

## **BOARD OF WATERMARK MARKET NEUTRAL FUND LTD EXECUTES SCHEME IMPLEMENTATION DEED**

February 5, 2019: Further to its announcement on December 20, 2018, the Board of Watermark Market Neutral Fund Limited (WMK, the Company) is pleased to announce that it has executed a Scheme Implementation Deed (the Deed) with Equity Trustees Limited and Watermark Funds Management Pty Ltd.

Execution of the Deed is the first formal step in the proposed restructure of the Company, by way of a scheme of arrangement, to convert WMK from a listed investment company to an unlisted unit trust (New Trust). Equity Trustees Limited has been appointed as Responsible Entity (RE) of the New Trust, which will be a registered managed investment scheme under the *Corporations Act 2001* (Cth) and will appoint Watermark Funds Management as Investment Manager of the New Trust (Investment Manager).

In executing the Deed, the Board, along with the RE and Investment Manager, have agreed to implement the Scheme subject to various conditions precedent, including an opinion from an Independent Expert that the transaction is in the best interests of WMK shareholders, and approval from Shareholders at a scheme meeting.

The Board has been working with the Company's advisers in recent weeks, finalising the structure of the Scheme. This work was essential to ensure that the Scheme is implemented in a way that maximises the value to Shareholders, in terms of the efficient transfer of the Company's assets into the New Trust.

The Board also wishes to provide the following updated indicative timetable for the Scheme:

<b>Event</b>	<b>Date</b>
Announcement	5 February 2019
WMK provides Regulator's Draft to ASIC	8 February 2019
First Court Date	25 February 2019
Printing and despatch of Scheme Booklet 1	1 March 2019
Scheme Meeting	1 April 2019
Second Court Date	3 April 2019
Effective Date – Lodge Court orders approving Scheme and s. 413 transfer of WMK Assets and liabilities with ASIC	4 April 2019
Record Date	9 April 2019
Implementation Date	15 April 2019

Shareholders should expect to receive more details once the Scheme Booklet has been dispatched. For any queries regarding this announcement or WMK in general, please contact the Investment Manager on 02 9252 0225 or [info@wffunds.com.au](mailto:info@wffunds.com.au).

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# Scheme Implementation Deed

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**Watermark Market Neutral Fund Limited**

(ACN 163 980 498)

**Equity Trustees Limited**

(ACN 004 031 298)

as trustee for the **Watermark Absolute Return Fund** (ARSN 631 094 534)

**Watermark Funds Management Pty Limited**

(ACN 106 302 505)



KARDOS • SCANLAN

CORPORATE LAWYERS

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**THIS SCHEME IMPLEMENTATION DEED** is made on

4 February

2019

**BETWEEN**      **Watermark Market Neutral Fund Limited** (ACN 163 980 498) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000 (**WMK**);

**AND**            **Equity Trustees Limited** (ACN 004 031 298) as trustee of the Watermark Absolute Return Fund (ARSN 631 094 534) of Level 1, 575 Bourke Street, Melbourne, VIC, 3000 (**Responsible Entity**);

**AND**            **Watermark Funds Management Pty Limited** (ACN 106 302 505) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000 (**Manager**).

## **RECITALS**

- A      WMK and the Responsible Entity have agreed that Watermark Absolute Return Fund will acquire the assets of WMK by means of a scheme of arrangement under Part 5.1 of the Corporations Act between WMK and the WMK Shareholders.
- B      The Scheme will involve the issue of Watermark Absolute Return Fund Units to WMK Shareholders as a capital reduction by WMK.
- C      WMK and the Responsible Entity have agreed to implement the scheme of arrangement on the terms of this Deed.
- D      The Manager has agreed to assist WMK and the Responsible Entity with the preparation of the Scheme Booklet and otherwise assist with the implementation of the Scheme.

## **OPERATIVE PROVISIONS**

### **1.        DEFINITIONS AND INTERPRETATION**

#### **1.1.     Definitions**

In this Deed:

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

**ASX** means ASX Limited (ACN 008 624 691) or, as the context requires, the financial market operated by it.

**Australian Accounting Standards** means the accounting standards promulgated by the Australian Accounting Standards Board.

**Business Day** means a weekday on which trading banks are open for business in Sydney, Australia, excluding any Saturday, Sunday or public holiday.

**Calculation Date** means 10 Business Days prior to the Scheme Meeting or such other time and date as WMK, the Manager and the Responsible Entity agree in writing.

**Capital Reduction** means the reduction in the capital of WMK by the Capital Reduction Amount under section 256B of the Corporations Act to be applied equally against each Scheme Share on issue as at the Record Date in accordance with the terms of the Capital Reduction Resolution.

**Capital Reduction Resolution** means the ordinary resolution concerning the Capital Reduction to be considered by Scheme Shareholders at the General Meeting in the form set out in the notice of general meeting contained in Annexure E of the Scheme Booklet.

**Competing Transaction** means any proposal by a Third Party in relation to a transaction or arrangement under which if the transaction or arrangement is completed:

- (a) a person would acquire (whether directly or indirectly) or become the holder of, or otherwise have a right to acquire or have an economic interest in, all or substantially all of the business conducted by WMK, or the assets of WMK;
- (b) a person would acquire (whether directly or indirectly) Control of WMK;
- (c) a person would acquire a relevant interest in, or voting power of, 50% or more of the WMK Shares;
- (d) a person would otherwise acquire, or merge or amalgamate with, WMK; or
- (e) WMK would be required to abandon or otherwise fail to proceed with the Transaction.

**Completion** means completion of the Transaction.

**Completion Net Assets** means the post-tax net assets of WMK as at the Calculation Date calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations), and the Corporations Regulations and excluding deferred tax assets (if any).

**Condition Precedent** means a condition precedent set out in Clause 3.1.

**Control** has the meaning given in section 50AA of the Corporations Act.

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

**Corporation Regulations** means the *Corporations Regulations 2001* (Cth).

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as WMK and the Responsible Entity agree on in writing.

**Distribution** means the:

- (a) equal reduction of capital of WMK by the Return of Capital Amount to be implemented in accordance with section 256B of the Corporations Act; and
- (b) declaration and payment of the Dividend Amount,

to be effected by the issue by direction of the Units to WMK Shareholders.

**Distribution Amount** means an amount equal to the Completion Net Assets less the Retention Amount.

**Dividend Amount** means the amount of the dividend (if any) which is declared and paid under Clause 4.9(a) as determined by the Directors.

**Director** means a director of WMK from time to time.

**Deed Poll** means the deed poll to be granted by the Responsible Entity in substantially the form set out in Schedule 3.

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**End Date** means 30 June 2019.

**Existing IMA** means the investment management agreement between WMK and the Manager dated June 2013.

**Explanatory Statement** means the statement pursuant to section 412 of the Corporations Act which has been, or will be, registered by ASIC in relation to the Scheme, which forms part of the Scheme Booklet.

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**General Meeting** means the general meeting for WMK Shareholders convened to consider the Capital Reduction Resolution.

**Government Agency** means any Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state.

**Implementation Date** means the day 5 Business Days after the Record Date or such other date as WMK and the Responsible Entity agree in writing.

**Independent Board Committee** means a committee of the WMK Board comprising all Directors other than Directors nominated by or associated with the Manager so that as at the date of this Deed, the members of the committee are Matthew Kidman, John Abernethy, Stephen Van Eyk and Robert Ferguson.

**Independent Director** means a member of the Independent Board Committee.

**Independent Expert** means the independent expert in respect of the Scheme appointed by WMK.

**Independent Expert's Report** means the report prepared by the Independent Expert to be provided to WMK and WMK Shareholders providing an opinion, among other things, as to whether the Scheme is in the best interests of WMK Shareholders.

**Ineligible Foreign Shareholder** means a Scheme Participant whose address as shown in the Share Register is a place outside Australia, its external territories or New Zealand unless WMK, the Responsible Entity and the Manager agree in writing that it is lawful and not unduly onerous or impracticable to issue that Scheme Participant with the Units when the Scheme becomes Effective.

**Ineligible Shareholder Units** has the meaning given to it in Clause 4.11(a)(i).

**Investment Entity** has the meaning given in the Listing Rules.

**Listing Rules** means the official listing rules of the ASX.

**Manager Information** means information regarding Watermark Absolute Return Fund (but excluding the Responsible Entity Information), the Manager and other entities managed by the Manager and its Related Bodies Corporate, provided by the Manager for inclusion in the Scheme Booklet.

**Manager Parties** means the Manager and its directors and officers and its advisers in connection with the Transaction, but for avoidance of doubt does not include WMK or the Responsible Entity.

**NAV** has the meaning given in the Watermark Absolute Return Fund Constitution excluding the Retention Amount.

**Nominee** means the agent appointed by the Responsible Entity to be issued with, and to withdraw, the Units in the Watermark Absolute Return Fund that would have otherwise been issued to Ineligible Foreign Shareholders in relation to the Scheme.

**NTA** means pre tax net tangible assets after excluding all current and deferred tax assets and liabilities and the Retention Amount, calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations), the Corporations Regulations and consistent with the requirements of the Listing Rules for an Investment Entity, rounded to the nearest one hundredth of a cent.

**Party** means a party to this deed.

**Proceeding** means any suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, examination or investigation commenced, brought, conducted or heard by or before or otherwise involving any court or other Government Agency or any arbitrator or arbitration panel.

**RG 60** means Regulatory Guide 60 issued by ASIC on 22 September 2011.

**Record Date** means the third Business Day after the Effective Date or such other date as WMK, the Responsible Entity and the Manager agree.

**Records** means:

- (a) records required to be maintained by WMK under applicable law;
- (b) accounting records; and
- (c) records of contracts,

relating to the WMK Assets.

**Registered Address** means, in relation to a WMK Shareholder, the address of the WMK Shareholder as recorded in the Share Register.

**Registry** means Boardroom Pty Limited of Level 12, 225 George Street, Sydney NSW 2000.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to all Parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Related Body Corporate** has the meaning set out in the Corporations Act.

**Relevant Interest** has the meaning given in Sections 608 and 609 of the Corporations Act.

**Representative** in respect of a Party, means each director, officer, employee, advisor, agent or representative of that Party.

**Responsible Entity Information** means information regarding the Responsible Entity provided by the Responsible Entity for inclusion in the Scheme Booklet.

**Responsible Entity Parties** means the Responsible Entity and its directors and officers and its advisers in connection with the Transaction, but for avoidance of doubt does not include WMK or the Manager.

**Responsible Entity Warranties** means the representations provided by the Responsible Entity under Clause 5.1.

**Retention Amount** means the sum of \$100,000.

**Return of Capital Amount** means an amount equal to the Completion Net Assets less the Dividend Amount and the Retention Amount.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between WMK and the WMK Shareholders, the form of which is set out in Schedule 2 (or in such other form as may be agreed to in writing by WMK, the Responsible Entity and the Manager).

**Scheme Booklet** means the information relating to the Transaction to be approved by the Court and despatched to all WMK Shareholders, including the Scheme, the Explanatory Statement, the Independent Expert's Report, the Deed Poll, the notice convening the Scheme Meeting and the proxy form for the Scheme Meeting.

**Scheme Consideration** means the consideration to be provided by the Responsible Entity to each Scheme Participant as calculated under Clause 4.1 and as set out in the Scheme.

**Scheme Meeting** means the meeting of WMK Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Scheme Participant** means each WMK Shareholder as at the Record Date.

**Scheme Participant Notice** means a notice setting out the name and Registered Address of each Scheme Participant and the number of Scheme Shares held by each Scheme Participant.

**Scheme Share** means a WMK Share held by a Scheme Participant as at the Record Date.

**Second Court Date** means the first day on which the application made to the Court for an order for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Share Register** means the register of members of WMK.

**Superior Competing Transaction** means a bona fide unsolicited Competing Transaction received by WMK after the date of this Deed which the Independent Board Committee has determined, acting in



good faith and in accordance with their fiduciary duties, and after consultation with and the receipt of written advice from the Independent Board Committee's external legal advisor and financial adviser is:

- (a) reasonably capable of being completed, taking into account all aspects of the Competing Transaction and the person making it; and
- (b) more favourable to WMK Shareholders (as a whole) than the Transaction, taking into account all the terms and conditions of the Competing Transaction.

**Termination Deed** means the deed terminating the Existing IMA.

**Transaction** means the implementation of the Scheme.

**Timetable** means the indicative timetable for the Transaction set out in Schedule 1.

**Third Party** means a person other than the Parties and their Representatives.

**Units** means fully paid ordinary units in the Watermark Absolute Return Fund.

**Watermark Absolute Return Fund** means the Watermark Absolute Return Fund (ARSN 631 094 534).

**Watermark Absolute Return Fund Constitution** means the constitution of the Watermark Absolute Return Fund.

**Watermark Absolute Return Fund Management Agreement** means an agreed form of investment management agreement with respect to the Watermark Absolute Return Fund to be entered into between the Manager and the Responsible Entity.

**Withdrawal** has the meaning given to it in Clause 4.11(a)(iii)(A).

**WMK Assets** has the meaning given to it in the Scheme.

**WMK Board** means the board of directors of WMK from time to time.

**WMK Constitution** means the constitution of WMK.

**WMK Information** means information regarding WMK provided by WMK for inclusion in the Scheme Booklet.

**WMK Management Agreement** means the investment management agreement between WMK and the Manager dated on or about 7 June 2013.

**WMK Parties** means WMK and its directors and officers and its advisers in connection with the Transaction, but for avoidance of doubt does not include the Responsible Entity or the Manager.

**WMK Share** means a fully paid ordinary share in the capital of WMK.

**WMK Shareholder** means a person who is registered in the WMK share register as the holder of a WMK Share.

**WMK Warranties** means the representations provided by WMK under Clause 5.2.

## 1.2. Interpretation

In this Deed, headings and bold type are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a Clause, Party, Attachment or Schedule is a reference to a clause of, and a party, attachment and schedule to this Deed, and a reference to this Deed includes any Attachment and Schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word **includes** in any form is not a word of limitation;
- (i) a reference to **\$** or **dollar** is to Australian currency;
- (j) a reference to any time, unless otherwise indicated, is a reference to the time in Sydney, Australia;
- (k) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (l) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed; and
- (m) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a Party.

## 2. AGREEMENT TO PROCEED WITH THE TRANSACTION

### 2.1. Proposal of Transaction

WMK agrees to propose the Transaction on and subject to the terms of this Deed.

## 2.2. Assistance

The Responsible Entity and the Manager agree with WMK to provide reasonable assistance to WMK to propose the Transaction on and subject to the terms of this Deed.

## 3. CONDITIONS PRECEDENT

### 3.1. Conditions Precedent to the Scheme

The Scheme will not become Effective, and the obligations of the Responsible Entity under the Deed Poll and Clauses 4.3(h) and 4.3(i) are not binding, until each of the following conditions precedent is satisfied or waived in the manner set out in Clause 3.3:

- (a) **Scheme Meeting Approval:** WMK Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act;
- (b) **Capital Reduction Approval:** WMK Shareholders approve the Capital Reduction Resolution at the General Meeting;
- (c) **Court Approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (d) **Restraints:** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or Government Agency or other material legal restraint or prohibition preventing the Transaction from being implemented is in effect at 8.00 am on the Second Court Date;
- (e) **No breach of WMK Warranty:** none of the WMK Warranties is or has become false, misleading or incorrect in a material respect by 8.00am on or before the Second Court Date;
- (f) **No breach of Responsible Entity Warranty:** none of the Responsible Entity Warranties is or has become false, misleading or incorrect in a material respect by 8.00am on or before the Second Court Date; and
- (g) **Independent Expert:** the Independent Expert issues a report which concludes that the Scheme is in the best interests of WMK Shareholders before the time when the Scheme Booklet is registered with ASIC and the Independent Expert has not publicly withdrawn or qualified this conclusion before 8am on the Second Court Date.

### 3.2. Reasonable endeavours

- (a) WMK must use its reasonable endeavours to procure that there is no occurrence within the control of WMK that would prevent the Conditions Precedent in Clause 3.1(e) to be satisfied.
- (b) The Responsible Entity must use its reasonable endeavours to procure that there is no occurrence within the control of the Responsible Entity that would prevent the Conditions Precedent in Clause 3.1(f) to be satisfied.
- (c) WMK and the Responsible Entity must each use its reasonable endeavours to procure that:

- (i) each of the Conditions Precedent in Clauses 3.1(a) to 3.1(d) and Clause 3.1(g) is satisfied as soon as practicable after the date of this Deed; and
- (ii) there is no occurrence within the control of WMK or the Responsible Entity (as the context requires) that would prevent the Conditions Precedent in Clauses 3.1(a) to 3.1(d) and Clause 3.1(g) being satisfied.

### **3.3. Waiver of Conditions Precedent**

- (a) The Conditions Precedent in Clauses 3.1(a) and 3.1(b) cannot be waived.
- (b) The Condition Precedent in Clause 3.1(d) is for the benefit of WMK and the Responsible Entity and any breach or non-fulfilment of that Condition Precedent may only be waived with the written consent of both WMK and the Responsible Entity (each in its absolute discretion).
- (c) The Condition Precedent in Clause 3.1(e) is for the sole benefit of the Responsible Entity and any breach or non-fulfilment of any of that Conditions Precedent may only be waived with the written consent of the Responsible Entity (in its absolute discretion).
- (d) The Conditions Precedent in Clauses 3.1(f) and 3.1(g) are for the sole benefit of WMK and any breach or non-fulfilment of any of those Conditions Precedent may only be waived with the written consent of WMK (in its absolute discretion).
- (e) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### **3.4. Termination on failure of Condition Precedent**

- (a) If:
  - (i) a Condition Precedent is not satisfied or waived by the date specified for its satisfaction;
  - (ii) a Condition Precedent becomes incapable of being satisfied by the date specified for its satisfaction and is not waived; or
  - (iii) the Scheme has not become Effective by the End Date,

and the relevant occurrence or the failure of the Condition Precedent does not arise out of a breach of Clause 3.2 or 3.5, then WMK and the Responsible Entity must consult in good faith with a view to:

- (iv) determining whether the Transaction may proceed by way of alternative means or methods and, if so, agree on the terms of such alternative means or methods;

- (v) changing the date of the application to be made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by WMK and the Responsible Entity (being a date not later than 5 Business Days before the End Date);
  - (vi) adjourning, or changing the date of the Scheme Meeting; or
  - (vii) extending the End Date.
- (b) If:
- (i) WMK and the Responsible Entity are unable to reach agreement under Clause 3.4(a) within 5 Business Days of the date on which they both become aware that the Condition Precedent is not satisfied or has become incapable of being satisfied (or, if earlier, by 8.00 am on the Second Court Date); or
  - (ii) the Scheme has not become Effective by the End Date,
- then unless the Condition Precedent is waived (and subject to Clause 3.4(c)), either may terminate this Deed at any time prior to 8.00 am on the Second Court Date with immediate effect by written notice to the other Parties.
- (c) A Party may not terminate this Deed under Clause 3.4(b), if the relevant Condition Precedent has not been satisfied, or is incapable of being satisfied, or there is an occurrence that will prevent the Condition Precedent being satisfied by the date specified in this Deed for its satisfaction, as a result of:
- (i) a deliberate act or omission by that Party, or any of its Representatives; or:
  - (ii) a breach of this Deed by that Party.
- (d) Subject to any rights or obligations arising under or pursuant to Clauses that are expressed to survive termination, on termination of this Deed, no Party has any rights against or obligations to any other Party under this Deed except for those rights and obligations which accrued prior to termination.

### 3.5. Certain notices

- (a) If, before the time specified for satisfaction of a Condition Precedent, an event that will prevent that Condition Precedent being satisfied occurs, the Party with knowledge of that event must promptly give the other Party written notice of that event.
- (b) WMK must promptly advise the Responsible Entity orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
  - (i) a representation or warranty provided in this Deed by WMK (**WMK Warranty**) to be false in a material respect;
  - (ii) a breach or non-fulfilment of any of the Conditions Precedent; or
  - (iii) a material breach of this Deed by a member of WMK or its Representatives.

- (c) The Responsible Entity must promptly advise WMK orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
  - (i) a representation or warranty provided in this Deed by the Responsible Entity (**Responsible Entity Warranty**) to be false in a material respect;
  - (ii) a breach or non-fulfilment of any of the Conditions Precedent; or
  - (iii) a material breach of this Deed by the Responsible Entity or its Representatives.

### 3.6. Certification

WMK and the Responsible Entity will provide to the Court on the Second Court Date a certificate executed as a deed, or such other evidence as the Court requests, as required by clause 3.2 of the Scheme.

## 4. IMPLEMENTATION

### 4.1. Calculation of Scheme Consideration

- (a) WMK must within 5 Business Days of the Calculation Date:
  - (i) cause its administrator, Link Funds Solutions Pty Limited (ACN 114 914 215) to calculate the NTA of WMK as at the Calculation Date; and
  - (ii) immediately notify the Manager and Responsible Entity of the WMK NTA.
- (b) In circumstances where the Watermark Absolute Return Fund has, immediately prior to the Calculation Date a NAV reasonably likely to be greater than zero the Responsible Entity must within 5 Business Days of the Calculation Date cause its administrator, Link Funds Solutions Pty Limited (ACN 114 914 215) to calculate the NAV of the Watermark Absolute Return Fund and the Scheme Consideration will be calculated on the following basis:

Where

**A** = the NAV of the Watermark Absolute Return Fund per Unit;

**B** = the NTA of WMK per WMK Share;

**D** = the number of WMK Shares held by the WMK Shareholder; and

**SC** = the number Units to be issued to each WMK Shareholder (rounded to the nearest whole number of Units),

$SC = (B/A) * D$

- (c) In circumstances where the Watermark Absolute Return Fund has, immediately prior to the Calculation Date a NAV reasonably likely to be zero the Scheme Consideration will be on the basis of one Watermark Absolute Return Fund Unit for each dollar of WMK NTA as calculated in accordance with Clause 4.1(a).

- (d) Each WMK Shareholder will be entitled to such number of Units on a pro-rata basis by reference to the number of WMK Shares that they hold as at the Record Date based on the following formula:

Where

A = the number Units required to be issued in the Watermark Absolute Return Fund in accordance with Clause 4.1(c)

B = the number of WMK Shares on issue at the Calculation Date

C = the number WMK Shares held by the WMK Shareholder

NU = the number Units to be issued to each WMK Shareholder (rounded to the nearest whole number of Units)

$$NU = (A/B) * C$$

- (e) Once the Scheme Consideration has been calculated by the Responsible Entity under either Clause 4.1(b) or 4.1(d) (as applicable) the Responsible Entity must immediately notify WMK and the Manager of the Scheme Consideration.

#### 4.2. WMK's obligations

WMK must take all necessary steps to implement the Transaction as soon as is reasonably practicable, including doing any acts it is authorised and able to do, on behalf of WMK Shareholders and including each of the following:

- (a) **preparation of Scheme Booklet:** subject to Clauses 4.2(h) and 4.4(a), prepare and despatch the Scheme Booklet in accordance with all applicable laws and in particular with the Corporations Act, RG 60, Regulation 5.1.01 and Schedule 8 of the *Corporations Regulations 2001* (Cth).
- (b) **section 411(17)(b) statement:** apply to ASIC for the production of:
- (i) an indication of intent letter stating that it does not intend to appear at Court on the First Court Date; and
  - (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objections to the Scheme;
- (c) **Court direction:** apply to the Court for orders directing WMK to convene the Scheme Meeting;
- (d) **Scheme Meeting:** convene the Scheme Meeting to approve the Scheme in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (e) **General Meeting:** convene the General Meeting to approve the Capital Reduction Resolution;
- (f) **Court approval:** subject to all Conditions Precedent in Clause 3.1 (other than Clause 3.1(c)) being satisfied or waived in accordance with this Deed, apply to the Court for orders approving the Scheme as agreed to by the WMK Shareholders at the Scheme Meeting;

- (g) **lodge copy of Court order:** lodge with ASIC an office copy of the Court orders approving the Scheme as agreed to by the WMK Shareholders at the Scheme Meeting no later than one Business Day after the day such office copy is received (or such later date as agreed in writing by WMK, the Responsible Entity and the Manager);
- (h) **consultation with the Responsible Entity and the Manager:** consult with the Responsible Entity and the Manager as to the content and presentation of the application to the Court and the Scheme Booklet including:
  - (i) providing to the Responsible Entity and the Manager drafts of the Scheme Booklet for the purpose of enabling the Responsible Entity and the Manager to review and comment on those draft documents;
  - (ii) taking all comments made by the Responsible Entity and the Manager into account in good faith when producing a revised draft of the Scheme Booklet;
  - (iii) providing to the Responsible Entity and the Manager a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable the Responsible Entity and the Manager to review the Regulator's Draft before its submission; and
  - (iv) obtaining written approval from the Responsible Entity and the Manager for the form and content in which the Responsible Entity Information and the Manager Information (respectively) appears in the Scheme Booklet which must not be unreasonably withheld or delayed;
- (i) **information:** provide all necessary information, or procure that the Registry provides all necessary information, in each case in a form reasonably requested by the Responsible Entity and the Manager, about the Transaction and WMK Shareholders to the Responsible Entity and the Manager and their authorised Representatives which the Responsible Entity and the Manager reasonably require in order to facilitate the provision by, or on behalf of, the Responsible Entity of the Scheme Consideration;
- (j) **ASIC review:** keep the Responsible Entity informed of any matters raised by ASIC in relation to the Scheme Booklet or the Scheme, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by the Responsible Entity;
- (k) **Independent Expert:** promptly appoint the Independent Expert and provide assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet as soon as practicable;
- (l) **Scheme Participant Notice:** subject to the Scheme becoming Effective, on or before the second Business Day after the Record Date, give the Responsible Entity a Scheme Participant Notice;
- (m) **Approvals:** subject to the Scheme becoming Effective, on or before the Implementation Date:
  - (i) the Directors convene and hold a meeting to:
    - (A) approve and otherwise give effect to the transfer of all of the WMK Assets to the Responsible Entity;



- (B) approve the declaration of an *in specie* distribution of the Scheme Consideration; and
    - (C) convene the Scheme Meeting to approve the Scheme ;
  - (ii) the Directors convene and hold the General Meeting to approve the Capital Reduction; and
  - (iii) WMK must direct the making of the requisite entry in the Share Register to effect the cancellation of the WMK Shares and the existing share certificates issued in respect of the WMK Shares (if any),
- subject to the issue of the Scheme Consideration in accordance with the Scheme;
- (n) **asset transfer:** if the Scheme becomes Effective do all things necessary to effect the transfer of the WMK Assets as contemplated by the Scheme;
  - (o) **in specie distribution and capital reduction:** if the Scheme becomes Effective and subject to all approvals in accordance with this Clause 4.1 pay a dividend and effect a capital reduction and cancellation of all WMK Shares and procure that the Watermark Absolute Return Fund distributes the Scheme Consideration as an in specie distribution (as detailed in Clause 4.9);
  - (p) **transfer of net proceeds of Withdrawals:** subject to Clause 4.2(o) occurring, pay or procure the payment of the net proceeds of the Withdrawals to Ineligible Foreign Shareholders (as detailed in Clause 4.11);
  - (q) **ASX:**
    - (i) WMK must apply to the ASX to ensure that WMK is suspended from official quotation on the Effective Date; and
    - (ii) once the Scheme becomes Effective, WMK must apply to the ASX to ensure that it is removed from the official list of ASX on the Implementation Date;
  - (r) **issue of a share to the Manager:** if the Scheme becomes Effective WMK must on the Implementation Date, immediately following completion of the Capital Reduction, issue one fully paid ordinary share at an issue price of \$1 to the Manager; and
  - (s) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(4)(b) of the Corporations Act, at which through its counsel, WMK will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this Deed and the Scheme.

#### 4.3. The Responsible Entity's obligations

The Responsible Entity must take all necessary steps to implement the Transaction as soon as is reasonably practicable, including doing each of the following:

- (a) **The Responsible Entity Information:** prepare and promptly provide to WMK the Responsible Entity Information for inclusion in the Scheme Booklet to comply with all applicable laws and ASIC regulatory guides, and consult with WMK as to the content and

presentation of the Responsible Entity Information in the Scheme Booklet, such consultation to include allowing WMK a reasonable opportunity to review and make comments on successive drafts of the Responsible Entity Information before lodgement of the Regulator's Draft with ASIC;

- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by WMK and provide comments, if any, as soon as practicable;
- (c) **confirmation of the Responsible Entity Information:** before the Regulator's Draft is provided to ASIC pursuant to section 411(2) of the Corporations Act, either:
  - (i) confirm in writing to WMK that the Responsible Entity Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to WMK the changes required to ensure that the Responsible Entity Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
- (d) **Independent Expert's report:** provide any assistance or information reasonably requested by WMK or by the Independent Expert in connection with the preparation of the Independent Expert's report to be sent together with the Scheme Booklet;
- (e) **update Responsible Entity Information:** if:
  - (i) at any time after the despatch of the Scheme Booklet, the Responsible Entity becomes aware of new information which, were it known at the time of despatch, should have been included in any of the Responsible Entity Information provided previously to WMK; or
  - (ii) at any time, the Responsible Entity becomes aware that any part of the Responsible Entity Information provided previously to WMK is misleading or deceptive in any material respect (whether by omission or otherwise),it must advise WMK so that WMK can determine whether supplementary disclosure to WMK Shareholders is required;
- (f) **Deed Poll:** on or prior to the First Court Date, enter into the Deed Poll;
- (g) **Court proceedings:** undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this Deed and the Scheme;
- (h) **asset transfer:** if the Scheme becomes Effective, accept and otherwise do all things necessary to effect the transfer of the WMK Assets to the Watermark Absolute Return Fund as contemplated by the Scheme on the Implementation Date; and
- (i) **Scheme Consideration:** if the Scheme becomes Effective, issue the Scheme Consideration, in the manner and amount contemplated by the terms of the Scheme:
  - (i) by issuing the Scheme Consideration to the WMK Shareholders in accordance with Clause 4.2(o);

- (ii) approve the WMK Shareholders as holders of Units; and
- (iii) update the unit register for the Watermark Absolute Return Fund accordingly.

#### 4.4. The Manager's Obligations

- (a) **assistance with preparation of Scheme Booklet:** use all reasonable endeavours to assist WMK and the Responsible Entity with the preparation of the Scheme Booklet as a whole;
- (b) **The Manager Information:** prepare and promptly provide to WMK the Manager Information for inclusion in the Scheme Booklet to comply with all applicable laws and ASIC regulatory guides, and consult with WMK as to the content and presentation of the Manager Entity Information in the Scheme Booklet, such consultation to include allowing WMK a reasonable opportunity to review and make comments on successive drafts of the Manager Information before lodgement of the Regulator's Draft with ASIC;
- (c) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by WMK and provide comments, if any, as soon as practicable;
- (d) **confirmation of the Manager Information:** before the Regulator's Draft is provided to ASIC pursuant to section 411(2) of the Corporations Act, either:
  - (i) confirm in writing to WMK that the Manager Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to WMK the changes required to ensure that the Manager Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
- (e) **Independent Expert's report:** provide any assistance or information reasonably requested by WMK or by the Independent Expert in connection with the preparation of the Independent Expert's report to be sent together with the Scheme Booklet;
- (f) **update Manager Information:** if:
  - (i) at any time after the despatch of the Scheme Booklet, the Manager becomes aware of new information which, were it known at the time of despatch, should have been included in any of the Manager Information provided previously to WMK; or
  - (ii) at any time, the Manager becomes aware that any part of the Manager Information provided previously to WMK is misleading or deceptive in any material respect (whether by omission or otherwise),

it must advise WMK so that WMK can determine whether supplementary disclosure to WMK Shareholders is required;
- (g) **liquidation of WMK portfolio:** the Manager must use all reasonable endeavours, subject to acting in the best interests of WMK Shareholders to liquidate and convert the assets of WMK into cash as soon as practicable following the date of this Deed;
- (h) **agreement to become WMK's sole shareholder:** if the Scheme becomes Effective the Manager must, on the Implementation Date and subject to completion of the Capital

Reduction, do all things necessary to subscribe for one fully paid ordinary share in WMK issued at \$1.00 and otherwise agree to be bound by the WMK Constitution.

#### **4.5. Conduct of business**

- (a) From the date of this Deed up to and including the Implementation Date, WMK must, and the Manager must (subject to Clause 4.4(g)) procure that WMK does, conduct its business in the ordinary and proper course of business consistent with past practice, keep the Responsible Entity informed of the conduct of business, and make all reasonable efforts to:
  - (i) keep available the services of the Directors and WMK's other officers;
  - (ii) maintain and preserve satisfactory relationships with its suppliers and others having business dealings with WMK (including using reasonable endeavours to obtain consents from third parties to any change of control provisions in contracts or arrangements to which WMK is a party);
  - (iii) not enter into any lines of business or other activities in which WMK is not engaged as of the date of this Deed;
  - (iv) preserve intact its asset and business organisation;
  - (v) not allow any tax payment that is due and payable to remain unpaid; and
  - (vi) manage its working capital in the ordinary course of ordinary business consistent with past practice.
- (b) Nothing in Clause 4.5(a) restrains WMK from taking any action permitted by this Deed or with the prior written consent of the Responsible Entity, which consent will not be unreasonably withheld or delayed.
- (c) The Parties must consult with each other in good faith immediately after execution of this Deed and for the period up to the Implementation Date, to discuss and assist in preparing a transition plan.

#### **4.6. Independent Board Committee recommendation**

- (a) Subject to Clause 4.6(b), WMK must use its reasonable endeavours to procure that:
  - (i) the Independent Board Committee unanimously recommends in the Scheme Booklet that, in the absence of a Superior Competing Transaction and subject to the Independent Expert concluding or continuing to conclude that the Transaction is in the best interests of WMK Shareholders, WMK Shareholders vote in favour of the Transaction; and
  - (ii) the Scheme Booklet will include a statement to the effect that each Independent Director will, in the absence of a Superior Competing Transaction and subject to the Independent Expert concluding or continuing to conclude that the Transaction is in the best interests of WMK Shareholders, vote (or procure the voting) of all Independent Director Shares in favour of the Scheme at the Scheme Meeting.
- (b) WMK must use its reasonable endeavours to procure that the Independent Board Committee collectively, and the Independent Directors of the WMK Board individually, do

not change, withdraw or modify its, his or her recommendation in the Scheme Booklet that WMK Shareholders vote in favour of the Transaction or their statement that they will vote (or procure the voting) of its, his or her Independent Director Shares in favour of the Scheme at the Scheme Meeting or make a recommendation or statement that is inconsistent with such recommendation or statement, unless:

- (i) the Independent Board Committee or Independent Director has first obtained written legal advice from its legal advisors that a failure by the Independent Board Committee or Independent Director to change, withdraw or modify its, his or her recommendation or statement or make a recommendation or statement that is inconsistent with it would be reasonably likely to constitute a breach of their fiduciary or statutory obligations;
  - (ii) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of WMK Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of WMK Shareholders; or
  - (iii) WMK receives a Superior Competing Transaction.
- (c) If the Independent Board Committee proposes to change, withdraw or modify its recommendation or statement in accordance with Clause 4.6(b), or make a recommendation or statement that is inconsistent with such recommendation or statement in accordance with Clause 4.6(b) WMK must immediately notify the Responsible Entity and the Manager in writing.
- (d) In the event that WMK provides notice under Clause 4.6(c) the Manager will be entitled to terminate this Deed by notice to WMK and the Responsible Entity with immediate effect.

#### **4.7. WMK Facilitation**

- (a) Where in this Clause 4 an obligation is imposed on WMK to undertake any act or to ensure that an act does not occur, WMK must, in addition to doing so itself, instruct the Manager to undertake that act or refrain from undertaking that act (as the case requires) where the terms of the WMK Management Agreement or any other agreement, arrangement or understanding or course of conduct between the Manager and WMK which imposes responsibility for that matter on the Manager.
- (b) Provided that WMK complies with Clause 4.7(a), any breach of an obligation imposed on WMK under this Clause 4 that is caused by any act that the Manager undertakes or refrains from undertaking will not be considered to be a breach of this Deed by WMK.

#### **4.8. Responsible Entity Facilitation**

- (a) Where in this Clause 4 an obligation is imposed on the Responsible Entity to undertake any act or to ensure that an act does not occur, the Responsible Entity must, in addition to doing so itself, instruct the Manager to undertake that act or refrain from undertaking that act (as the case requires) where the terms of the Watermark Absolute Return Fund Management Agreement or any other agreement, arrangement or understanding or course of conduct between the Manager and the Responsible Entity which imposes responsibility for that matter on the Manager.

- (b) Provided that the Responsible Entity complies with Clause 4.8(a), any breach of an obligation imposed on the Responsible Entity under this Clause 4 that is caused by any act that the Manager undertakes or refrains from undertaking will not be considered to be a breach of this Deed by the Responsible Entity.

#### **4.9. Completion Steps**

Subject to the satisfaction or waiver of the Conditions and this deed not having been terminated before Completion, Completion must occur on the Effective Date and at Completion the following events must occur in the following sequence:

- (a) WMK must declare and pay a dividend in the amount of the Dividend Amount to be applied as a component of the Distribution;
- (b) WMK must apply for the Units in consideration for the transfer of the WMK Assets to Watermark Absolute Return Fund;
- (c) WMK must itself transfer or procure that the Manager under the Existing IMA transfers legal and beneficial title to the WMK Assets to the Responsible Entity on behalf of the Watermark Absolute Return Fund, or as it may direct, free of any security interests and other Third Party rights.
- (d) WMK must itself deliver or procure that the Manager delivers to the Watermark Absolute Return Fund or as it may direct:
  - (i) all transfer documents and instructions to Third Parties necessary to transfer title to the WMK Assets executed by the transferor;
  - (ii) all title documents relating to WMK Assets; and
  - (iii) all Records relating in any way to the WMK Assets.
- (e) WMK must:
  - (i) in satisfaction of its obligations to undertake the Distribution, direct the Responsible Entity to issue the Units to the WMK Shareholders in accordance with Clause 4.1; and
  - (ii) on behalf of each WMK Shareholder agree to accept the Units and be bound by the Constitution;
- (f) the Responsible Entity must immediately issue the Units and allot them to each WMK Shareholder on the basis detailed in Clause 4.1;
- (g) WMK must issue one fully paid ordinary share to the Manager as detailed in Clause 4.2;
- (h) WMK and the Manager must execute the Termination Deed; and
- (i) the Responsible Entity and the Manager must execute the New Management Agreement.

#### **4.10. Distribution Notice**

- (a) WMK must determine and make an appropriate announcement to the ASX setting out:

- (i) the proportions of the Distribution Amount that comprise the Return of Capital Amount and the Dividend Amount; and
  - (ii) the proportions of the Dividend Amount that comprise franked and unfranked dividends.
- (b) For the purposes of Clause 4.10(a), the Dividend Amount must be franked to the extent of the estimated franking account balance of WMK as at the Calculation Date.

#### **4.11. Completion steps in relation to Ineligible Foreign Shareholders**

Notwithstanding any other provision in the Deed:

- (a) the Responsible Entity:
  - (i) will not issue the Units and allot them to an Ineligible Foreign Shareholders to which the Ineligible Foreign Shareholders would otherwise be entitled under the Scheme (**Ineligible Shareholder Units**);
  - (ii) will issue the Ineligible Shareholder Units to the Nominee on their behalf; and
  - (iii) must procure the Nominee to:
    - (A) apply to withdraw the Ineligible Shareholder Units as soon as reasonably practicable and in any event not more than 20 Business Days after the Implementation Date (**Withdrawal**); and
    - (B) within 5 Business Days after the Withdrawal, remit the net proceeds of the Withdrawal received (after deducting any applicable brokerage, stamp duty and other costs, taxes and charges) to WMK.
- (b) Within 10 Business Days of receiving the net proceeds from the Withdrawal, WMK must remit to each Ineligible Foreign Shareholder an amount equal to the proportion of the net proceeds received by WMK under the Withdrawal to which that Ineligible Foreign Shareholder is entitled (rounded to the nearest cent), in satisfaction of their right to the Scheme Consideration.
- (c) WMK's obligation to pay or procure the payment of the net proceeds to the Ineligible Foreign Shareholders under Clause 4.11(b) will be paid in Australian dollars by:
  - (i) electronic funds transfer to a bank account as noted on WMK's share register on the Record Date; or
  - (ii) whether or not an account is noted on WMK's share register, cheque drawn on an Australian bank and sent by pre-paid post to the Ineligible Foreign Shareholder's Registered Address.

## **5. REPRESENTATIONS AND UNDERTAKINGS**

### **5.1. Responsible Entity's representations**

The Responsible Entity represents to WMK (in its own right and separately as trustee or nominee for each of the other WMK Parties) and the Manager (in its own right and separately as trustee or nominee for each of the other Manager Parties) that:

- (a) the Responsible Entity Information provided to WMK for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that each of the WMK Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Transaction in accordance with the Corporations Act;
- (b) the Responsible Entity Information provided under Clause 4.3(a) included in the Scheme Booklet, as at the date the Scheme Booklet is despatched to WMK Shareholders, will (to the best of the Responsible Entity's knowledge, information and belief, after due enquiry) not contain any statement which is materially misleading or deceptive including by way of material omission from that statement;
- (c) the Responsible Entity will, as a continuing obligation, provide to WMK all further or new information which it becomes aware of after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that there would be no breach of Clause 5.1(b) if it applied as at the date on which that information arose;
- (d) the Responsible Entity is a validly existing corporation registered under the laws of its place of incorporation;
- (e) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Responsible Entity;
- (f) the Responsible Entity has full corporate power and lawful authority to execute, deliver and perform this Deed, including under the Watermark Absolute Return Fund Constitution; and
- (g) this Deed does not conflict with or result in the breach of or default under the Watermark Absolute Return Fund Constitution and to the best of the Responsible Entity's knowledge any other agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound.

### **5.2. WMK's representations**

WMK represents to the Responsible Entity and its directors and officers (in its own right and separately as trustee or nominee for each of the other the Responsible Entity Parties) and the Manager (in its own right and separately as trustee or nominee for each of the other Manager Parties) that:

- (a) no information (other than the Responsible Entity Information and the Independent Expert's Report) contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to WMK Shareholders, will contain (to the best of WMK's knowledge, information and belief, after due enquiry) any statement which is materially misleading or deceptive, including by way of material omission from that statement;



- (b) WMK is a validly existing corporation registered under the laws of its place of incorporation;
- (c) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of WMK;
- (d) WMK has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed;
- (e) this Deed does not conflict with or result in the breach of or default under any provision of the WMK Constitution or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it is bound; and
- (f) its capital structure, including all issued securities, as at the date of this Deed is as set out in clause 2(b) of the Scheme.

### **5.3. Manager representations**

The Manager represents to WMK and its directors and officers (in its own right and separately as trustee or nominee for each of the other the WMK Parties) and the Responsible Entity (in its own right and separately as trustee or nominee for each of the other Responsible Entity Parties) that:

- (a) no information (other than the Responsible Entity Information, WMK Information and the Independent Expert's Report) contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to WMK Shareholders, will contain (to the best of WMK's knowledge, information and belief, after due enquiry) any statement which is materially misleading or deceptive, including by way of material omission from that statement;
- (b) the Manager is a validly existing corporation registered under the laws of its place of incorporation;
- (c) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Manager;
- (d) the Manager has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed; and
- (e) this Deed does not conflict with or result in the breach of or default under any provision of the Manager Constitution or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it is bound.

### **5.4. Survival of representations**

Each representation and warranty in Clauses 5.1, 5.2 and 5.3:

- (a) is severable;
- (b) survives the termination of this Deed; and
- (c) is given with the intention that liability under it is not confined to breaches which are discovered before the date of termination of this Deed.

## **6. PUBLIC ANNOUNCEMENTS**

### **6.1. Announcement of Transaction**

Immediately after the execution of this Deed, WMK must issue a public announcement in a form previously agreed in writing between WMK, the Responsible Entity and the Manager.

## **7. CONFIDENTIALITY**

### **7.1. Confidentiality**

- (a) Each Party acknowledges and agrees that all information received by it from any other Party before or after the date of this Deed is confidential information and must remain confidential and not be disclosed to any Third Party without the consent of the other Parties.
- (b) A Party may make any disclosures in relation to this deed as it thinks necessary:
  - (i) to its professional advisers, insurers, bankers, financial advisers and financiers, if those persons undertake to keep information disclosed confidential;
  - (ii) to comply with any Law or requirement of any Government Authority or the rules of ASX; or
  - (iii) to its Representatives to whom it is necessary to disclose the information if that Representative undertakes to keep the information disclosed confidential.

## **8. LIABILITY OF THE RESPONSIBLE ENTITY**

- (a) WMK and the Manager agree that the Responsible Entity enters into this Deed in its capacity as trustee of the Watermark Absolute Return Fund and in no other capacity.
- (b) WMK and the Manager agree that the liability of the Responsible Entity to the Manager and WMK, their officers, or agents or any other person under or arising out of this Deed in relation to the Watermark Absolute Return Fund is limited to the amount that the Responsible Entity actually receives in the exercise of its right of indemnity against the Watermark Absolute Return Fund.
- (c) Each of the Manager and WMK may enforce its rights under this Deed against the Responsible Entity only to the extent of the Responsible Entity's right of indemnity out of the assets of the Watermark Absolute Return Fund.
- (d) If the Manager or WMK does not recover all money owing to it by enforcing the rights referred to in Clause 8(c), it may not seek to recover the shortfall by:
  - (i) bringing proceedings against the Responsible Entity in its personal capacity; or
  - (ii) applying to have the Responsible Entity wound up or proving in the winding up of the Responsible Entity unless another creditor has initiated proceedings to wind up the Responsible Entity.
- (e) Each of the Manager and WMK waives its rights and releases the Responsible Entity from any personal liability whatsoever, in respect of any loss or damage which:

- (i) it may suffer as a result of the Responsible Entity's non-performance of its obligations and liabilities under this Deed; and
  - (ii) cannot be paid or satisfied out of the assets of the Watermark Absolute Return Fund out of which the Responsible Entity is entitled to be indemnified in respect of any liability incurred as the trustee.
- (f) The limitation in this Clause 8 does not apply to the extent that any liability arises from fraud, gross negligence or breach of trust by the Responsible Entity as the trustee of the Watermark Absolute Return Fund. For these purposes, it is agreed that the Responsible Entity cannot be regarded as having acted fraudulently, with gross negligence or in breach of trust to the extent to which the fraud, gross negligence or breach of trust has been caused or contributed to by a failure of either the Manager or WMK to fulfil its obligations under this Deed or any other act or omission of either the Manager or WMK or any other person.
- (g) Nothing in Clause 8(f) shall make the Responsible Entity liable to any claim for an amount greater than the amount which the Responsible Entity would have been able to claim and recover from the assets of the Watermark Absolute Return Fund in relation to the relevant liability if the Responsible Entity's right of indemnification out of the assets of the Watermark Absolute Return Fund had not been prejudiced by the Responsible Entity's failure to properly perform its duties.
- (h) The Responsible Entity is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Responsible Entity's liability is limited in the same manner as set out in paragraph (a) to (g) of this Clause.
- (i) Each of the Manager and WMK acknowledges and agrees that in respect of any liability or obligation incurred by the Responsible Entity under or arising out of this Deed, it shall not be permitted to set off liabilities or obligations against it nor have any recourse to, the assets of any managed investment scheme or trust for which the Responsible Entity has been appointed as responsible entity or trustee, other than the Watermark Absolute Return Fund.
- (j) This Clause applies despite any other provision in this Deed and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this Deed. In the event of any inconsistency, this Clause prevails and survives termination of this Deed.

## 9. TERMINATION

### 9.1. Termination by any Party

Unless otherwise agreed to by WMK, the Responsible Entity or the Manager, any Party may terminate this Deed by giving written notice to the other Party at any time prior to the **Effective Date** where:

- (a) one of the other Parties is in material breach of any Clause, including a warranty, of this Deed which is incapable of being remedied, or if the breach is capable of being remedied, continue to exist for more than 10 Business Days;
- (b) a Court or other Governmental Agency has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme; or

- (c) any condition precedent referred to in Clause 3 has not been satisfied or waived in accordance with this Deed.

## 9.2. Effect of termination

In the event of termination of this Deed by any Party pursuant to this Clause 9 or Clause 4.6(d), this Deed will become void and have no effect, other than in respect of any liability for an antecedent breach of this Deed.

## 10. GST

### 10.1. GST

- (a) Any consideration or amount payable under this Deed, including any non-monetary consideration (as reduced in accordance with Clause 10.1(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this Deed, an additional amount (**Additional Amount**) is payable by the Party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the Party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under Clause 10.1(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under Clause 10.1(b):
  - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate.
- (e) Despite any other provision in this Deed:
  - (i) if an amount payable under or in connection with this Deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a Party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that Party is entitled in respect of that Amount Incurred; and
  - (ii) no Additional Amount is payable under Clause 10.1(b) in respect of a Supply to which section 84-5 of the GST Law applies.

- (f) Any reference in this Clause to an Input Tax Credit to which a Party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that Party but to which the Representative Member of a GST Group of which the Party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this Deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

## **11. GENERAL**

### **11.1. No representation or reliance**

- (a) Each Party acknowledges that no Party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each Party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other Party, except for any representation or inducement expressly set out in this Deed.
- (c) Each Party acknowledges and confirms that Clauses 11.1(a) and 11.1(b) do not prejudice any rights a Party may have in relation to information which has been filed by the other Party with ASIC or ASX.

### **11.2. No merger**

The rights and obligations of the Parties do not merge on implementation of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

### **11.3. Consents**

Any consent referred to in, or required under, this Deed from any Party may not be unreasonably withheld, unless this Deed expressly provides for that consent to be given in that Party's absolute discretion.

### **11.4. Notices**

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

WMK

Address:	Level 23, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000
Fax no:	+61 2 9252 1220
Attention:	Mark Licciardo
Email:	info@wffunds.com.au

Responsible Entity

Address: Level 2, 575 Bourke Street, Melbourne, Victoria 3000  
Fax no: +61 3 8623 5200  
Attention: Harvey H Kalman, Executive General Manager, Corporate Trustee Services  
Email: hkalman@eqt.com.au

Manager

Address: Level 23, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000  
Fax no: +61 2 9252 1220  
Attention: Tim Bolger  
Email: bolger@wffunds.com.au

(or as otherwise notified by that Party to the other Party from time to time);

- (c) must be signed by the Party making the communication or by a person duly authorised by that Party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, or by email to the email address, of the addressee, in accordance with Clause 11.4(b); and
- (e) is regarded as received by the addressee:
  - (i) if sent by prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
  - (ii) if sent by fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day;
  - (iii) if delivered by hand, on delivery at the address of the addressee as provided in Clause 11.4(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day; and
  - (iv) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) subject to the email being sent within the hours of 9am and 5pm on a Business Day, 6 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

### **11.5. Stamp Duty**

WMK undertakes and agrees to fully indemnify the Responsible Entity with respect to any amounts payable in connection with the implementation of the Scheme under clause 9.1 of the Deed Poll.

### **11.6. Governing law and jurisdiction**

- (a) This Deed is governed by the laws of the State of New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

### **11.7. Waivers**

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by any Party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver or consent given by any Party under this Deed is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of any term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### **11.8. Variation**

This Deed may only be varied by a document signed by, or on behalf of, each of the Parties.

### **11.9. Assignment**

A Party may not assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of the other Party.

### **11.10. Further action**

Each Party will do all things and execute all further documents necessary to give full effect to this Deed.

### **11.11. Entire agreement**

This Deed supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the Parties.

### **11.12. Counterparts**

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Deed by signing any counterpart.

- (d) This Deed may be executed on the basis of an exchange of facsimile copies or electronic images (such as scanned copies or digital photos), and execution of this Deed by such means is a valid and sufficient execution.



**Schedule 1  
Timetable**

<b>Event</b>	<b>Date</b>
Announcement	Date of this Deed
WMK provides Regulator's Draft to ASIC	8 February 2019
First Court Date	25 February 2019
Printing and despatch of Scheme Booklet	1 March 2019
Scheme Meeting	1 April 2019
Second Court Date	3 April 2019
Effective Date – Lodge Court orders approving Scheme and s. 413 transfer of WMK Assets and liabilities with ASIC	4 April 2019
Record Date	9 April 2019
Implementation Date	15 April 2019

**Schedule 2**  
**Scheme**

Attached.

# Scheme of Arrangement

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**Watermark Market Neutral Fund Limited**

(ACN 163 980 498)

**Scheme Shareholders**



**KARDOS • SCANLAN**

CORPORATE LAWYERS

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This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

## **PARTIES:**

**Watermark Market Neutral Fund Limited** (ACN 163 980 498) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000 (**WMK**); and

## **The Scheme Shareholders.**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1. Definitions**

In this Scheme:

**Assets** means any legal or equitable right, estate or interest (whether present or future and whether vested or contingent) in real or personal property and any description, wherever located and whether tangible or intangible, including:

- (a) any part of the business or undertaking of a body corporate;
- (b) a chose or other thing in action, including any rights under any contract, negotiable instrument or other arrangement;
- (c) any share in a company and any unit or other interest in a trust;
- (d) any 'property' (within the meaning in subsection 413(4) of the Corporations Act; and
- (e) any other thing capable of being transferred or otherwise dealt with by order of the Court in accordance with paragraph 413(1)(a) of the Corporations Act.

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

**ASX** means ASX Limited (ACN 008 624 691) or, as the context requires, the financial market operated by it.

**Administrator** means Link Funds Solutions Pty Limited (ACN 114 914 215), being the administrator for the Fund and WMK.

**Australian Accounting Standards** means the accounting standards promulgated by the Australian Accounting Standards Board.

**Business Day** means a weekday on which trading banks are open for business in Sydney, Australia, excluding any Saturday, Sunday or public holiday.

**Capital Reduction** means the reduction in the capital of WMK by the Capital Reduction Amount under section 256B of the Corporations Act to be applied equally against each Scheme Share on issue as at the Record Date in accordance with the terms of the Capital Reduction Resolution.

**Capital Reduction Amount** means the amount of the Distribution Amount less the Dividend Amount.

**Capital Reduction Entitlement** means in relation to a Scheme Shareholder, the Capital Reduction Pro-Rata Amount multiplied by the number of Scheme Shares held by the Scheme Shareholder on the Record Date.

**Capital Reduction Pro-Rata Amount** means the Capital Reduction Amount divided by the number of Scheme Shares on issue on the Record Date.

**Capital Reduction Resolution** means the ordinary resolution concerning the Capital Reduction to be considered by Scheme Shareholders at the General Meeting as set out in Annexure A of this Scheme.

**Calculation Date** means 10 Business Days before the Scheme Meeting or such earlier time and date as WMK and the Responsible Entity agree in writing.

**CHESS** means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

**Completion Net Assets** means the post-tax net assets of WMK as at the Calculation Date calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations), and the Corporations Regulations and excluding deferred tax assets (if any).

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

**Corporation Regulations** means the *Corporations Regulations 2001* (Cth).

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as WMK, the Responsible Entity and the Manager agree on in writing.

**Deed Poll** means the deed poll to be granted by the Responsible Entity in substantially the form set out in Schedule 3 to the Implementation Deed or such other form agreed to in writing between WMK, the Responsible Entity and the Manager.

**Delivery Time** means, in relation to the Second Court Date, the time being 2 hours before commencement of the hearing of the Court on the Second Court Date.

**Distribution Amount** means an amount equal to the Completion Net Assets less the Retention Amount.

**Dividend** means a dividend declared in accordance with section 254T of the Corporations Act

**Dividend Amount** means the amount of the dividend (if any) which is declared and paid under Clause 4.9(a) of the Implementation Deed as determined by the Directors.

**Dividend Entitlement** means in relation to a Scheme Shareholder, the Dividend Pro-Rata Amount multiplied by the number of Scheme Shares held by the Scheme Shareholder on the Record Date.

**Dividend Pro-Rata Amount** means the Dividend Amount divided by the number of Scheme Shares on issue on the Record Date.

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**Eligible Shareholder** means a Scheme Shareholder whose registered address on the WMK Register as at the Record Date is in:

- (a) Australia or New Zealand; and
- (b) any other place where WMK reasonably believes that it is not prohibited and not unduly onerous or impractical to implement the Scheme and to issue the Units.

**End Date** means 30 June 2019.

**Fund** means Watermark Absolute Return Fund (ARSN 631 094 534 ).

**General Meeting** means the general meeting for WMK Shareholders held on 1 April 2019 to consider the Capital Reduction Resolution.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state.

**Implementation Date** means the day 5 Business Days after the Scheme Record Date or such other date as WMK, the Responsible Entity and the Manager agree in writing.

**Implementation Deed** means the scheme implementation deed dated 4 February 2019 between WMK, the Responsible Entity and the Manager relating to the implementation of this Scheme.

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address as shown in the Share Register is a place outside Australia and its external territories or New Zealand unless WMK, the Responsible Entity and the Manager agree in writing that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with Units when this Scheme becomes Effective.

**Listing Rules** means the official listing rules of the ASX.

**Manager** means Watermark Funds Management Pty Limited (ACN 106 302 505).

**NAV** has the meaning given in the Watermark Absolute Return Fund Constitution excluding the Retention Amount.

**Nominee** means the agent appointed by the Responsible Entity to be issued with, and to withdraw, the Units in the Fund that would have otherwise been issued to Ineligible Foreign Shareholders in relation to the Scheme.

**NTA** means pre tax net tangible assets after excluding all current and deferred tax assets and liabilities and the Retention Amount, calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations), the Corporations Regulations and consistent with the requirements of the Listing Rules for an Investment Entity, rounded to the nearest one hundredth of a cent.

**Registered Address** means, in relation to a WMK Shareholder, the address of the WMK Shareholder as recorded in the Share Register.

**Responsible Entity** means Equity Trustees Limited (ACN 004 031 298) as responsible entity of the Fund.

**Retention Amount** means \$100,000.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between WMK and the Scheme Shareholders subject to any alterations or conditions:

- (a) agreed to in writing by WMK, the Responsible Entity and the Manager and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed by WMK, the Responsible Entity and the Manager.

**Scheme Consideration** for each Scheme Share means the number of Units calculated in accordance with the procedure set out in Annexure B.

**Scheme Meeting** means the meeting of WMK Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Scheme Record Date** means the third Business Day after the Effective Date or such other date as WMK, the Responsible Entity and the Manager agree.

**Scheme Share** means a WMK Share held by a Scheme Shareholder as at the Scheme Record Date.

**Scheme Shareholder** means each person who is registered in the Share Register as the holder of WMK Shares as at the Scheme Record Date.

**Second Court Date** means the first day on which the application made to the Court for an order for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Share Register** means the register of members of WMK maintained in accordance with the Corporations Act.

**Unit** means a fully paid unit in the capital of the Fund.

**WMK Assets** means the Assets of WMK as at the Implementation Date excluding the Retention Amount and any deferred tax assets (if any).

**WMK Register** means the share register of WMK.

**WMK Registry** means Boardroom Pty Limited of Level 12, 225 George Street, Sydney NSW 2000.

**WMK Share** means a fully paid ordinary share in the capital of WMK.

**Withdrawal Facility** means the facility to be established and implemented by WMK and the Nominee under clause 4.11 of the Implementation Deed with respect to Ineligible Foreign Shareholders.

**Withdrawal Period** means the period on and from the Implementation Date to and including the fifth Business Day after the Implementation Date (or, subject to obtaining any necessary ASIC exemptions or waivers, such longer period of time which WMK and the Nominee determine).

## **1.2. Interpretation**

In this Scheme, headings and bold type are for convenience only and do not affect interpretation and, unless the context requires otherwise:



- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a Clause, Party, Attachment or Schedule is a reference to a clause of, and a party, attachment and schedule to this Scheme, and a reference to this Scheme includes any Attachment and Schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word **includes** in any form is not a word of limitation;
- (i) a reference to **\$** or **dollar** is to Australian currency;
- (j) a reference to any time, unless otherwise indicated, is a reference to the time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme; and
- (l) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a Party.

### **1.3. Business Day**

Where the day on or day by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## **2. PRELIMINARY MATTERS**

- (a) WMK is a public company limited by shares incorporated in Australia and registered in New South Wales, Australia, and has been admitted to the official list of the ASX. WMK Shares are quoted for trading on the ASX.
- (b) As at the Second Court Date, **[insert]** WMK Shares were on issue.
- (c) The Responsible Entity is a public company acting as responsible entity of the Fund, a registered managed investment scheme under the Corporations Act.

- (d) If this Scheme becomes Effective, in consideration of the transfer of the WMK Assets by WMK to the Responsible Entity:
  - (i) the Responsible Entity will procure the issue of the Scheme Consideration to the Scheme Shareholders to assist WMK in implementing the Capital Reduction;
  - (ii) The WMK Shares will be cancelled by WMK in accordance with the terms of the Capital Reduction Resolution and this Scheme.
- (e) WMK, the Manager and the Responsible Entity have agreed by executing the Implementation Deed to Implement the Scheme and conduct the Capital Reduction.
- (f) This Scheme attributes actions to the Responsible Entity but does not itself impose an obligation on it to perform those actions. The Responsible Entity has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Scheme, including providing or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

### **3. CONDITIONS**

#### **3.1. Conditions Precedent**

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions precedent in clause 3.1 of the Implementation Deed (other than the condition precedent in clause 3.1(c) of the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed by the Delivery Time;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before the Delivery Time;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act and agreed to by WMK, the Manager and the Responsible Entity;
- (d) Scheme Shareholders' approval of the Capital Reduction Resolution by the required majority under the Corporations Act at the General Meeting;
- (e) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by WMK, the Manager and the Responsible Entity; and
- (f) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) and section 413(1) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(10) and section 413(3) of the Corporations Act, on or before the End Date (or any later date WMK, the Manager and the Responsible Entity agree).

#### **3.2. Certificate**

- (a) WMK and the Responsible Entity will provide to the Court on the Second Court Date a certificate executed as a deed, or such other evidence as the Court requests, confirming (in

respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.

- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

#### **4. IMPLEMENTATION OF THIS SCHEME**

##### **4.1. Lodgement of Court orders with ASIC**

WMK will lodge with ASIC, in accordance with sections 411(10) and 413(3) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as WMK, the Manager and the Responsible Entity agree in writing.

##### **4.2. Implementation of the Capital Reduction and the Scheme**

On the Implementation Date, without the need for any further act by any Scheme Shareholder:

- (a) the Scheme Consideration will be issued by the Responsible Entity in accordance with the terms of the Deed Poll;
- (b) WMK will reduce its share capital by the Capital Reduction Amount in accordance with the Capital Reduction Resolution;
- (c) WMK will apply the Dividend Entitlement and Capital Reduction Entitlement of each Scheme Shareholder in accordance with clause 4.4;
- (d) the WMK Assets will be transferred to the Fund; and
- (e) subject to the completion of the steps set out in clauses 4.2(a) to 4.2(d), WMK will then immediately issue one fully paid ordinary share to the Manager.

##### **4.3. Implementation of steps 4.2(a) to 4.2(d) to be simultaneous**

Implementation of all of the steps set out in clauses 4.2(a) to 4.2(d) shall be carried out simultaneously and no step in clauses 4.2(a) to 4.2(d) shall be deemed to have been completed until all steps have been carried out.

##### **4.4. Entitlements of Scheme Shareholders**

The Dividend Entitlement and then the Capital Reduction Entitlement of each Scheme Shareholder will, on the Implementation Date, be applied (without the need for any further act by a Scheme Shareholder) as follows:

- (a) for each Eligible Shareholder, by WMK procuring the Responsible Entity on behalf of the Fund, issue to that Eligible Shareholder that number of Units calculated in accordance with section 4.1 of the Implementation Deed with respect to the number of Scheme Shares held by each Eligible Shareholder on the Record Date (rounded to the nearest whole number of Units); and
- (b) for each Ineligible Foreign Shareholder, by WMK procuring the Responsible Entity on behalf of the Fund, issue to the Nominee that number of Units calculated in accordance

with section 4.1 of the Implementation Deed with respect to the number of Scheme Shares held by that Ineligible Foreign Shareholder on the Record Date (rounded to the nearest whole number of Units).

#### **4.5. Issue of Units**

The obligations of WMK under clause 4.4 will be discharged by WMK procuring:

- (a) the issue of all the Units in the Fund to the Scheme Shareholders (or in the case of Ineligible Foreign Shareholders, to the Nominee) in the numbers determined in accordance with clause 4.4); and
- (b) the entry in the Fund's unit register:
  - (i) of the name of each Scheme Shareholder (other than the Ineligible Foreign Shareholders) in respect of the Units issued to the relevant Scheme Shareholder; or
  - (ii) of the name of the Nominee in respect of those Units that would otherwise have been issued to each Scheme Shareholder who is an Ineligible Foreign Shareholder.

#### **4.6. Dispatch of holding statements**

As soon as practicable after the Implementation Date, WMK will procure that the Responsible Entity (on behalf of the Fund) sends to each Scheme Shareholder (who is not an Ineligible Foreign Shareholder) or the Nominee (as applicable), holding statements for the Units issued in accordance with clause 4.5, by prepaid post to their registered address at the Record Date, or as otherwise directed by the relevant Scheme Shareholders or the Nominee.

#### **4.7. Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any Units must be issued to and registered in the name of the joint holders and the holding statement in respect of the requisite number of Units must be sent to the holder whose name appears first in the Share Register as at the Scheme Record Date; and
- (b) any bank cheque required to be paid to Ineligible Foreign Shareholders by or on behalf of WMK must be payable to the joint holders and be forwarded to the holder whose name appears first in the Share Register as at the Scheme Record Date.

#### **4.8. Appointment as agent**

Each Ineligible Foreign Shareholder appoints WMK as its agent to receive on its behalf any financial services guide or other notices which may be given by the Nominee to the Ineligible Foreign Shareholder.

### **5. WITHDRAWAL FACILITY**

#### **5.1. The Withdrawal Facility**

WMK will procure, in accordance with the terms of the Withdrawal Facility, that the Nominee or the Unit registry (as applicable):

- (a) as soon as reasonably practicable (and in any event no later than the end of the Withdrawal Period), withdraw for the benefit of each Ineligible Foreign Shareholder, all the Units issued to the Nominee under clause 4.5 in consideration for the application of the Capital Reduction Entitlement of that Ineligible Foreign Shareholder;
- (b) accounts to each Ineligible Foreign Shareholder for the proceeds of the withdrawal and any income attributable to those Units (on an averaged basis so that all Ineligible Foreign Shareholders receive the same price per Unit, subject to rounding up to the nearest whole cent); and
- (c) remits the proceeds of the withdrawal due to each Ineligible Foreign Shareholder under clause 5.1(b) to the Ineligible Foreign Shareholder no later than 5 Business Days after the end of the Withdrawal Period, such amounts to be dispatched by:
  - (i) direct credit to each Ineligible Foreign Shareholder's nominated bank account as noted in the WMK Register at the Record Date; or
  - (ii) where a bank account has not been nominated by an Ineligible Foreign Shareholder for the purpose of clause 5.1(c)(i), cheque to be mailed to that Ineligible Foreign Shareholder's address as show in the WMK Register at the Record Date.

## **5.2. Satisfaction of obligations**

WMK, by complying with the terms of clause 5.1 in respect of an Ineligible Foreign Shareholder will be taken to have satisfied and discharged its obligations to the relevant Ineligible Foreign Shareholder under the terms of the Capital Reduction Resolution and the Scheme. An Ineligible Foreign Shareholder will have no claim against WMK for any entitlement they would have had to the Units but for the terms of this Scheme.

## **5.3. Acknowledgement**

Under this Scheme, each Ineligible Foreign Shareholder agrees and acknowledges that the sale in respect of the person's Capital Reduction Entitlement under the Withdrawal Facility or this Scheme by operation of clause 5.1 constitutes satisfaction of all the person's entitlements in and to that person's Capital Reduction Entitlement.

# **6. GENERAL SCHEME PROVISIONS**

## **6.1. Agreement to become a member of the Fund**

Under this Scheme, each Scheme Shareholder (including those Scheme Shareholders who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme) who will receive units:

- (a) agrees to become a Unitholder in the Fund, to have their name entered into the Fund's register of Unitholders, accepts the Units issued to them and agrees to be bound by the Fund's constitution; and
- (b) agrees and acknowledges that the issue of Units in accordance with clause 4.5 constitutes satisfaction of all that person's entitlements in and to that person's Capital Reduction Entitlement.

## **6.2. Appointment of agent and attorney**

- (a) Each Scheme Shareholder, without the need for any further act, irrevocably appoints WMK as its agent and attorney for the purpose of executing any document or doing any other act necessary or desirable to give effect to the terms of this Scheme, including without limitation:
  - (i) the execution and delivery of any form or documentation required to effect the issue of the Units to Eligible Shareholders, the Nominee or any other person in accordance with the terms of the Scheme, and the delivery of any such form to the Responsible Entity;
  - (ii) executing any document or doing any other act necessary to give effect to the terms of this Scheme, including, without limitation, the communication of the Eligible Shareholder's consent, agreement, notifications under clauses 6.1, 6.3, 6.4 or 6.5; and
  - (iii) the enforcement of the Deed Poll against the Responsible Entity,and WMK accepts such appointment.
- (b) WMK, as agent of each Scheme Shareholder, may sub-delegate its functions under clause 6.2(a) to all or any of its directors and secretaries (jointly and severally).

## **6.3. Instructions to WMK**

Except for an Eligible Shareholder's tax file number, binding instructions or notifications between an Eligible Shareholder and WMK relating to WMK Shares or an Eligible Shareholder's status as a WMK Shareholder (including without limitation, any instructions in relation to payment of dividends or communications from WMK) will (to the extent permitted by law), from the Record Date, be deemed by reason of this Scheme to be similarly binding instructions or notifications to, and accepted by, the Responsible Entity (on behalf of the Fund) in respect of the Units issued to Eligible Shareholders until those instructions or notifications are, in each case, revoked or amended in writing addressed to the Responsible Entity at the Fund's unit registry.

## **6.4. Scheme Shareholders' consent**

Each Scheme Shareholder irrevocably consents to WMK doing all things necessary incidental or expedient to the implementation and performance of the Scheme and acknowledges that the Scheme binds WMK and all of the Scheme Shareholders from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme).

## **6.5. Amendments to the Scheme**

WMK may, by its counsel and with the consent of the Responsible Entity, consent, on behalf of all persons concerned (including a Scheme Shareholder), to any alterations or conditions to this Scheme as the Court thinks just to impose.

## **6.6. Further Steps**

WMK will execute all documents and do all acts and things necessary or desirable for the implementation and performance of its obligations under this Scheme and will, on behalf of Scheme Shareholders, procure the Responsible Entity on behalf of the Fund to execute all documents and do all acts and things necessary or desirable for the implementation and performance of the steps

attributed to the Fund or the Responsible Entity under this Scheme or with respect to the Capital Reduction.

#### **6.7. Scheme binding**

To the extent of any inconsistency between this Scheme and the WMK constitution, this Scheme overrides the WMK constitution and binds WMK and all Scheme Shareholders.

#### **6.8. Enforcement of Deed Poll**

WMK undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against the Responsible Entity on behalf of the Fund on behalf of and as agent and attorney for Scheme Shareholders.

### **7. DEALING IN WMK SHARES**

#### **7.1. Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in WMK Shares or other alterations to the Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant WMK Share on or before the Scheme Record Date; and
- (b) in all other cases, registerable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Scheme Record Date at the place where the Share Register is kept,

and WMK will not accept for registration, nor recognise for any purpose any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate, except a transfer to the Responsible Entity pursuant to this Scheme and any subsequent transfer by the Responsible Entity.

#### **7.2. Register**

- (a) WMK must register registerable transmission applications or transfers of the WMK Shares in accordance with clause 7.1(b) on or before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 7.2(a) requires WMK to register a transfer that would result in a WMK Shareholder holding a parcel of WMK Shares that is less than a 'marketable parcel' (for the purposes of this clause 7.2(a) 'marketable parcel' has the meaning given in the ASX Settlement Operating Rules).
- (b) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport to agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and WMK shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, WMK must maintain the Share Register in accordance with the provision of this clause 7.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.

- (d) Subject to the provision of the Scheme Consideration and registration of the transfer to the Responsible Entity contemplated in clause 4.2, all statements of holding for WMK Shares will cease to have effect after the Scheme Record Date as document of title in respect of those shares and, as from the Scheme Record Date, each entry current as at the Scheme Record Date on the Share Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the WMK Share relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, WMK will ensure that a copy of the Share Register as at the Scheme Record Date, including details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the Share Register, is available to the Responsible Entity in the form the Responsible Entity reasonably requires.

## **8. GENERAL**

### **8.1. Scheme Shareholders' agreement and warranties**

Each Scheme Shareholder agrees and acknowledges that this Scheme binds WMK and all Scheme Shareholders (including those who do not attend the Scheme Meeting or those who do not vote, or vote against this Scheme, at the Scheme Meeting).

### **8.2. Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to WMK, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at WMK's registered office or at the office of the WMK Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or of the General Meeting or the non-receipt of such notice by a WMK Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the General Meeting or the proceedings of the Scheme Meeting or General Meeting.

### **8.3. Governing law and jurisdiction**

- (a) This Scheme is governed by the laws in force in the State of New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

### **8.4. Further action**

WMK must do all things and execute all further documents necessary or expedient to give full effect to this Scheme and the transactions contemplated by it.

### **8.5. No liability when acting in good faith**

Neither WMK or the Responsible Entity nor any director, officer or secretary of WMK or the Responsible Entity will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.



## **ANNEXURE A**

### **Capital Reduction Resolution**

*“That, subject to and conditional on the Scheme becoming Effective and for the purposes of section 256C(1) of the Corporations Act, approval be given for:*

- (a) the share capital of WMK, as at the Record Date, be reduced to zero on the Implementation Date in consideration for the rights obtained under the Scheme and that the WMK Shares be cancelled; and*
- (b) WMK's obligations under paragraph (a) are to be satisfied by WMK procuring the issue of Units (as defined in the Scheme) in satisfaction of the amount to be distributed to each holder of WMK Shares thereunder in accordance with the provisions of the Scheme.”*

## ANNEXURE B

### Scheme Consideration

**Scheme Consideration** for each Scheme Share means the number of Units calculated as follows:

1. WMK must within 5 Business Days of the Calculation Date:
  - (a) cause the Administrator to calculate the NTA of WMK as at the Calculation Date; and
  - (b) immediately notify the Manager and Responsible Entity of WMK's NTA.
2. In circumstances where the Fund has, immediately prior to the Calculation Date a NAV reasonably likely to be greater than zero the Responsible Entity must within 5 Business Days of the Calculation Date cause the Administrator to calculate the NAV of the Fund and the Scheme Consideration will be calculated on the following basis:

Where:

**A** = the NAV of the Fund per Unit;

**B** = the NTA of WMK per WMK Share;

**D** = the number of WMK Shares held by the WMK Shareholder; and

**SC** = the number Units to be issued to each WMK Shareholder (rounded to the nearest whole number of Units),

$$SC = (B/A) * D$$

3. In circumstances where the Fund has, immediately prior to the Calculation Date a NAV reasonably likely to be zero the Scheme Consideration will be on the basis of one Fund Unit for each dollar of WMK NTA as calculated in accordance with paragraph 1 above.
4. Each WMK Shareholder will be entitled to such number of Units on a pro-rata basis by reference to the number of WMK Shares that they hold as at the Record Date based on the following formula:

Where:

**A** = the number Units required to be issued in the Fund in accordance with paragraph 3 above;

**B** = the number of WMK Shares on issue at the Calculation Date;

**C** = the number WMK Shares held by the WMK Shareholder; and

**NU** = the number Units to be issued to each WMK Shareholder (rounded to the nearest whole number of Units),

$$NU = (A/B) * C$$

5. Once the Scheme Consideration has been calculated by the Responsible Entity, the Responsible Entity must immediately notify WMK and the Manager of the Scheme Consideration.

**Schedule 3**  
**Deed Poll**

Attached.

# Deed Poll

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**Equity Trustees Limited** (ACN 004 031 298)

as responsible entity of the **Watermark Absolute Return Fund** (ARSN 631 094 534)



KARDOS • SCANLAN

CORPORATE LAWYERS

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**Made By**

**Equity Trustees Limited** (ACN 004 031 298) of Level 1, 575 Bourke Street, Melbourne, VIC 3000 as the responsible entity for the Watermark Absolute Return Fund (ARSN 631 094 534) (**Responsible Entity**),

**in favour of** each person registered as a holder of one or more Watermark Absolute Return Fund Units (**Watermark Absolute Return Fund Units**).

Recitals:

- A. WMK, the Responsible Entity and the Manager have entered into the Implementation Deed.
- B. In the Implementation Deed, the Responsible Entity agreed to enter into this Deed Poll.
- C. The Responsible Entity is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Scheme.
- D. The effect of the Scheme will be that the WMK Assets will be transferred to the Responsible Entity in exchange for the issue of the Scheme Consideration to Scheme Participants and that the WMK Shares will be cancelled.

**1. DEFINITIONS AND INTERPRETATION****1.1. Definitions**

In this Deed Poll:

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing WMK to convene the Scheme Meeting to consider the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard).

**Fund** means the Watermark Absolute Return Fund (ARSN 631 094 534).

**Fund Constitution** means the constitution of the Watermark Absolute Return Fund.

**Implementation Date** means the day 5 Business Days after the Scheme Record Date or such other date as WMK, the Responsible Entity and the Manager agree in writing.

**Implementation Deed** means the scheme implementation deed dated 4 February 2019 between WMK, the Responsible Entity and the Manager relating to the implementation of this Scheme.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between WMK and the Scheme Shareholders subject to any alterations or conditions:

- (a) agreed to in writing by the Responsible Entity, the Manager and WMK and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed by the Responsible Entity, the Manager and WMK.

Unless the context otherwise requires, terms defined in the Scheme have the meaning when used in this Deed Poll.

## **1.2. Interpretation**

Clauses 1.2 and 1.3 of the Scheme apply to the interpretation of this Deed Poll, except that references to 'this Scheme' in those clauses are to be read as references to 'this Deed Poll'.

## **1.3. Nature of Deed Poll**

The Responsible Entity acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints WMK and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing this Deed Poll against the Responsible Entity.

## **2. CONDITIONS TO OBLIGATIONS**

### **2.1. Conditions**

This Deed Poll and the obligations of the Responsible Entity under this Deed Poll are subject to the Scheme becoming Effective.

### **2.2. Termination**

This Deed Poll and the obligations of the Responsible Entity under this Deed Poll will automatically terminate and this Deed Poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the End Date or any later date as the Court, with the consent of WMK and the Responsible Entity, may order.

### **2.3. Consequences of termination**

If this Deed Poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to Scheme Shareholders:

- (a) the Responsible Entity is released from its obligations to further perform this Deed Poll except those obligations contained in clause 7 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights, powers or remedies they have against the Responsible Entity in respect of any breach of this Deed Poll which occurred before it was terminated.

## **3. PERFORMANCE OF OBLIGATIONS GENERALLY**

The Responsible Entity must comply with its obligations under the Implementation Deed and do all acts and things reasonably necessary or desirable on its part to give full effect to the Scheme.

## **4. SCHEME OBLIGATIONS**

### **4.1. Undertaking to issue the Scheme Consideration**

Subject to clause 2, the Responsible Entity undertakes in favour of each Scheme Shareholder to:

- (a) issue the Scheme Consideration to each Scheme Shareholder or the Nominee (as appropriate) in accordance with the terms of the Scheme; and
- (b) undertake all other actions attributed to it under the Scheme,

subject to and in accordance with the provisions of the Scheme.

## **5. WARRANTIES**

The Responsible Entity represents and warrants that:

- (a) it is a corporation validly existing under the law of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with the terms of this Deed Poll;
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of the Fund Constitution and to the best of the Responsible Entity's knowledge any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound; and
- (f) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

## **6. LIABILITY OF THE RESPONSIBLE ENTITY**

- (a) The Responsible Entity enters into this Deed Poll in its capacity as trustee of the Fund and in no other capacity.
- (b) The liability of the Responsible Entity to the Scheme Shareholders or any other person under or arising out of this Deed Poll in relation to the Fund is limited to the amount that the Responsible Entity actually receives in the exercise of its right of indemnity against the Fund.
- (c) Scheme Shareholders may enforce their rights under this Deed Poll against the Responsible Entity only to the extent of the Responsible Entity's right of indemnity out of the assets of the Fund.
- (d) If the Scheme Shareholders do not recover all money owing to each of them by enforcing the rights referred to in clause 6(c), they may not seek to recover the shortfall by:



- (i) bringing proceedings against the Responsible Entity in its personal capacity; or
  - (ii) applying to have the Responsible Entity wound up or proving in the winding up of the Responsible Entity unless another creditor has initiated proceedings to wind up the Responsible Entity.
- (e) Each Scheme Shareholder waives their rights and releases the Responsible Entity from any personal liability whatsoever, in respect of any loss or damage which:
  - (i) they may suffer as a result of the Responsible Entity's non-performance of its obligations and liabilities under this Deed Poll; and
  - (ii) cannot be paid or satisfied out of the assets of the Scheme out of which the Responsible Entity is entitled to be indemnified in respect of any liability incurred as the trustee.
- (f) The limitation in this clause 6 does not apply to the extent that any liability arises from fraud, gross negligence or breach of trust by the Responsible Entity as the trustee of the Fund. For these purposes, it is agreed that the Responsible Entity cannot be regarded as having acted fraudulently, with gross negligence or in breach of trust to the extent to which the fraud, gross negligence or breach of trust has been caused or contributed to by a failure of a Scheme Shareholder to fulfil its obligations under this Deed Poll or any other act or omission of either the Scheme Shareholder or any other person.
- (g) Nothing in clause 6(f) shall make the Responsible Entity liable to any claim for an amount greater than the amount which the Responsible Entity would have been able to claim and recover from the assets of the Fund in relation to the relevant liability if the Responsible Entity's right of indemnification out of the assets of the Fund had not been prejudiced by the Responsible Entity's failure to properly perform its duties.
- (h) The Responsible Entity is not obliged to do or refrain from doing anything under this Deed Poll (including incur any liability) unless the Responsible Entity's liability is limited in the same manner as set out in paragraph (a) to (g) of this clause.
- (i) The Scheme Shareholders acknowledge and agree that in respect of any liability or obligation incurred by the Responsible Entity under or arising out of this Deed Poll, they shall not be permitted to set off liabilities or obligations against it nor have any recourse to, the assets of any managed investment scheme or trust for which the Responsible Entity has been appointed as responsible entity or trustee, other than the Fund.
- (j) This clause applies despite any other provision in this Deed Poll and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this Deed Poll. In the event of any inconsistency, this clause prevails and survives termination.

## **7. CONTINUING OBLIGATIONS**

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the Responsible Entity has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

## **8. NOTICES**

### **8.1. Form of notice**

Any communication to the Responsible Entity under or in connection with this Deed Poll:

- (a) must be in writing;
- (b) must be addressed as shown below:
  - Address: Level 2, 575 Bourke Street, Melbourne Victoria 3000
  - Fax no: +61 3 8623 5200
  - Attention: Harvey H Kalman, Head of Corporate Fiduciary & Financial Services
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the Responsible Entity, in accordance with clause 8.1(b), or given in any other way permitted by law; and
- (e) is regarded as received by the Responsible Entity:
  - (i) if sent by prepaid post, on the third Business Day after the date of posting (if posted to an address in the same country), and on the fifth Business Day after the date of posting (if posted to an address in a different country); and
  - (ii) if sent by fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day; and

if delivered by hand, on delivery at the address of the addressee as provided in clause 8.1(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

## **9. GENERAL**

### **9.1. Duty**

The Responsible Entity must :

- (a) pay all duties, registration fees and similar taxes and any fines and penalties with respect to duty, registration fees and similar taxes in respect of this Scheme and the Deed Poll, the performance of the Scheme and this Deed Poll and each transaction effected by or made under or in connection with the Scheme and this Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

## **9.2. Governing law and jurisdiction**

- (a) This Deed Poll is governed by the laws in force in the State of New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

## **9.3. Waiver**

- (a) The Responsible Entity may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on words or conduct of the Responsible Entity as a waiver of any right unless the waiver is in writing and signed by the Responsible Entity.
- (c) The meanings of the terms used in this clause 9.3 are set out below:

**conduct** includes delay in the exercising of a right;

**right** means any right arising under or in connection with this deed and includes the right to rely on this clause; and

**waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## **9.4. Variation**

A provision of this Deed Poll may not be varied unless:

- (a) if before the Second Court Date, the variation is agreed to by WMK or the Manager; or
- (b) if on or after the Second Court Date, the variation is agreed to by WMK or the Manager and is approved by the Court,

in which event the Responsible Entity will enter into a further Deed Poll in favour of the Scheme Shareholders giving effect to the variation.

## **9.5. Cumulative rights**

The rights created by this Deed Poll are personal to the Responsible Entity and each Scheme Shareholder under this Deed Poll and cumulative with, and do not exclude, any other rights, powers or remedies provided by law independently of this Deed Poll.

## **9.6. Assignment**

- (a) The rights created by this Deed Poll are personal to the Responsible Entity and each Scheme Shareholder and must not be dealt with at law or equity without the prior written consent of the Responsible Entity.
- (b) Any purported dealing in contravention of clause 9.6(a) is invalid.

## **9.7. Further action**

The Responsible Entity must do all things and execute all further documents necessary or expedient to give full effect to this Scheme and the transactions contemplated by it.

**Executed** as a Deed Poll:

**EXECUTED** by **Equity Trustees Limited** (ACN 004 )  
031 298) as trustee of **Watermark Absolute** )  
**Return Fund** (ARSN 631 094 534) by its ) .....  
attorneys under Power of Attorney dated 27 ) Signature of Attorney  
May 2016 in the presence of: )  
 )  
 ) .....  
 ) Name of Attorney & Schedule Number  
..... )  
Signature of witness )  
 ) .....  
 ) Signature of Attorney  
..... )  
(Print name) )  
 ) .....  
 ) Name of Attorney & Schedule Number

Executed by the Parties as a Deed:

EXECUTED by )  
Watermark Market Neutral Fund Limited )  
(ACN 163 980 498) in accordance with section )  
127 of the Corporations Act: )

  
\_\_\_\_\_  
Director/Secretary

MATTHEW KIDMAN  
\_\_\_\_\_  
Name (please print)

  
\_\_\_\_\_  
Director

JUSTIN BRAITLING  
\_\_\_\_\_  
Name (please print)

EXECUTED by Equity Trustees Limited (ACN 004 )  
031 298) as trustee of Watermark Absolute )  
Return Fund (ARSN 631 094 534) by its )  
attorneys under Power of Attorney dated 27 )  
May 2016 in the presence of: )

.....  
Signature of witness )

.....  
(Print name) )


.....  
Signature of Attorney )

.....  
Name of Attorney & Schedule Number )

.....  
Signature of Attorney )

.....  
Name of Attorney & Schedule Number )

EXECUTED by )  
Watermark Funds Management Pty Limited )  
(ACN 106 302 505) in accordance with section )  
127 of the Corporations Act: )

  
\_\_\_\_\_  
Witness

TIM BOLTER  
\_\_\_\_\_  
Name (please print)

  
\_\_\_\_\_  
Director

JUSTIN BRAITLING  
\_\_\_\_\_  
Name (please print)

Executed by the Parties as a Deed:

EXECUTED by )  
Watermark Market Neutral Fund Limited )  
(ACN 163 980 498) in accordance with section )  
127 of the Corporations Act: )

\_\_\_\_\_  
Director/Secretary


\_\_\_\_\_  
Director


\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

EXECUTED by Equity Trustees Limited (ACN 004 )  
031 298) as trustee of Watermark Absolute )  
Return Fund (ARSN 631 094 534) by its )  
attorneys under Power of Attorney dated 27 )  
May 2016 in the presence of: )

  
.....  
Signature of witness )  
**Gianluca Pulvano** )  
Associate - Operations & Oversight )  
Corporate Trustee Services )  
.....  
(Print name) )

  
.....  
Signature of Attorney )  
**Russell Beasley** )  
Authorised Person - Schedule II )  
Equity Trustees Limited )  
.....  
ACN 004 031 298 )  
Name of Attorney & Schedule Number )

  
.....  
Signature of Attorney )  
**Alex Phlong** )  
Authorised Person - Schedule III )  
Equity Trustees Limited )  
.....  
ACN 004 031 298 )  
Name of Attorney & Schedule Number )

EXECUTED by )  
Watermark Funds Management Pty Limited )  
(ACN 106 302 505) in accordance with section )  
127 of the Corporations Act: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)