

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/05/2021 10:43:43 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	QUD147/2021
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v PE CAPITAL FUNDS MANAGEMENT LIMITED & ANOR
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 13/05/2021 8:39:53 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2 Originating process

(rules 2.2 and 15A.3)

Federal Court of Australia
District Registry: Queensland
Division: General

No. of 2021

IN THE MATTER OF PE CAPITAL FUNDS MANAGEMENT LIMITED (ACN 605 157 248)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

And

PE CAPITAL FUNDS MANAGEMENT LIMITED (ACN 605 157 248)

First Defendant

And

ENDEAVOUR SECURITIES (AUSTRALIA) LTD (ACN 079 988 819) (IN LIQUIDATION)

Second Defendant

A. DETAILS OF APPLICATION

This application is made under sections 461(1)(k), 462, 464, 471B, 601EE(2), 601ND(1), 601NF(1) and 1101B of the *Corporations Act 2001* (Cth) (the **Act**), section 21 of the *Federal Court of Australia Act 1976* (Cth) (the **FCA**) and the implied/inherent jurisdiction of the Court.

For the purpose of this application:

“*Registered Schemes*” means the managed investment schemes known as:

- (a) the PE Capital Master Fund (ARSN 117 940 799) (formerly known as the Skylight Capital Build-Up Fund);
- (b) the three so-called “sub-funds” of the PE Capital Master Fund, namely the PE Capital Commercial Property Income Fund, the PE Capital Asia Diversified Income Fund and the PE Capital Asia Wholesale Opportunities Fund;
- (c) the PE Capital Monthly Yield Fund (ARSN 103 557 900) (formerly known as the Film Opportunities Fund).

“*Unregistered Schemes*” means all activities and arrangements whereby the first defendant and others associated with the first defendant, elicited or obtained funds from investors for the purpose of investing, reinvesting, dealing with and/or otherwise using such funds for the purpose of providing a return to investors on the funds invested, known as:

- (a) the PE Capital Asia Wholesale Opportunities Fund;

Filed on behalf of the Australian Securities and Investments Commission, Plaintiff

Prepared by Hugh Copley

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BRISBANE QLD 4000



- (b) the PE Capital Asia Diversified Income Fund;
- (c) the PE Capital Property Development Opportunities Fund (P Fund) (also referred to as the “P1 Fund”);
- (d) the PE Capital Property Development Opportunities Fund (P3 Fund).

On the facts stated in the supporting affidavits of Anne Elizabeth Gubbins affirmed 11 May 2021 and Simon Ross Phinn affirmed 11 May 2021 and such further affidavits as may be read, the plaintiff, the Australian Securities and Investments Commission, applies for the following relief.

Leave to commence proceeding against Endeavour Securities (Australia) Ltd

- 1. An order pursuant to section 471B of the Act that the plaintiff be granted leave *nunc pro tunc* to commence, and proceed with, this proceeding against the second defendant.

Winding-Up – Registered Schemes

- 2. An order pursuant to section 601ND(1)(a) of the Act that the Registered Schemes be wound up.
- 3. An order pursuant to section 601NF(1) of the Act that a registered liquidator or liquidators be responsible for the winding-up of the Registered Schemes.

Winding Up – Unregistered Schemes

- 4. An order pursuant to section 601EE(2) of the Act that the Unregistered Schemes be wound up.
- 5. An order pursuant to section 601EE(2) of the Act that a registered liquidator or liquidators be responsible for the winding-up of the Unregistered Schemes.

Winding-Up – PE Capital Funds Management Ltd

- 6. An order pursuant to section 461(1)(k) of the Act that the first defendant be wound up on the ground that it is just and equitable to do so.
- 7. An order that a registered liquidator or liquidators be appointed to the first defendant.

Declarations

- 8. Declarations pursuant to section 1101B of the Act and, or alternatively, section 21 of the FCA and, or further alternatively, the implied/inherent jurisdiction of the Court, that the first defendant has acted in contravention of:
 - (a) section 601ED(5) of the Act;
 - (b) section 911A of the Act;
 - (c) section 911C of the Act; and
 - (d) section 1041H of the Act.
- 9. Further, or in the alternative, a declaration pursuant to section 21 of the FCA and, or alternatively, the implied/inherent jurisdiction of the Court, that the first defendant has acted in contravention of section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth).

General orders

- 10. The first defendant pay the plaintiff's costs of this application.



11. The parties have liberty to apply on five business days' notice in writing.
12. Such further or other order or relief as the Court considers appropriate.

Date:

A handwritten signature in purple ink, consisting of stylized initials, positioned above a horizontal line.

Signature of plaintiff's legal practitioner

This application will be heard by _____ at Level 6, Harry
Gibbs Commonwealth Law Courts Building, 119 North Quay (corner Tank Street), Brisbane QLD
4000 at _____ am/pm on _____.

B. NOTICE TO DEFENDANTS

TO: PE CAPITAL FUNDS MANAGEMENT LTD
c/- TF Accountants Pty Ltd
Suite 2 Level 5
459 Little Collins Street
Melbourne VIC 3000

AND TO: ENDEAVOUR SECURITIES (AUSTRALIA) LTD (IN LIQUIDATION)
c/- Jason Mark Tracy and David Michael Orr
PO Box N250
Grosvenor Place
Sydney NSW 1220

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing:



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Registrar

The originating process is filed by Hugh Copley, legal practitioner for the plaintiff, Australian Securities and Investments Commission.

D. SERVICE

The plaintiffs' address for service is Level 20, 240 Queen Street, Brisbane QLD 4000.

It is intended to serve a copy of this originating process on the defendants.