



**Australian Government**

**Takeovers Panel**

**Reasons for Decision**  
**Real Estate Capital Partners USA Property Trust**  
**[2012] ATP 6**

**Catchwords:**

*Rights issue – renounceable – underwriting – potential control impact – no reasonable steps to minimise control impact – no dispersion strategy – need for funds – declaration – orders*

*Corporations Act 2001 (Cth), sections 602, item 10 of section 611, item 13 of section 611, 657A, 657D*

*Guidance Note 17: Rights Issues*

*Vesture Limited 02 [2010] ATP 15, Multiplex Prime Property Fund 03 [2009] ATP 22, DataDot Technology Limited [2009] ATP 13, Emperor Mines Ltd 01R [2004] ATP 27*

**INTRODUCTION**

1. The Panel, James Dickson, Alastair Lucas (sitting President) and John Story made a declaration of unacceptable circumstances in relation to the affairs of Real Estate Capital Partners USA Property Trust. The application concerned a 0.98 for 1 renounceable rights issue which was fully underwritten by Frost Holdings Pty Ltd. If none of the rights were taken up, Frost’s voting power in RCU had the potential to increase from 19.82% to 59.51%. The Panel concluded that the rights issue was likely to have a substantial impact on the control of RCU and all reasonable steps had not been taken to minimise the control effect. The Panel made orders providing unitholders with an opportunity to participate in any shortfall.
2. In these reasons, the following definitions apply.

Acorn	Acorn Capital Limited
Applicant	Intelligent Investor Funds Pty Limited
Frost	Frost Holdings Pty Limited
Investment Manager	Real Estate Capital Partners Management Pty Limited, as investment manager for RCU
Moelis	Moelis & Company
RCU	Real Estate Capital Partners USA Property Trust
RE	Real Estate Capital Partners Managed Investments Limited, as responsible entity for RCU
Regal	Regal Funds Management Pty Limited
Rights Issue	The fully-underwritten renounceable rights issue announced on 1 March 2012, to raise \$20 million at an offer price of \$0.40 per unit with 0.98 new units for every 1 unit held by eligible unitholders of RCU

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#### FACTS

3. RCU is an ASX listed property trust (ASX code: RCU). Its principal activity is investing in commercial property interests in the United States of America.
4. In August 2011, RE and Investment Manager recognised that RCU had potential cash flow concerns as a result of an \$88 million financing facility maturing in August 2012.
5. In October and November 2011, RE and Investment Manager discussed possible strategies to address this with substantial unitholders of RCU, being Frost (19.82%), Acorn (11.62%), the Applicant (8.00%) and Regal (7.00%). Various alternatives were discussed. Acorn, the Applicant and Regal were in favour of asset sales (or the sale of RCU in its entirety). Frost was in favour of an equity capital raising.
6. Also in October and November 2011, RE and Investment Manager met with Moelis (a professional underwriter who underwrote RCU's capital raising in March 2011) to discuss possible strategies.
7. On 10 November 2011, Frost wrote to RE expressing an interest in underwriting a rights issue to raise between \$10 million and \$20 million. RE replied that it was interested and that a meeting should be arranged.
8. On 29 November 2011, Investment Manager discussed a possible rights issue with Moelis. Moelis said it was not interested in underwriting and did not think that any "*professional underwriter*" would be interested in underwriting either.<sup>1</sup>
9. In December 2011, RE formed the view that proceeding with asset sales in the short term presented unacceptable timing risk. Around that time, Investment Manager learned that the facility could not be refinanced without an extension to the lease of one of RCU's major assets in the United States (which would incur extension costs of approximately USD6.9 million).
10. On 20 December 2011, to demonstrate to RCU's financiers that the RE had the ability to fund the lease extension, Frost agreed to provide up to \$8 million of funding by subscribing for convertible notes. Ultimately the convertible notes were not subscribed for as the convertible note funding was superseded by the underwriting arrangements.
11. On 23 December 2011, RCU updated the market that it was seeking to extend existing leases at a significant upfront cost and that an extensive process had been undertaken to secure replacement finance for the \$88 million facility maturing in August 2012.
12. On 5 January 2012, Investment Manager attempted to contact major unitholders (including the Applicant, Regal and Acorn) to discuss the 23 December announcement. It was unable to reach Acorn. The Applicant asked whether RCU needed more capital. Investment Manager responded that it would depend on the

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<sup>1</sup> RE also met with Regal and Macquarie around this time in relation to, among other things, a possible capital raising

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timing of certain initiatives (such as the lease extension and potential asset sales) but did not elaborate.

13. On 24 January 2012, RE and Investment Manager met with Frost to discuss an underwritten rights issue. Frost proposed a non-renounceable rights issue with no shortfall facility or back-end book-build. In addition, Frost would not agree to having any sub-underwriters and made it clear that any attempts by RE to determine the interest of other unitholders as underwriters or sub-underwriters would jeopardise the proposed underwriting.
14. On 21 February 2012, Frost agreed to the Rights Issue being renounceable. Frost would not agree to any other dispersion strategies suggested by RE.
15. On 29 February 2012, an underwriting agreement was entered into.
16. On 29 February 2012, the lease extension agreement was executed (requiring the payment of approximately USD3.4 million of extension costs by 30 April 2012).
17. On 1 March 2012, the Rights Issue was announced.
18. On 5 March 2012, Moelis wrote to RE noting that a number of RCU unitholders (including the Applicant, Acorn and Regal), wished to participate in the underwriting and that more favourable terms than those agreed with Frost could be offered.
19. On 6 March 2012, RE replied that it could not terminate the underwriting agreement with Frost without incurring significant financial penalties.

## APPLICATION

### Declaration sought

20. By application dated 9 March 2012, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted that:
  - (a) the underwriting arrangements would provide Frost with the opportunity to substantially increase its voting power in RCU
  - (b) the Rights Issue constituted a misuse of the exceptions in item 10 and item 13 of section 611<sup>2</sup> by causing a change in control of RCU without Frost having to pay a control premium and
  - (c) the Rights Issue was contrary to the purposes of Chapter 6 as set out in section 602, including in particular that the acquisition of control over the units in RCU takes place in an efficient, competitive and informed market (section 602(a)) and the holders of the units in RCU all have a reasonable and equal opportunity to participate in any benefits accruing to the holders (section 602(c)).

### Interim orders sought

21. The Applicant sought interim orders to the effect that RCU be prevented from:

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<sup>2</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

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- (a) dispatching the entitlement offer booklet and acceptance forms
  - (b) commencing the deferred settlement trading of new units and
  - (c) issuing or allotting any new units in RCU.
22. On 14 March 2012, the President of the Panel considered the interim order in paragraph 21(a) but declined to make it, considering that such an order was not necessary to maintain the status quo. The President considered that dispatch of the offer booklet and the application form would not materially affect the Panel's ability to consider and resolve the matter or have any material impact on the Panel's ability to make any of the final orders sought.
23. We did not think we needed to make the other interim orders sought.

#### Final orders sought

24. The Applicant sought final orders that:
- (a) Frost be prevented from acting as sole underwriter to the Rights Issue
  - (b) any fees already received by Frost under the underwriting agreement be repaid and any outstanding fee payable be reduced to zero
  - (c) RE consider any commercial offer of a professional underwriter and/or a number of sub-underwriters to take part in the underwriting of the Rights Issue and
  - (d) RE bear the costs of the proceedings before the Panel.

#### DISCUSSION

25. The Applicant submitted that the Rights Issue and the underwriting arrangements were unacceptable because they had the potential to increase Frost's voting power in RCU from 19.82% to a maximum of 59.51% and RE had not taken all reasonable steps to mitigate the potential control effect.
26. In considering whether a rights issue gives rise to unacceptable circumstances, the Panel considers, broadly, the company's situation (including its need for funds), the structure of the rights issue and the effect of the rights issue.<sup>3</sup>
27. ASIC submitted that *"regardless of whether a rights issue falls within the legal terms of the exemption in item 10 of section 611, if the rights issue offends the purposes in section 602, it may give rise to unacceptable circumstances."* We agree.

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<sup>3</sup> Guidance Note 17: Rights Issues at [6]

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#### Need for funds

28. Guidance Note 17 states that, in considering a company's need for funds, "*the Panel will look at the company's financial situation, the amount sought to be raised and the suitability of raising capital by the rights issue*".<sup>4</sup>
29. RE submitted that a capital raising was considered necessary in late 2011. It formed the view that proceeding with asset sales in the short term presented unacceptable risks because "*there was no reasonable certainty of completing sufficient asset sales, other than at steep discounts to book value, prior to the maturity date of the loans*". The interim financial report of RCU for the half-year ended 31 December 2011 included an emphasis of matter in relation to RCU's ability to continue as a going concern. We accept that RCU was in need of funds.
30. However, need for funds is not a safe harbour.<sup>5</sup> A balance needs to be reached between an entity's need for funds and the potential control impact of a rights issue.<sup>6</sup> In this matter, despite the need for funds, RE still had an obligation to ensure that the Rights Issue was structured in a way that minimised any potential control impact.

#### Structure of the Rights Issue

31. The Rights Issue was:
  - (a) renounceable and
  - (b) priced at a discount of 20.7% to the VWAP of RCU units in the 5 days prior to the announcement on 1 March 2012.
32. The Rights Issue did not contain any other features that may have reduced the potential control impact (such as sub-underwriting, provision for oversubscriptions, a shortfall facility or back-end book-build).
33. RE submitted that it attempted to implement dispersion strategies such as a shortfall facility, back-end book-build or sub-underwriting but Frost had specifically discouraged it from doing so. RE also submitted that Frost stated: "*Frost Holdings would not be prepared to underwrite on terms that required any dispersion strategy or the sounding of unitholders [and] indicated that any approach made by the Responsible Entity to sound any unitholders would jeopardise the proposed underwriting by Frost Holdings.*"
34. Frost and RE were aware that the structure of the Rights Issue was important, particularly given that the Rights Issue was to be underwritten by a major unitholder. A standing item on the agenda of the RCU due diligence committee meetings for the Rights Issue was the implication of Guidance Note 17.

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<sup>4</sup> Guidance Note 17: Rights Issues at [7]

<sup>5</sup> Guidance Note 17: Rights Issues at [8]

<sup>6</sup> *Emperor Mines Ltd 01R* [2004] ATP 27 at [30], *Multiplex Prime Property Fund 03* [2009] ATP 22

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35. Frost submitted that the Rights Issue was renounceable and priced at a discount to market, which would minimise any potential control effect. RE submitted that the renounceability “*sufficiently dealt with the policy issues underpinning [Guidance Note 17]*”. We disagree with both these submissions. While renounceability certainly helps, it is not a safe harbour.<sup>7</sup> In any event, in this case the effects of the renounceability were reduced by market events.

#### Effect on control

36. The structure of the Rights Issue had the potential to substantially impact the control of RCU. Assuming no other RCU unitholders took up their entitlement, Frost may have increased its voting power in RCU from 19.82% up to 59.51%.
37. We do not think that all reasonable steps to minimise the potential control impact were taken as:
- (a) other than the issue being renounceable, no facility for unitholders to take up units in excess of their entitlement was included in the Rights Issue, even though requested by RE and
  - (b) there was no dispersion strategy in place for dealing with shortfall units, such as the appointment of sub-underwriters.
38. Moreover, only limited inquiries were made by RE to source potential underwriters or sub-underwriters.
39. RE submitted that it had approached the Applicant and other major unitholders to discuss strategies for RCU at a general level in late 2011. It submitted that none of them had expressed an interest in being involved in a capital raising at that time and that, based on those discussions, it did not believe there would be any interest.
40. Frost submitted that RE and Investment Manager had approached the other unitholders and Moelis to provide capital and “*they refused*” and were now “*offering too little too late*” and “*seeking to disrupt the Rights Issue and [were] endangering RCU*”. In response the Applicant submitted that Frost’s assertions were unreasonable, “*given that the RE approached only one professional underwriter, on an informal basis and at a very preliminary stage, and did not approach [the Applicant, Acorn or Regal] about participating in the proposed Rights Issue at all.*”
41. The discussions that took place were in the context of strategies for RCU generally. In our view this was not enough.
42. Guidance Note 17 states, “*The failure of directors to properly canvass professional underwriters or seek out alternatives to a related party or major shareholder underwriter (sub-underwriter) may increase the likelihood of unacceptable circumstances*”.<sup>8</sup>

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<sup>7</sup> Guidance Note 17: Rights Issues at [17]

<sup>8</sup> Guidance Note 17: Rights Issues at [21]

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43. We believe that once RE had settled on a capital raising (as opposed to asset sales) it should have, and had the opportunity to, approach one or more professional underwriters, as well as the other major unitholders. While the underwriting agreement was negotiated with Frost on an arm's length basis, it does not change the fact that such approaches should have been made.

#### Nature of underwriter

44. In *DataDot Technology Limited*<sup>9</sup> the Panel stated:

*"The nature of underwriting is to ensure the success for the company of the issue and usually, at the same time, to lay off the risk of equity holding to other parties."*

45. Frost did not seek or indeed, in our view, want to pass the risk to others. In fact, Frost sought to preclude the Rights Issue containing any such measures.
46. Frost submitted that its intentions and motivations were not relevant, but that: *"even if Frost's intentions and motivations [were] relevant, its primary motivation was to ensure that its significant holding in RCU remained of value"*. This would suggest that Frost's primary concern was the success of the capital raising. Allowing sub-underwriters or a shortfall or other dispersion strategy to be introduced would not have reduced the success of the Rights Issue and therefore the protection of Frost's 19.82% holding. Allowing dispersion strategies should not be of concern to an underwriter.
47. Frost submitted that it considered itself to be in a different position to that of a normal underwriter as no professional underwriter would have *"skin in the game"* or provided the level of financial support and commitment to RCU that Frost had, and for such a protracted time. That is true. It was a substantial unitholder, not a normal underwriter. However, irrespective of the underwriting exception in item 10 of section 611, the Panel looks at the effect of the rights issue against the principles in section 602.<sup>10</sup> Frost's desire to increase its unitholding in RCU as a result of the underwriting arrangements was manifest from submissions and from the actions of Frost. Its refusal to allow the RE to explore any significant dispersion strategy supports our view that the potential control impact of the Rights Issue gave rise to unacceptable circumstances.

#### Additional matters

48. Once we had decided to conduct proceedings and issued a brief to the parties, Frost provided two proposals to settle the matter, which included that Frost would cap its RCU unitholding arising from the Rights Issue at 35% and distribute units it acquired above the cap in accordance with any dispersion strategy that we considered necessary.

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<sup>9</sup> [2009] ATP 13 at [35]

<sup>10</sup> Guidance Note 17: Rights Issues at [6]

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49. We did not accept the proposals. The Rights Issue should have included an adequate dispersion strategy and it did not. A cap would not have rectified this.
50. The Applicant submitted that an alternative underwriting proposal was put to RCU pursuant to which Moelis would fully underwrite the Rights Issue with each of the Applicant, Regal and Acorn acting as sub-underwriters. RE did not consider this was appropriate given the fees that would be payable to Frost on termination of the underwriting agreement and because certain clauses suggested by Moelis were not acceptable. Our role is to remedy the unacceptability of the underwriting arrangements which the RE negotiated, not require the acceptance of an alternative.
51. The Applicant submitted that the underwriting fees payable to Frost were excessive (being approximately 11.5%<sup>11</sup>) and referred to *Vesture Limited 02*<sup>12</sup> in which the Panel noted that an underwriting fee of 8% was high. The Applicant also submitted that the high underwriting fees would dissuade unitholders from applying to the Panel and were a further reason why the RE should have sought alternative arrangements.
52. High fees did not dissuade the application from being made. The Panel has previously noted that high fees may increase its level of concern with a rights issue.<sup>13</sup> They did so here.

## DECISION

### Declaration

53. It appears to us that the circumstances are unacceptable having regard to:
  - (a) the effect the circumstances have had, are having, will have or are likely to have on:
    - (i) the control, or potential control, of RCU or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in RCU and/or
  - (b) the purposes of Chapter 6 set out in section 602.
54. Accordingly, we made the declaration set out in Annexure A and consider that it is not against the public interest to do so. We had regard to the matters in s657A(3).

### Orders

55. Following the declaration, we made the final orders set out in Annexure B.

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<sup>11</sup> This included an underwriting fee of 5%, an underwriting establishment fee of 2.5%, a due diligence expense reimbursement fee of 2% and a fee for establishing credit support of 2%

<sup>12</sup> [2010] ATP 15 at [33]

<sup>13</sup> *Vesture Limited 02* [2010] ATP 15 at [33]



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56. Our orders do not detract from the Rights Issue being successful but reduce the potential control effect of the underwriting. They provide unitholders with an opportunity to reduce the underwritten amount, by applying for additional units in the shortfall.
57. Our orders (among other things) require that Frost:
- (a) is not able to rely on any rights it may have to terminate the underwriting arrangement by reason of the Panel proceedings
  - (b) divest units it receives as underwriter so unitholders who were originally entitled to participate in the rights issue are offered as many units as necessary to take up their full entitlement (if applicable) and may apply for units in excess of their entitlement and
  - (c) pay for the costs of the dispersion strategy.
58. The Applicant submitted that non-unitholders should be entitled to participate in the shortfall facility as a further dispersion strategy, noting that the introduction of new unitholders was proposed as part of the alternative underwriting proposal made by Moelis. We were not persuaded by this.
59. Under s657D the Panel's power to make orders is very wide. The Panel is empowered to make 'any order'<sup>14</sup> if 4 tests are met:
- (a) it has made a declaration under s657A. This was done on 28 March 2012.
  - (b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. We are satisfied that our orders do not unfairly prejudice any person.
  - (c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 26 March 2012. Other than ASIC, each party made submissions and rebuttals.
  - (d) it considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons. The orders do this by requiring a shortfall dispersion strategy to be implemented.

#### Costs

60. As we made a declaration, we are empowered to make a determination (and orders) regarding who is to bear the costs of the parties to the proceedings.<sup>15</sup>

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<sup>14</sup> Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

<sup>15</sup> Section 657D(2)(d)

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61. The Applicant submitted that Frost should bear the costs of the proceedings before the Panel. Ultimately we decided not to make a costs order.

**Alastair Lucas**

**President of the sitting Panel**

**Decision dated 28 March 2012**

**Reasons published 5 April 2012**

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#### Advisers

Party	Advisers
Applicant	Greenwich Legal
RE	King & Wood Mallesons
Frost	Henry Davis York
Acorn	Greenwich Legal
Regal	Greenwich Legal



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## **Annexure A**

### **CORPORATIONS ACT**

#### **SECTION 657A**

#### **DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

##### **REAL ESTATE CAPITAL PARTNERS USA PROPERTY TRUST**

##### **CIRCUMSTANCES**

1. Real Estate Capital Partners USA Property Trust (**RCU**) has a 0.98 for 1 rights issue underway, announced by the responsible entity of RCU (Real Estate Capital Partners Managed Investments Limited – **RE**) on 1 March 2012.
2. The rights issue is renounceable and rights trading ended on 21 March 2012.
3. The rights issue is fully underwritten by Frost Holdings Pty Ltd (**Frost**), which has voting power of 19.82% in RCU.
4. If no unit holders (other than Frost) take up their entitlement under the rights issue, Frost would obtain voting power of 59.51% in RCU.
5. Frost discouraged RCU or RE from implementing a dispersion strategy in relation to the rights issue, other than allowing the rights issue to be renounceable.
6. All reasonable steps to minimise the potential control impact of the rights issue on RCU were not taken.
7. It appears to the Panel that the circumstances are unacceptable having regard to:
  - (a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
    - (i) the control, or potential control, of RCU or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in RCU and/or
  - (b) the purposes of Chapter 6 set out in section 602 of the Corporations Act 2001 (Cth) (Act).

8. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

## **DECLARATION**

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of RCU.

**Alan Shaw**  
**Counsel**  
**with authority of Alastair Lucas**  
**President of the sitting Panel**  
**Dated 28 March 2012**



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## **Annexure B**

### **CORPORATIONS ACT SECTION 657D ORDERS**

#### **REAL ESTATE CAPITAL PARTNERS USA PROPERTY TRUST**

The Panel made a declaration of unacceptable circumstances on 28 March 2012.

#### **THE PANEL ORDERS**

1. Frost must not:
  - (a) rely on any right it may have to terminate the underwriting arrangement as a consequence of the application to the Panel in this matter, the declaration of unacceptable circumstances and these orders or
  - (b) rely on clauses 10.3 or 12.1 of the underwriting agreement with RCU in relation to any 'losses' (as defined in the underwriting agreement) that it incurs as a consequence of the application to the Panel in this matter, the declaration of unacceptable circumstances and these orders other than the reasonable costs and expenses incurred by Frost in considering and responding to the application to the Panel.
2. Frost must:
  - (a) divest shortfall units as set out in these orders and
  - (b) until completion of these orders, not otherwise deal with or vote any shortfall units.
3. Within 10 business days of these orders RCU must, on behalf of Frost, offer eligible unit holders any shortfall units obtained by Frost under the rights issue on terms to the following effect:
  - (a) the price is the rights issue price
  - (b) the offer is open for 2 weeks from the date the last of the offers is dispatched
  - (c) eligible unit holders who did not take up their full entitlement in the rights issue are offered as many units as is necessary for them to take up what were their full original entitlements

- (d) eligible unit holders who accept for units under order 3(c) are treated as if they had subscribed for those units pursuant to the rights issue
- (e) eligible unit holders (including Frost) are invited to apply for any units remaining after the acceptances in order 3(c) have been satisfied in full. Applications must be filled as follows:
  - (i) each unit holder who has applied for additional units will be allocated their pro rata share of the shortfall having regard to their unit holdings at the record date. If a unit holder has made a shortfall application for an amount less than the amount of units that the unit holder would otherwise be allocated under this process, the unit holder will be allocated the amount applied for and
  - (ii) if, following allocation of the shortfall in the first round, there remains any shortfall, the above allocation process will be repeated in rounds until either all the shortfall has been allocated or all shortfall applications have been satisfied in full

For avoidance of doubt the Corporations Act limits apply to the acquisition of shortfall units (other than by Frost)

- (f) the money (in cheque or other form acceptable to RCU) for the units accepted under order 3(c) is to be sent to RCU with the acceptance. The money is to be banked in a special purpose trust account no later than the end of the day of receipt and
  - (g) the money (in cheque or other form acceptable to RCU) for the units applied for under order 3(e) must be paid within 2 business days of notification to the applicant of the proposed allocation. If not, the units may be re-allocated. Frost is not obliged to pay for any proposed allocation of units under order 3(e).
4. The offer must be made in a letter of offer dispatched to eligible unit holders.
  5. Within 5 business days of the close of the offer, RCU must:
    - (a) scale back the applications if necessary
    - (b) disclose in a market announcement the scale back and its detailed calculation methodology
    - (c) register the transfers of the units and
    - (d) pay over the money, and account, to Frost for the units sold (other than in relation to those units allocated to Frost).
  6. Frost must provide proper transfers for the sale of the units.
  7. Frost must pay to RCU the reasonable costs of dispatching the offers and processing the acceptances, applications and refunds (if any).
  8. RCU must issue any refund due to an applicant within 5 business days of transfers being completed.

9. RCU must extend the closing date of the rights issue by no less than 2 business days and promptly make an ASX announcement after it has done so.

**Interpretation**

10. In these orders the following terms apply.

<b>eligible unit holders</b>	Unit holders of RCU who were eligible to participate in the rights issue
<b>Frost</b>	Frost Holdings Pty Ltd
<b>RCU</b>	<ul style="list-style-type: none"><li>• Real Estate Capital Partners USA Property Trust or</li><li>• Real Estate Capital Partners Managed Investments Limited as responsible entity for the Trust,</li></ul> as the case may be
<b>record date</b>	The record date for the rights issue, being 13 March 2012 at 7pm
<b>rights issue</b>	The rights issue announced by RCU by ASX release dated 1 March 2012 and released on ASX by RCU on 2 March 2012
<b>shortfall units</b>	Units not subscribed for under the rights issue by eligible unit holders
<b>underwriting arrangement</b>	The underwriting of the rights issue by Frost

**Alan Shaw**  
**Counsel**  
**with authority of Alastair Lucas**  
**President of the sitting Panel**  
**Dated 28 March 2012**