Table 3** above. The loans to Client 5 (also a Corporate Authorised Representative of EverBlu) and Client 1 (a close friend of Mr Blumenthal) were not on commercial terms. While the loan to Mr Scholz included the payment of interest, it was not documented until 12 January 2022 and the loan was unsecured. Under the Personal Dealing Policy, Mr Blumenthal was required to inform and obtain approval from EverBlu's Head of Compliance prior to Anglo Menda providing each of the loans set out in **Table 3**. He failed to do so.

**Engagement of consultant by Creso**

29. In or around March 2021, Mr Blumenthal caused Creso to engage a consultant to provide Creso with consultancy, promotional and marketing services, including the provision of market data, market research and market intelligence (which was to be provided by the consultant to Mr Blumenthal), as well as promoting Creso to potential investors via the consultant's professional and social media network. The consultant was subsequently engaged by Creso. The consultant and his main trading entity, Client 3, were also clients of EverBlu.
30. The agreement between Creso and the consultant was not in writing and the consultant did not provide Mr Blumenthal with any formal reports documenting the services that he was providing to Creso.
31. During the Relevant Period, the consultant issued Creso with invoices totalling \$1,237,500, via one of the consultant's trading entities, which were paid by Creso.

### Engagement of Tyson Scholz by Creso

32. In March 2021, Mr Blumenthal caused Creso to engage Tyson Scholz to provide marketing and promotional services for Creso. Mr Scholz is a known market "influencer"<sup>1</sup> and was also an EverBlu client.
33. During the Relevant Period, Mr Scholz's companies, SV4T Investments Pty Ltd and EWOLF Enterprises Pty Ltd, issued Creso with invoices totalling \$2,013,000, which were paid by Creso.
34. As noted above, from May 2021 to November 2021, Mr Blumenthal caused Anglo Menda to loan Mr Scholz \$7,125,460 for the purpose of trading Creso shares. Mr Blumenthal charged Mr Scholz interest of \$712,546.

### DETAILS OF CONDUCT

35. As a result of ASIC's investigation into EverBlu and Mr Blumenthal pursuant to section 13 of the ASIC Act, ASIC is satisfied that:
  - 35.1. Mr Blumenthal accepted client instructions for a substantial proportion of the trading in Creso shares as set out in **Table 1**, in breach of his obligations under the Attestation and 'Chinese Wall' Register;
  - 35.2. EverBlu failed to properly monitor and control the use of the Suspense Account, so as to ensure that client orders facilitated through the Suspense Account complied with EverBlu's Dealing Manual;
  - 35.3. EverBlu and Mr Blumenthal failed to follow the procedure prescribed in the Dealing Manual to receive client orders, execute client orders and record client orders, and failed to maintain records of client orders and trades in accordance with the Document Retention Policy, particularly where orders were facilitated through the Suspense Account;
  - 35.4. Mr Blumenthal failed to maintain contemporaneous records of client instructions he received for orders and trades in Creso shares contrary to the Document Retention Policy;
  - 35.5. EverBlu failed, in accordance with the Conflicts of Interest Policy, to identify and manage actual or potential conflicts of interest that arose out of:
    - 35.5.1. Mr Blumenthal's concurrent roles with, and interest in, Creso and EverBlu, in circumstances where Mr Blumenthal facilitated trading in Creso shares by EverBlu's clients; and
    - 35.5.2. Mr Blumenthal's concurrent roles with Anglo Menda and EverBlu, in circumstances where Anglo Menda provided loans to EverBlu clients to facilitate their trading in Creso shares which took place through the clients' accounts held with EverBlu as set out in **Table 3** above;
  - 35.6. Mr Blumenthal failed to comply with the Conflicts of Interest Policy in respect of the actual or potential conflicts of interest that arose out of the matters set out in paragraphs 35.5.1 and 35.5.2 above, including by failing to first identify and then

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<sup>1</sup> A finfluencer is a person who uses social media platforms that are publicly available to influence the financial decision-making of others through promotions or recommendations.

to inform EverBlu's Head of Compliance of such conflicts of interest as soon as he became aware of them;

- 35.7. Mr Blumenthal facilitated the lending of funds by Anglo Menda to EverBlu's clients to fund trading in Creso shares in breach of the Personal Dealing Policy;
  - 35.8. EverBlu failed to establish and maintain compliance measures to ensure that, as far as reasonably practical, EverBlu and its representatives complied with the provisions of the Financial Services Law;
  - 35.9. EverBlu and Mr Blumenthal failed to comply with the Compliance Framework and ensure that EverBlu adhered to its compliance obligations, including under EverBlu's AFSL and also failed to take necessary and appropriate corrective action to remedy breaches, including recording breaches and incidents within EverBlu's Breaches and Incidents Register; and
  - 35.10. EverBlu failed to put in place adequate processes and controls to monitor compliance with the Dealing Manual.
36. By directing or causing bids of significant volume from a single client to be submitted through both the client account and the Suspense Account, as outlined in paragraphs 23 to 25 and **Table 2** above, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed, Mr Blumenthal's conduct was likely to have had the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for Creso shares.

#### **ASIC'S CONCERNS**

37. As a result of the matters referred to in paragraph 35 and 36 above, ASIC is concerned that:
- 37.1. EverBlu, during the Relevant Period, breached its general obligations as a Financial Services Licensee under s 912A of the Corporations Act to:
    - 37.1.1. do all things necessary to ensure that the Financial Services provided under the licence are provided efficiently and fairly pursuant to s 912A(1)(a) of the Corporations Act;
    - 37.1.2. have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of Financial Services as part of the Financial Services business of the licensee or the representative pursuant to s 912A(1)(aa) of the Corporations Act;
    - 37.1.3. comply with the conditions on its licence pursuant to s 912A(1)(b) of the Corporations Act;
    - 37.1.4. comply with the Financial Services Laws pursuant to s 912A(1)(c) of the Corporations Act;
    - 37.1.5. take reasonable steps to ensure that its representatives comply with the Financial Services Laws pursuant to s 912A(1)(ca) of the Corporations Act; and

- 37.1.6. ensure that its representatives, including Mr Blumenthal, were adequately trained, and were competent, to provide those Financial Services pursuant to s 912A(1)(f) of the Corporations Act;
- 37.2. Mr Blumenthal, during the Relevant Period, was involved in EverBlu's breaches of its general obligations set out in paragraph 37.1 above (s 920A(1)(g) of the Corporation Act);
- 37.3. Mr Blumenthal is not adequately trained to:
  - 37.3.1. provide one or more Financial Services; or
  - 37.3.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.3.3. carry on a Financial Services business, (s 920A(1)(da) of the Corporations Act);
- 37.4. Mr Blumenthal is not a fit and proper person to:
  - 37.4.1. provide one or more Financial Services; or
  - 37.4.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.4.3. carry on a Financial Services business, (ss 920A(1)(d) and 913BB(2)(k) of the Corporations Act); and
- 37.5. Mr Blumenthal has contravened a Financial Services Law, being s 1041B of the Corporations Act (s 920A(1)(e) of the Corporations Act).

#### **ADMISSIONS OF WRONGDOING**

- 38. EverBlu admits the conduct identified in paragraph 35 above and admits each and every contravention identified in paragraph 37.1 above.
- 39. Mr Blumenthal admits the conduct identified in paragraphs 35 and 36 above and admits each and every contravention identified in paragraphs 37.2 to 37.5 above.

#### **UNDERTAKINGS**

- 40. Under section 93AA of the ASIC Act, EverBlu and Mr Blumenthal have offered, and ASIC has agreed to accept as an alternative to ASIC taking administrative action, the undertakings in paragraphs 41 to 55 below.

##### **Undertakings given by EverBlu**

###### *Cease to provide Financial Services*

- 41. EverBlu undertakes that, immediately on the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will cease offering any Financial Services to any new clients and will only provide Financial Services to existing clients that are necessary for the orderly cessation of EverBlu's Financial Services business, which are to be completed by no later than eight weeks after the Acceptance Date.

###### *Cancellation of EverBlu's AFSL*

- 42. EverBlu undertakes that, within eight weeks of the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will lodge an application with

ASIC requesting the immediate cancellation of EverBlu's AFSL, with payment of the prescribed fee.

43. EverBlu undertakes that it will comply with the steps (where applicable) listed on ASIC's website on the webpage "Cancelling your AFS licence".

*AFCA membership*

44. EverBlu undertakes that it will maintain membership with AFCA for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Professional indemnity insurance*

45. EverBlu undertakes that it will maintain professional indemnity insurance for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Costs of compliance*

46. EverBlu undertakes that it will pay all costs associated with its compliance with this enforceable undertaking.

*Provision of documents*

47. EverBlu undertakes that it will provide all documents and information requested by ASIC from time to time for the purpose of assessing EverBlu's compliance with the terms of this enforceable undertaking within 10 business days after receiving a request from ASIC.

**Undertakings given by Mr Blumenthal**

*Cease to provide Financial Services*

48. Mr Blumenthal undertakes that, from the Acceptance Date, he will not:

- 48.1. provide Financial Services;
- 48.2. carry on a Financial Services business; or
- 48.3. perform any function involved in the carrying on of a Financial Services business including as an officer, manager, employee, contractor or a Responsible Manager of an entity carrying on a Financial Services business,

for a period of five years.

49. The undertaking given by Mr Blumenthal in paragraph 48 of this enforceable undertaking does not preclude Mr Blumenthal facilitating (in his capacity as the sole director of EverBlu)—for a period of eight weeks from the Acceptance Date (or within such longer period that may be agreed by ASIC and Mr Blumenthal)—EverBlu's compliance with:

- 49.1. paragraphs 41 to 45 of this enforceable undertaking; and
- 49.2. EverBlu's obligations under the Business Purchase Agreement,

on the basis that Mr Blumenthal resigns as a director of EverBlu as and from the date EverBlu's AFSL is cancelled (and appoints an alternate director to EverBlu as and from that date for the purposes of facilitating EverBlu's ongoing compliance with paragraphs 44 and 45 of this enforceable undertaking).

50. For the avoidance of doubt, paragraph 49 of this enforceable undertaking does not permit Mr Blumenthal to facilitate (in his capacity as the sole director of EverBlu)—as and from the Acceptance Date—EverBlu offering and/or providing Financial Services to any new clients and has been offered to ASIC on the basis that (pursuant to the terms of the Business Purchase Agreement):

- 50.1. EverBlu's contractors providing Financial Services to EverBlu's clients prior to the Acceptance Date will have had (as at the Acceptance Date) their contracts novated to

the Buyer, such that EverBlu will have no employees or contractors providing Financial Services to clients as and from the Acceptance Date; and

- 50.2. As and from the Acceptance Date, EverBlu will have no active clearing and settlement facility accounts available to it, rendering it incapable of providing Financial Services to clients.

#### *Training*

51. In the event that Mr Blumenthal intends to re-enter the Financial Services industry after the five year period referred to in paragraph 48 of this enforceable undertaking has elapsed, Mr Blumenthal undertakes to (prior to doing so) complete further professional training in areas deemed appropriate by ASIC.
52. In the event that Mr Blumenthal has not successfully completed the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to not provide Financial Services until such courses are successfully completed.
53. As soon as practicable following the completion of the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to provide ASIC with documents substantiating successful completion of that training.

#### *Costs of compliance*

54. Mr Blumenthal undertakes that he will pay all costs associated with his compliance with this enforceable undertaking.

#### *Provision of documents*

55. Mr Blumenthal undertakes 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 10 business days after receiving a request from ASIC.

### **ACKNOWLEDGEMENTS**

56. EverBlu and Mr Blumenthal acknowledge that ASIC:
- 56.1. may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- 56.2. may from time to time publicly refer to this enforceable undertaking;
- 56.3. will from time to time publicly report about compliance with this enforceable undertaking; and
- 56.4. will make this enforceable undertaking available for public inspection.
57. EverBlu and Mr Blumenthal acknowledge that:
- 57.1. 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 to seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- 57.2. 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;
- 57.3. this enforceable undertaking has no operative force until accepted by ASIC; and
- 57.4. the date of the enforceable undertaking is the date on which it is accepted by



ASIC.

Executed by EverBlu Capital Pty Ltd )  
ACN 612 793 683 in accordance with )  
section 127 of the Corporations Act 2001  
(Cth)

  
.....  
Sole Director / Company Secretary

Adam Blumenthal  
.....  
Name of Sole Director / Company  
Secretary (print)

14/12/23  
.....  
Date

Executed by Adam Blumenthal (in his )  
individual capacity) in the presence of: )

  
.....  
14/12/23  
.....  
Date

  
.....  
Witness

Elan Sasson  
.....  
Name of Witness (print)

14 December 2023.  
.....  
Date

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

  
.....  
Brendan Caridi

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC 14 December 2023  
.....



## ENFORCEABLE UNDERTAKING

*Australian Securities Investments Commission Act 2001 (Cth)*

Section 93AA

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

**EverBlu Capital Pty Ltd**

**ACN 612 793 683**

**Australian Financial Services Licence No. 499601**

*Sydney, New South Wales*

and

**Adam Blumenthal**

*Sydney, New South Wales*

## DEFINITIONS

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

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

**AFCA** means the Australian Financial Complaints Authority.

**AFSL** means Australian financial services licence.

**Authorised Representative** has the meaning given by section 916A of the Corporations Act.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth). **Business Purchase Agreement** means the Business Purchase Agreement entered into between EverBlu, Mr Blumenthal and the Buyer dated 3 December 2023.

**Buyer** means the entity defined as the Buyer in the Business Purchase Agreement.

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

**EverBlu** means EverBlu Capital Pty Ltd (ACN 612 793 683).

**EverBlu's AFSL** means AFSL number 499601 held by EverBlu.

**Financial Service** has the meaning given by Division 4 of Part 7.1 of the Corporations Act.

**Financial Services Law** has the meaning given by section 761A of the Corporations Act.

**Financial Services Licensee** has the meaning given by section 761A of the Corporations Act.

**Mr Blumenthal** means Adam Blumenthal.

**Relevant Period** means 18 March 2021 to 15 November 2021.

**Responsible Manager** means an individual nominated by an Australian Financial Services Licensee in accordance with ASIC RG105.

**Suspense Account** means the EverBlu account designated 'SUSP\_EVB'.

## ASIC'S ROLE

2. 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.

## BACKGROUND

3. EverBlu was incorporated on 3 June 2016. Mr Blumenthal is the part owner and controlling mind of EverBlu.
4. EverBlu holds AFSL number 499601 and has been operating under this AFSL since 2 September 2017. EverBlu provides research, corporate advisory and stockbroking services.
5. Mr Blumenthal is the chairman, director, Authorised Representative and Responsible Manager of EverBlu and during the Relevant Period oversaw and was involved in the corporate advisory and stockbroking services provided by EverBlu.
6. Mr Blumenthal is the sole director and shareholder of Anglo Menda Pty Ltd (**Anglo Menda**), which is an Authorised Representative of EverBlu.
7. During the Relevant Period, Mr Blumenthal was a non-executive director, substantial shareholder and the chairman of Creso Pharma Limited ACN 609 406 911 (**Creso**). As at 28 February 2021, Mr Blumenthal's total shareholding in Creso was valued at approximately \$30 million. Creso was listed on the Australian Stock Exchange (**ASX**) from 20 October 2016 to 12 June 2023 under the code 'CPH'. EverBlu led Creso's Initial Public Offering.
8. From at least July 2017, EverBlu provided corporate advisory services to Creso.

## EverBlu's AFSL

9. EverBlu's AFSL authorises it to carry on a Financial Services business to:
  - 9.1. provide general financial product advice for basic deposit products and securities;
  - 9.2. deal in a financial product by:
    - 9.2.1. issuing, applying for, acquiring, varying or disposing of securities;
    - 9.2.2. applying for, acquiring, varying or disposing of basic deposit products and securities;
    - 9.2.3. underwriting an issue of securities;to retail and wholesale clients.
10. The conditions of EverBlu's AFSL include that EverBlu must:
  - 10.1. establish and maintain compliance measures that ensure, as far as is reasonably practicable, that EverBlu complies with the provisions of the Financial Services Law; and
  - 10.2. (for any natural person who provides financial product advice to retail clients on behalf of EverBlu) among other things, implement procedures for continuing training.

## Relevant EverBlu policies

11. During the Relevant Period, EverBlu maintained a number of policies that governed how EverBlu's representatives were to conduct themselves while working for EverBlu, including:
  - 11.1. *Conflicts of Interest Policy* (version 4), dated May 2020 (**Conflicts of Interest**

**Policy**), which outlined EverBlu's policies and procedures for managing conflicts of interest and provided a framework to identify, evaluate, monitor, manage and disclose conflicts of interests and required all EverBlu Representatives (as defined in the Conflicts of Interest Policy) to, among other things:

- 11.1.1. direct financial product advice at the best interests of the recipient, which should be placed ahead of the interests of the Representatives, with the advice to be based solely on the merits of the security being evaluated and not based on any other relationship that EverBlu or its Representatives may have with that security;
  - 11.1.2. be aware of and identify conflicts of interest in relation to a Representative's employment with EverBlu;
  - 11.1.3. disclose any pecuniary interest which relates to the provision of a financial service by EverBlu as soon as practicable after the earlier of the Representative becoming aware of the financial service or the pecuniary interest;
  - 11.1.4. immediately inform the Head of Compliance or Conflict Manager if they have or become aware of a conflict of interest in relation to their employment with EverBlu; and
  - 11.1.5. establish, prior to providing any financial service, that no 'Strong Conflict' exists (as defined in the Conflicts of Interest Policy).
- 11.2. *Personal Dealing Policy* (version 4), dated May 2020 (**Personal Dealing Policy**), which required the directors, officers, representatives, Authorised Representatives and employees of EverBlu to notify EverBlu of certain intended transactions involving themselves, or associated parties, prior to the transaction and receive authorisation before the transaction was entered into, and prohibited EverBlu from providing credit to its employees or their associates;
- 11.3. *Dealing Manual* (version 4), dated March 2020 (**Dealing Manual**), which outlined the prescribed procedures for receiving, recording and executing client orders and specified the information that must be collected in relation to client orders. The Dealing Manual included a procedure that established "Chinese Walls" to restrict communication of, and access to, information that was not publicly available to EverBlu's representatives who were involved in EverBlu's dealing services; and
- 11.4. *Document Retention Policy* (version 4), dated May 2020 (**Document Retention Policy**), which outlined the obligations that applied to all representatives of EverBlu in relation to the management, retention, retrieval and destruction of documents and required copies of all documents relating to customer records and transactions be retained for the life of the client relationship and an additional seven years from the date EverBlu ceases to provide Financial Services to the customer, including files notes and recordings of meetings and telephone calls.

#### **Use of the Suspense Account**

12. Suspense accounts are typically used for the temporary entry of orders and/or transactions in circumstances where there is incomplete or missing information to properly assign the order or transaction to a client's account. During the Relevant Period, the Suspense Account was used to trade Creso securities and other Division 3 Financial Products. Mr Blumenthal instructed EverBlu's designated trading representative (**DTR**) to use the Suspense Account to enter orders (in particular, buy

orders or 'bids') into the market throughout the day and to purchase Creso shares, without always identifying to the DTR the particular EverBlu client whose trade instructions were being provided.

13. During the Relevant Period, the Suspense Account came to be used more frequently for trades where Mr Blumenthal instructed the DTR to place the orders and was predominately used for trading in Creso shares.

#### **Restrictions on Mr Blumenthal dealing in Creso shares**

14. On 12 August 2020, Mr Blumenthal, in his capacity as EverBlu's delegate, along with EverBlu's Responsible Manager - Head of Wealth Management and EverBlu's Head of Compliance, signed the EverBlu Capital Delegation and Attestation Business Continuity Plan in respect of Mr Blumenthal (**Attestation**) which provided that Mr Blumenthal must not provide general advice or accept a client instruction:
  - 14.1. in relation to a company of which he is a director; and
  - 14.2. for a company under 'Restriction'.
15. During the Relevant Period, Mr Blumenthal was a director of Creso, which was also a company under 'Restriction'.
16. On 23 March 2021, Mr Blumenthal was added to the 'Chinese Wall' Register in respect of Creso by EverBlu's Head of Compliance. The addition of Mr Blumenthal to that register generated an automated 'Chinese Walls Register Entry Acknowledgement', which noted that Mr Blumenthal electronically acknowledged he had read and understood these requirements. The addition of Mr Blumenthal to Creso's 'Chinese Wall' Register meant that he was required, under the Dealing Manual, not to (in respect of non-public information):
  - 16.1. act on that information personally;
  - 16.2. communicate that information to anyone other than EverBlu Capital Compliance;
  - 16.3. participate in any Research committees (or similar bodies); or
  - 16.4. engage in any activities involving providing advice in relation to securities (e.g. publishing research reports), or in relation to any securities whose market price is likely to be affected by the disclosure of that information.

#### **Mr Blumenthal's dealing in Creso shares**

17. Despite being subject to the limitations and restrictions detailed at paragraphs 14 to 16 above, Mr Blumenthal used his position at EverBlu during the Relevant Period to:
  - 17.1. personally enter, amend and cancel client orders for Creso shares directly through client accounts;
  - 17.2. direct the DTR to enter, amend and cancel client orders for Creso shares on client accounts;
  - 17.3. direct the DTR to:
    - 17.3.1. enter, amend and cancel client orders for Creso shares through the Suspense Account; and
    - 17.3.2. subsequently book resulting trades from the Suspense Account to client accounts, each of which were accounts held in the name of individuals known to Mr Blumenthal.
18. During the Relevant Period, EverBlu accounted for approximately 27% of all market volume trading in Creso shares. Approximately 75% of that trading was done via the Suspense Account.

19. **Table 1** below shows that:

- 19.1. Creso shares bought or sold through the Suspense Account were allocated to one or more of six client accounts, which together purchased 378 million shares and sold 271 million shares; and
- 19.2. only 45 million of those shares were purchased directly through the respective clients' accounts and only 121 million of those shares were sold directly through the respective clients' accounts.

**Table 1 – Trading in Creso shares**

Client Account	Total volume bought/sold via Suspense A/c, then allocated to Client Account			Total volume bought/sold directly via Client Account	
	Buy Volume	Sell Volume	% of Allocation from Suspense	Buy Volume	Sell Volume
Tyson Scholz	129,230,266	85,062,464	33%	26,226,438	34,250,000
Client 1	96,375,000	89,747,954	29%	4,000,000	9,627,046
Client 2	68,293,581	31,798,084	15%	5,000,000	39,517,287
Client 3	55,726,658	35,638,674	14%	10,464,224	26,560,133
Client 4	20,400,000	21,424,052	6%	Nil	11,756,346
Client 5	8,138,598	8,138,598	3%	Nil	Nil
<b>Total</b>	<b>378,154,103</b>	<b>271,809,826</b>	<b>100%</b>	<b>45,460,662</b>	<b>121,710,812</b>

20. A substantial portion of the trades in **Table 1** occurred as a consequence of Mr Blumenthal instructing the DTR to place the orders and took place during the period Mr Blumenthal was on the 'Chinese Wall' Register.
21. When Mr Blumenthal received client orders to trade in Creso shares, he did not follow EverBlu's prescribed procedures for receiving, recording and executing client orders, and he did not retain sufficient records of client orders and trades as required by the Dealing Manual and Document Retention Policy.
22. Specifically, with respect to EverBlu's prescribed procedures for recording client orders and maintaining records as set out in the Document Retention Policy, Mr Blumenthal did not retain notebooks that contemporaneously recorded the client instructions that he received during 2021.
23. The platform used by Market Operators (e.g. ASX) for the trading of listed securities displays buy and sell orders on the basis that the identity of the broker and/or underlying buyers and sellers is anonymised. Any person viewing the market for Creso shares can only see the number of bidders (and sellers) and the respective volumes and prices.
24. On the following occasions, Mr Blumenthal disaggregated single client orders to purchase Creso shares by either: (i) placing himself; or (ii) directing the DTR to place, two bids through the Suspense Account and/or client's account, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed so as to create, or cause the creation of, a false or misleading appearance with respect to the market for Creso shares. This conduct was likely to have had the effect of creating, or causing the creation of, a misleading appearance with respect to the number of market participants actively trading Creso shares.

**Table 2 – Disaggregated bids in Creso and bids in Creso shares through multiple accounts**

Date	Time	Account used to enter Bid	Price	Volume	Aggregate size	Relevant Client
18/03/2021	10:40:57	Suspense	\$0.2000	600,000	1,000,000	Client 4
18/03/2021	10:41:00	Suspense	\$0.2000	400,000		
19/03/2021	15:31:40	Suspense	\$0.2200	600,000	1,000,000	Client 3
19/03/2021	15:31:49	Suspense	\$0.2200	400,000		
09/04/2021	10:02:12	Suspense	\$0.2050	750,000	1,070,000	Client 3
09/04/2021	10:03:18	Suspense	\$0.2050	320,000		
18/05/2021	10:16:38	Suspense	\$0.1600	500,000	800,000	Client 4
18/05/2021	10:16:56	Suspense	\$0.1600	300,000		
17/06/2021	10:55:37	Suspense	\$0.1800	600,000	1,100,000	Client 1
17/06/2021	10:56:00	Suspense	\$0.1800	500,000		
10/08/2021	10:03:40	Tyson Scholz	\$0.1250	650,000	1,250,000	Scholz
10/08/2021	10:08:39	Suspense	\$0.1250	600,000		
10/08/2021	10:56:15	Tyson Scholz	\$0.1250	770,000	1,170,000	
10/08/2021	10:56:42	Tyson Scholz	\$0.1250	400,000		
08/10/2021	10:18:13	Tyson Scholz	\$0.1150	500,000	750,000	Scholz
08/10/2021	10:18:24	Tyson Scholz	\$0.1150	250,000		
25/10/2021	10:10:10	Suspense	\$0.1150	500,000	800,000	Scholz
25/10/2021	10:11:27	Suspense	\$0.1150	300,000		
25/10/2021	11:01:31	Suspense	\$0.1150	500,000	1,250,000	
25/10/2021	11:02:26	Tyson Scholz	\$0.1150	750,000		
01/11/2021	10:02:45	Suspense	\$0.1200	500,000	750,000	Scholz
01/11/2021	10:02:52	Suspense	\$0.1200	250,000		
01/11/2021	10:45:23	Suspense	\$0.1300	300,000	500,000	
01/11/2021	10:47:52	Suspense	\$0.1300	200,000		
01/11/2021	16:09:54	Suspense	\$0.1300	250,000	500,000	
01/11/2021	16:10:10	Suspense	\$0.1300	250,000		
09/11/2021	10:03:59	Suspense	\$0.1500	500,000	750,000	Client 2
09/11/2021	10:04:52	Suspense	\$0.1500	250,000		

25. At the time of receiving client orders in relation to the trades in **Table 2**, Mr Blumenthal had sought and obtained from the EverBlu clients their authorisation to execute the orders in a manner that he considered appropriate.

**Loans to EverBlu clients for trading in Creso shares**

26. During the Relevant Period, Anglo Menda was an Authorised Representative of EverBlu. Mr Blumenthal was the sole director and shareholder of Anglo Menda.
27. During the Relevant Period, Anglo Menda loaned funds to certain EverBlu clients to fund trading by those clients in Creso shares, including:



**Table 3 – Anglo Menda loans to EverBlu clients**

Client	Amount loaned
Client 5	\$975,000.00
Tyson Scholz	\$7,125,460.04
Client 1	\$5,226,850.00

28. Mr Blumenthal facilitated these loans from Anglo Menda to the clients set out in **Table 3** above. The loans to Client 5 (also a Corporate Authorised Representative of EverBlu) and Client 1 (a close friend of Mr Blumenthal) were not on commercial terms. While the loan to Mr Scholz included the payment of interest, it was not documented until 12 January 2022 and the loan was unsecured. Under the Personal Dealing Policy, Mr Blumenthal was required to inform and obtain approval from EverBlu's Head of Compliance prior to Anglo Menda providing each of the loans set out in **Table 3**. He failed to do so.

**Engagement of consultant by Creso**

29. In or around March 2021, Mr Blumenthal caused Creso to engage a consultant to provide Creso with consultancy, promotional and marketing services, including the provision of market data, market research and market intelligence (which was to be provided by the consultant to Mr Blumenthal), as well as promoting Creso to potential investors via the consultant's professional and social media network. The consultant was subsequently engaged by Creso. The consultant and his main trading entity, Client 3, were also clients of EverBlu.
30. The agreement between Creso and the consultant was not in writing and the consultant did not provide Mr Blumenthal with any formal reports documenting the services that he was providing to Creso.
31. During the Relevant Period, the consultant issued Creso with invoices totalling \$1,237,500, via one of the consultant's trading entities, which were paid by Creso.

### Engagement of Tyson Scholz by Creso

32. In March 2021, Mr Blumenthal caused Creso to engage Tyson Scholz to provide marketing and promotional services for Creso. Mr Scholz is a known market "influencer"<sup>1</sup> and was also an EverBlu client.
33. During the Relevant Period, Mr Scholz's companies, SV4T Investments Pty Ltd and EWOLF Enterprises Pty Ltd, issued Creso with invoices totalling \$2,013,000, which were paid by Creso.
34. As noted above, from May 2021 to November 2021, Mr Blumenthal caused Anglo Menda to loan Mr Scholz \$7,125,460 for the purpose of trading Creso shares. Mr Blumenthal charged Mr Scholz interest of \$712,546.

### DETAILS OF CONDUCT

35. As a result of ASIC's investigation into EverBlu and Mr Blumenthal pursuant to section 13 of the ASIC Act, ASIC is satisfied that:
  - 35.1. Mr Blumenthal accepted client instructions for a substantial proportion of the trading in Creso shares as set out in **Table 1**, in breach of his obligations under the Attestation and 'Chinese Wall' Register;
  - 35.2. EverBlu failed to properly monitor and control the use of the Suspense Account, so as to ensure that client orders facilitated through the Suspense Account complied with EverBlu's Dealing Manual;
  - 35.3. EverBlu and Mr Blumenthal failed to follow the procedure prescribed in the Dealing Manual to receive client orders, execute client orders and record client orders, and failed to maintain records of client orders and trades in accordance with the Document Retention Policy, particularly where orders were facilitated through the Suspense Account;
  - 35.4. Mr Blumenthal failed to maintain contemporaneous records of client instructions he received for orders and trades in Creso shares contrary to the Document Retention Policy;
  - 35.5. EverBlu failed, in accordance with the Conflicts of Interest Policy, to identify and manage actual or potential conflicts of interest that arose out of:
    - 35.5.1. Mr Blumenthal's concurrent roles with, and interest in, Creso and EverBlu, in circumstances where Mr Blumenthal facilitated trading in Creso shares by EverBlu's clients; and
    - 35.5.2. Mr Blumenthal's concurrent roles with Anglo Menda and EverBlu, in circumstances where Anglo Menda provided loans to EverBlu clients to facilitate their trading in Creso shares which took place through the clients' accounts held with EverBlu as set out in **Table 3** above;
  - 35.6. Mr Blumenthal failed to comply with the Conflicts of Interest Policy in respect of the actual or potential conflicts of interest that arose out of the matters set out in paragraphs 35.5.1 and 35.5.2 above, including by failing to first identify and then

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<sup>1</sup> A finfluencer is a person who uses social media platforms that are publicly available to influence the financial decision-making of others through promotions or recommendations.

to inform EverBlu's Head of Compliance of such conflicts of interest as soon as he became aware of them;

- 35.7. Mr Blumenthal facilitated the lending of funds by Anglo Menda to EverBlu's clients to fund trading in Creso shares in breach of the Personal Dealing Policy;
  - 35.8. EverBlu failed to establish and maintain compliance measures to ensure that, as far as reasonably practical, EverBlu and its representatives complied with the provisions of the Financial Services Law;
  - 35.9. EverBlu and Mr Blumenthal failed to comply with the Compliance Framework and ensure that EverBlu adhered to its compliance obligations, including under EverBlu's AFSL and also failed to take necessary and appropriate corrective action to remedy breaches, including recording breaches and incidents within EverBlu's Breaches and Incidents Register; and
  - 35.10. EverBlu failed to put in place adequate processes and controls to monitor compliance with the Dealing Manual.
36. By directing or causing bids of significant volume from a single client to be submitted through both the client account and the Suspense Account, as outlined in paragraphs 23 to 25 and **Table 2** above, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed, Mr Blumenthal's conduct was likely to have had the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for Creso shares.

#### **ASIC'S CONCERNS**

37. As a result of the matters referred to in paragraph 35 and 36 above, ASIC is concerned that:
- 37.1. EverBlu, during the Relevant Period, breached its general obligations as a Financial Services Licensee under s 912A of the Corporations Act to:
    - 37.1.1. do all things necessary to ensure that the Financial Services provided under the licence are provided efficiently and fairly pursuant to s 912A(1)(a) of the Corporations Act;
    - 37.1.2. have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of Financial Services as part of the Financial Services business of the licensee or the representative pursuant to s 912A(1)(aa) of the Corporations Act;
    - 37.1.3. comply with the conditions on its licence pursuant to s 912A(1)(b) of the Corporations Act;
    - 37.1.4. comply with the Financial Services Laws pursuant to s 912A(1)(c) of the Corporations Act;
    - 37.1.5. take reasonable steps to ensure that its representatives comply with the Financial Services Laws pursuant to s 912A(1)(ca) of the Corporations Act; and

- 37.1.6. ensure that its representatives, including Mr Blumenthal, were adequately trained, and were competent, to provide those Financial Services pursuant to s 912A(1)(f) of the Corporations Act;
- 37.2. Mr Blumenthal, during the Relevant Period, was involved in EverBlu's breaches of its general obligations set out in paragraph 37.1 above (s 920A(1)(g) of the Corporation Act);
- 37.3. Mr Blumenthal is not adequately trained to:
- 37.3.1. provide one or more Financial Services; or
  - 37.3.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.3.3. carry on a Financial Services business, (s 920A(1)(da) of the Corporations Act);
- 37.4. Mr Blumenthal is not a fit and proper person to:
- 37.4.1. provide one or more Financial Services; or
  - 37.4.2. perform one or more functions as an officer of an entity that carries on a Financial Services business; or
  - 37.4.3. carry on a Financial Services business, (ss 920A(1)(d) and 913BB(2)(k) of the Corporations Act); and
- 37.5. Mr Blumenthal has contravened a Financial Services Law, being s 1041B of the Corporations Act (s 920A(1)(e) of the Corporations Act).

#### **ADMISSIONS OF WRONGDOING**

38. EverBlu admits the conduct identified in paragraph 35 above and admits each and every contravention identified in paragraph 37.1 above.
39. Mr Blumenthal admits the conduct identified in paragraphs 35 and 36 above and admits each and every contravention identified in paragraphs 37.2 to 37.5 above.

#### **UNDERTAKINGS**

40. Under section 93AA of the ASIC Act, EverBlu and Mr Blumenthal have offered, and ASIC has agreed to accept as an alternative to ASIC taking administrative action, the undertakings in paragraphs 41 to 55 below.

##### **Undertakings given by EverBlu**

###### *Cease to provide Financial Services*

41. EverBlu undertakes that, immediately on the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will cease offering any Financial Services to any new clients and will only provide Financial Services to existing clients that are necessary for the orderly cessation of EverBlu's Financial Services business, which are to be completed by no later than eight weeks after the Acceptance Date.

###### *Cancellation of EverBlu's AFSL*

42. EverBlu undertakes that, within eight weeks of the Acceptance Date or within such longer period that may be agreed by ASIC and EverBlu, it will lodge an application with

ASIC requesting the immediate cancellation of EverBlu's AFSL, with payment of the prescribed fee.

43. EverBlu undertakes that it will comply with the steps (where applicable) listed on ASIC's website on the webpage "Cancelling your AFS licence".

*AFCA membership*

44. EverBlu undertakes that it will maintain membership with AFCA for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Professional indemnity insurance*

45. EverBlu undertakes that it will maintain professional indemnity insurance for a 12-month period, starting from the date EverBlu's AFSL is cancelled.

*Costs of compliance*

46. EverBlu undertakes that it will pay all costs associated with its compliance with this enforceable undertaking.

*Provision of documents*

47. EverBlu undertakes that it will provide all documents and information requested by ASIC from time to time for the purpose of assessing EverBlu's compliance with the terms of this enforceable undertaking within 10 business days after receiving a request from ASIC.

**Undertakings given by Mr Blumenthal**

*Cease to provide Financial Services*

48. Mr Blumenthal undertakes that, from the Acceptance Date, he will not:

- 48.1. provide Financial Services;
- 48.2. carry on a Financial Services business; or
- 48.3. perform any function involved in the carrying on of a Financial Services business including as an officer, manager, employee, contractor or a Responsible Manager of an entity carrying on a Financial Services business,

for a period of five years.

49. The undertaking given by Mr Blumenthal in paragraph 48 of this enforceable undertaking does not preclude Mr Blumenthal facilitating (in his capacity as the sole director of EverBlu)—for a period of eight weeks from the Acceptance Date (or within such longer period that may be agreed by ASIC and Mr Blumenthal)—EverBlu's compliance with:

- 49.1. paragraphs 41 to 45 of this enforceable undertaking; and

- 49.2. EverBlu's obligations under the Business Purchase Agreement,

on the basis that Mr Blumenthal resigns as a director of EverBlu as and from the date EverBlu's AFSL is cancelled (and appoints an alternate director to EverBlu as and from that date for the purposes of facilitating EverBlu's ongoing compliance with paragraphs 44 and 45 of this enforceable undertaking).

50. For the avoidance of doubt, paragraph 49 of this enforceable undertaking does not permit Mr Blumenthal to facilitate (in his capacity as the sole director of EverBlu)—as and from the Acceptance Date—EverBlu offering and/or providing Financial Services to any new clients and has been offered to ASIC on the basis that (pursuant to the terms of the Business Purchase Agreement):

- 50.1. EverBlu's contractors providing Financial Services to EverBlu's clients prior to the Acceptance Date will have had (as at the Acceptance Date) their contracts novated to

the Buyer, such that EverBlu will have no employees or contractors providing Financial Services to clients as and from the Acceptance Date; and

- 50.2. As and from the Acceptance Date, EverBlu will have no active clearing and settlement facility accounts available to it, rendering it incapable of providing Financial Services to clients.

#### *Training*

51. In the event that Mr Blumenthal intends to re-enter the Financial Services industry after the five year period referred to in paragraph 48 of this enforceable undertaking has elapsed, Mr Blumenthal undertakes to (prior to doing so) complete further professional training in areas deemed appropriate by ASIC.
52. In the event that Mr Blumenthal has not successfully completed the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to not provide Financial Services until such courses are successfully completed.
53. As soon as practicable following the completion of the further professional training referred to in paragraph 51 of this enforceable undertaking, Mr Blumenthal undertakes to provide ASIC with documents substantiating successful completion of that training.

#### *Costs of compliance*

54. Mr Blumenthal undertakes that he will pay all costs associated with his compliance with this enforceable undertaking.

#### *Provision of documents*

55. Mr Blumenthal undertakes 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 10 business days after receiving a request from ASIC.

### **ACKNOWLEDGEMENTS**

56. EverBlu and Mr Blumenthal acknowledge that ASIC:
- 56.1. may issue a media release on execution of this enforceable undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- 56.2. may from time to time publicly refer to this enforceable undertaking;
- 56.3. will from time to time publicly report about compliance with this enforceable undertaking; and
- 56.4. will make this enforceable undertaking available for public inspection.
57. EverBlu and Mr Blumenthal acknowledge that:
- 57.1. 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 to seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
- 57.2. 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;
- 57.3. this enforceable undertaking has no operative force until accepted by ASIC; and
- 57.4. the date of the enforceable undertaking is the date on which it is accepted by

ASIC.

Executed by EverBlu Capital Pty Ltd )  
ACN 612 793 683 in accordance with )  
section 127 of the Corporations Act 2001  
(Cth)

  
Sole Director / Company Secretary

Adam Blumenthal  
Name of Sole Director / Company  
Secretary (print)

14/12/23  
Date

Executed by Adam Blumenthal (in his )  
individual capacity) in the presence of: )

  
14/12/23  
Date

  
Witness

Elan Sasson  
Name of Witness (print)

14 December 2023.  
Date

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

  
Brendan Caridi

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC 14 December 2023

