

COURT ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

David Makowa
a registered company auditor numbered 445344
with principal place of practice at Unit 3, 35 Tamara Drive, Cockburn Central WA
6164
(Mr Makowa)

1 Definitions

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

Acceptance Date means the date of acceptance by ASIC of this court enforceable undertaking;

ASA means Australian Auditing Standard made by the AUASB and in force pursuant to section 336 of the Corporations Act;

ASAE means Standards on Assurance Engagements formulated by the AUASB pursuant to section 227B of the ASIC Act, which establishes the assurance practitioner's responsibilities on assurance engagements other than audits or reviews of historical financial information to comply with ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* and any subject matter-specific ASAEs such as ASAE 3100 *Compliance Engagements*, ASAE 3150 *Assurance Engagements on Controls* and ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*;

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

AUASB means the Auditing and Assurance Standards Board, responsible for developing, issuing and maintaining auditing and assurance standards under section 227B of the ASIC Act;

AFSL means Australian Financial Service Licence;

AFS Licensee means Australian Financial Services Licensee;

Brite Advisors means Brite Advisors Pty Ltd ACN 135 024 412 and since 2 October 2009 has held an AFSL 337670 authorising the licensee to carry on a financial services business;

CADB means Companies Auditors Disciplinary Board;

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

Corporations Regulations means the *Corporations Regulations 2001* (Cth);

FS70 means the prescribed form for lodgement of an AFS Licensee profit and loss statement and balance sheet, in accordance with ss989B(2) of the Corporations Act;

FS71 means the prescribed form for lodgement of an auditor's report for AFS Licensee, in accordance with Regulation 7.8.13 of the Corporations Regulations¹;

FY19 means the period 1 July 2018 to 30 June 2019;

FY20 means the period 1 July 2019 to 30 June 2020;

FY21 means the period 1 July 2020 to 30 June 2021; and

FY22 means the period 1 July 2011 to 30 June 2022;

Liquidators means Linda Smith and Robert Kirman of McGrath Nicol were appointed as liquidators to Brite Advisors and as receivers and managers over the property, assets and undertakings held by Brite Advisors on trust for others.

2 Background

2.1 ASIC's role:

- 2.1.1 Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
- 2.1.2 Providers of financial services in Australia are regulated through Chapter 7 of the Corporations Act and must hold an AFSL or be authorised by the AFS Licensee. AFS Licensees are required to prepare a true and fair profit and loss statement and balance sheet in the prescribed form (FS70), and lodge this together with an auditor's report: s989B Corporations Act. Regulation 7.8.13 of the Corporations Regulations requires the auditor's report under ss989B(3)(c) of the Corporations Act² to be lodged in the prescribed form (FS71) and contain a statement of the auditor's opinion on specified matters.
- 2.1.3 Company auditors are registered by ASIC under Part 9.2 of the Corporations Act and appointed by an AFS Licensee under s990B of the Corporations Act.
- 2.1.4 If a registered company auditor fails to carry out or perform adequately and properly their duties, ASIC may apply to the CADB to cancel or

¹ As required by ss989B(3)(c) of the Corporations Act, as modified by Regulation 7.8.12A of the Corporations Regulations.

² Note, subsection 989B(3) of the Corporations Act is modified by Regulation 7.8.12A of the Corporations Regulations.

suspend the registration of the auditor under s1292 of the Corporations Act.

2.2 The Auditor's duties:

- 2.2.1 An auditor who conducts an audit of a profit and loss statement and balance sheet of an AFS Licensee must conduct the audit in accordance with the ASAs: s989CA of the Corporations Act.
- 2.2.2 An auditor who provides a statement of the auditor's opinion on specific matters for an AFS Licensee under Regulation 7.8.13 of the Corporations Regulations and an audit opinion under notional s912AC of the Corporations Act,³ is required by the prescribed form (FS71) to conduct the assurance engagements in accordance with AUASB standards. ASA 101 *Preamble to AUASB Standards*⁴ provides ASAEs are to be applied to assurance engagements dealing with subject matters other than historical financial information.

2.3 Details of conduct and ASIC's investigation:

- 2.3.1 Mr Makowa is a registered company auditor and was appointed as auditor for Brite Advisors on 20 September 2017.
- 2.3.2 Mr Makowa audited Brite Advisors for the financial years 30 June 2016 through to 30 June 2022.
- 2.3.3 Brite Advisors was placed into liquidation on just and equitable grounds on 2 February 2024. Approximately 2,000 individual beneficiaries invested their pension funds with Brite Advisors. The Liquidators continue to investigate Brite Advisors' significant funds under management of US\$856 million (audit qualified value at 30 June 2022).
- 2.3.4 In June 2024 ASIC commenced an investigation into Mr Makowa's conduct of the FY19, FY20, FY21 and FY22 audits of Brite Advisors.

3 ASIC's views concerning the conduct

- 3.1 As a result of the investigation, ASIC holds the view that in his role as individual auditor of Brite Advisors for the FY19, FY20, FY21 and FY22 audits, Mr Makowa failed to carry out or perform adequately and properly the duties of an auditor outlined at paragraph 2.2 above. In particular, Mr

³ As modified by ASIC under s926A of the Corporations Act, and legislative instrument ASIC Class Order [CO 13/761] compiled version 4 in force from 27 September 2017 to 28 April 2017 and compiled version 5 in force 29 April 2021 to 20 March 2023.

⁴ ASA 101_09-21, at paragraph A3(d), operative 1 October 2021, and ASA 100 operative from 1 July 2006.

Makowa did not conduct the audit engagements in accordance with the ASAs and ASAEs.

3.1.1 ASIC found that, for the FY19, FY20, FY21 and FY22 audits of Brite Advisors profit and loss statement and balance sheet, Mr Makowa failed to obtain sufficient appropriate audit evidence to enable him:

- a. to form an opinion on whether the financial statements are prepared in all material respects in accordance with the applicable financial reporting framework (ASA 200 and ASA 700); and
- b. to conclude that he had obtained reasonable assurance that the financial statements as a whole were free from material misstatement (ASA 200, ASA 330 and ASA 700).

3.1.2 Specifically throughout the planning, execution and concluding phases of each audit, Mr Makowa:

- i. failed to obtain an understanding of the applicable financial reporting framework, together with the ownership, operations and internal controls of Brite Advisors, to appropriately plan the audit, identify risks and assess the required reporting obligations (ASA 300, ASA 315 and ASA 240);
- ii. failed to design and perform audit procedures and prepare audit documentation sufficient to enable an experienced auditor to understand the procedures performed, the audit evidence obtained, and the conclusions reached on significant matters across Brite Advisors profit and loss and balance sheet transactions and account balances (ASA 330 and ASA 230);
- iii. failed to obtain an understanding of the Brite Advisors related party relationships and transactions sufficient to conclude whether the financial report achieves fair presentation or is not misleading (ASA 550);
- iv. failed to appropriately apply and set out the audit sampling methodology where samples are purportedly used (ASA 530);
- v. failed to perform going concern or subsequent events procedures (ASA 560 and ASA 570);
- vi. failed to perform the required conclusions and evaluations, of the audit evidence obtained and applicable financial reporting framework, to support the auditor's opinions (ASA 700 and ASA 800),

3.1.3 Furthermore, ASIC found that Mr Makowa failed to obtain sufficient appropriate evidence to form the required opinions in the context of the specified matters within Regulation 7.8.13 of the Corporations Regulations and s912AC of the Corporations Act. Specifically, Mr Makowa's engagement letters did not adequately agree the terms of the

assurance engagements, and Mr Makowa failed to perform any assurance procedures or obtain evidence to conclude and provide the required opinion on the specified matters within Regulation 7.8.13 of the Corporations Regulations and s912AC of the Corporations Act (ASAE 3000, ASAE 3100, ASAE 3150 and ASAE 3450).

4 Admission concerning Mr Makowa's failure of his duties

- 4.1 Mr Makowa acknowledges and admits that he failed to adequately perform his duties as auditor of Brite Advisors for FY19, FY20, FY21 and FY22 in the terms set out at paragraph 2.2 and in the detailed areas set out in Section 3, and has offered a court enforceable undertaking in the terms of paragraph 5.1 below.

5 Undertakings

- 5.1 Under s93AA of the ASIC Act, Mr Makowa has offered, and ASIC has agreed to accept as an alternative to applying to the CADB in respect of the conduct outlined at Section 3, the undertakings in paragraph 5.2 below.

- 5.2 Mr Makowa undertakes that:

- 5.2.1 within 7 business days of the Acceptance Date, he will cancel his individual auditor registration online through the auditors portal / complete and lodge with ASIC a Form 905 *Notification of ceasing to practice as, or change to details of, an auditor*;
- 5.2.2 he will not re-apply for registration as a registered company auditor;
- 5.2.3 if ASIC requests information and documents for the purpose of assessing compliance with the terms of this court enforceable undertaking, he will provide the requested information and documents to ASIC within 7 business days of the request; and
- 5.2.4 he will pay the costs of his compliance with this court enforceable undertaking.

6 Acknowledgements

- 6.1 Mr Makowa acknowledges that ASIC:

- 6.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- 6.1.2 may from time to time publicly refer to this undertaking; and
- 6.1.3 will make this undertaking available for public inspection.

- 6.2 Further Mr Makowa acknowledges that:

- 6.2.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any

contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;

6.2.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct.

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

Signed by **David Makowa** in the presence of:)

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) Signature: David Makowa

Signature of Witness

John Polter

Name of Witness in full

17 June 2025

Date

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

Tom O'Shea

Delegate of Australian Securities and Investments Commission

Date: 18 June 2025