

# announcement



30 April 2009

## **Merger with IOOF Holdings Limited becomes effective**

Australian Wealth Management Limited (**AWM**) wishes to advise that it has today lodged with the Australian Securities and Investments Commission orders of the Supreme Court of Victoria approving the proposed scheme of arrangement between AWM and its shareholders (**Scheme**) in order to effect a merger between AWM and IOOF Holdings Limited (**IOOF**).

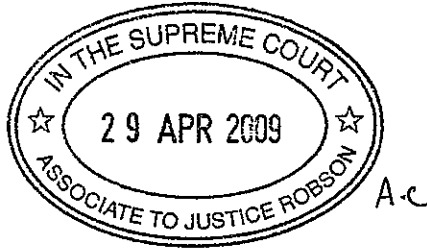
The Scheme has accordingly become legally effective and the transaction will be implemented on 12 May 2009.

A copy of the Court order approving the Scheme is attached.

For further information, please contact:

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IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION  
COMMERCIAL COURT



No. 5140 of 2009

LIST E

IN THE MATTER OF SECTION 411(1) OF THE CORPORATIONS ACT 2001 (CTH)  
IN THE MATTER OF AUSTRALIAN WEALTH MANAGEMENT LIMITED ACN 111 116 511

AUSTRALIAN WEALTH MANAGEMENT LIMITED

Plaintiff

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Robson  
DATE MADE: 29 April 2009  
ORIGINATING PROCESS: Filed 4 March 2009  
HOW OBTAINED: On return of the order of the Honourable Justice Robson  
made 6 March 2009  
ATTENDANCE: Mr P.D. Crutchfield of Counsel for the Plaintiff  
OTHER MATTERS: Nil

THE COURT ORDERS THAT

1. Pursuant to section 411(4)(b) of the *Corporations Act 2001* (Cth) (**Act**) the scheme of arrangement between the Plaintiff and its members (a copy of which is annexed to these orders and marked "A") is approved.
2. Pursuant to section 411(12) of the Act the Plaintiff be exempt from compliance with section 411(11) of the Act.
3. This order be drawn up by the solicitor for the Plaintiff and be signed by a Judge.

DATE AUTHENTICATED: 29 April 2009



The Honourable Justice Robson

# Scheme Of Arrangement

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**Australian Wealth Management Limited  
(Target)**

ABN 53 111 116 511

**The holders of ordinary fully paid shares  
issued in Australian Wealth Management  
Limited**

ABN 53 111 116 511

## Blake Dawson

Level 39  
101 Collins Street  
Melbourne VIC 3000  
Australia  
T 61 3 9679 3000  
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**Reference**  
03-2001-8240

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# Scheme of Arrangement

Under section 411 of the Corporations Act

DATE

PARTIES

**Australian Wealth Management Limited** ABN 53 111 116 511 (**Target**)

Each holder of fully paid ordinary shares in the Target.

OPERATIVE PROVISIONS

## 1. INTERPRETATION

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### 1.1 Definitions

The following definitions apply in this document:

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

**ASX** means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

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

**Bidder** means IOOF Holdings Ltd ABN 49 100 103 722.

**Bidder Register** means the register of members of Bidder.

**Bidder Share** means a fully paid ordinary share in Bidder.

**Bidder Share Registry** means the persons operating the Bidder Register.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne.

**CHESS** means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement and Transfer Corporation Limited ABN 49 008 504 532.

**Condition** means a condition precedent in clause 3.2 of the Implementation Deed.

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

**Court** means the Supreme Court of Victoria.

**Deed Poll** means a document in the form of Schedule 3 to the Implementation Deed.

**Effective** means the coming into effect, pursuant to 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 Scheme Shareholder** means a Scheme Participant other than an Ineligible Overseas Shareholder.

**End Date** means 31 July 2009, subject to any extension under clause 3.8 of the Implementation Deed.

**First Court Date** means the first day of the hearing of the Court of an application for an order under section 411(1) of the Corporations Act convening the Scheme Meeting.

**GST** has the meaning given to it in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Implementation** means the implementation of the Scheme, on it becoming effective under section 411(10) of the Corporations Act.

**Implementation Deed** means the deed between Target and Bidder dated 24 November 2008 relating to the implementation of the Scheme.

**Implementation Date** means the third Business Day following the Record Date.

**Ineligible Overseas Shareholder** means an Overseas Scheme Participant other than one in respect of whom Bidder is satisfied that:

- (a) the laws of the Overseas Scheme Participant's country of residence or address (as shown in the Target Register) would permit the issue and allotment of new Bidder Shares to the Overseas Scheme Participant, either unconditionally or after compliance with conditions which Bidder in its sole discretion regards as acceptable and not unduly onerous; and
- (b) the issue and allotment of new Bidder Shares to that Overseas Scheme Participant would not be unduly onerous or impractical.

**Meeting Date** means the date on which the Scheme Meeting is to be held.

**Overseas Scheme Participant** means a Scheme Participant whose address shown in the Target Register is a place outside of Australia or New Zealand and their respective external territories.

**Proceeds** means the proceeds of sale after deduction of any applicable brokerage and other selling costs, taxes and charges.

**Record Date** means 7.00pm on the day which is 5 Business Days after the Effective Date or any other date agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

**Registered Address** means, in relation to a Target Shareholder, the address of the shareholder shown in the Target Register.

**Sale Agent** means the person nominated by Bidder and approved by Target to sell the Bidder Shares that are attributable to Ineligible Overseas Shareholders under the terms of the Scheme.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Participants, set out in this document, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act.

**Scheme Booklet** means the document approved by the Court and distributed to the Target Shareholders containing, among other things, the explanatory statement (as

required by Part 5.1 of the Corporations Act relating to the Scheme), this document and notices of meeting relating to the Scheme and other related information (including supplemental information).

**Scheme Consideration** means 1 Bidder Share for every 3.73 Target Shares held by a Scheme Participant as at the Record Date.

**Scheme Meeting** means the meeting of Target Shareholders, to be convened by the Court to consider the Scheme.

**Scheme Participant** means each Target Shareholder as at the Record Date (taking into account registration of all registrable transfers and transmission applications in accordance with clause 7.1).

**Scheme Share** means each Target Share on issue as at the Record Date.

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

**Takeovers Panel** means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

**Target Register** means the register of members of Target.

**Target Share** means each fully paid ordinary share in the capital of the Target.

**Target Share Registry** means the persons operating the Target Register.

**Target Shareholder** means each person who is registered in the Target Register as a holder of Target Shares.

**Target Shareholder Approval** means a resolution in favour of the Scheme passed by the required majority of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act.

## 1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and



- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **associate, entity, officer, relevant interest** and **subsidiary** have the same meaning as in the Corporations Act.
- (g) The words **related body corporate** have the same meaning as in section 50 of the Corporations Act.
- (h) A reference to \$ or **dollar** is to Australian currency.
- (i) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (j) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (k) Words defined in the GST Act have the same meaning in clauses concerning GST.
- (l) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- (m) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Act, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- (n) A reference to time in this document is a reference to time in Melbourne.

### 1.3 Non-Business Days

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

### 1.4 Multiple Parties

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and

- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

## **2. BACKGROUND TO SCHEME**

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### **2.1 Target**

- (a) Target is a public company incorporated in Australia. It is registered in Victoria and is a company limited by shares. It has its registered office at Level 22, 207 Kent Street, Sydney, New South Wales 2000.
- (b) Target is admitted to the official list of ASX and Target Shares are quoted on the stock market conducted by ASX.
- (c) As at 24 November 2008, 599,525,017 of Target Shares were on issue.

### **2.2 Bidder**

- (a) Bidder is a public company incorporated in Australia. It is registered in Victoria and is a company limited by shares. It has its registered office at Level 29, 303 Collins Street, Melbourne, Victoria 3000.
- (b) Bidder is admitted to the official list of ASX and its fully paid ordinary shares are quoted on the stock market conducted by ASX.
- (c) As at 24 November 2008, 68,821,801 of Bidder Shares were on issue.

### **2.3 What happens if Scheme becomes Effective**

If the Scheme becomes Effective then:

- (a) in consideration of the transfer of each Scheme Share held by Scheme Participants, Bidder will pay the Scheme Consideration to each Scheme Participant in accordance with the terms of this Scheme;
- (b) all the Scheme Shares will be transferred to Bidder and Target will become a wholly owned subsidiary of Bidder; and
- (c) Target will enter Bidder's name in the Target Register as the holder of all Scheme Shares.

### **2.4 Implementation Deed**

Target and Bidder have entered into the Implementation Deed, to facilitate the implementation of the Scheme. In particular, Target and Bidder have agreed that each of them will perform their respective obligations under the Scheme which relate to each of them respectively and to do everything within their power that is necessary to give full effect to the Scheme.

### **2.5 Deed Poll**

Bidder has executed a Deed Poll under which it covenants to carry out its obligations under the Scheme including to pay the Scheme Consideration in accordance with the terms of this Scheme.

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### **3. CONDITIONS PRECEDENT**

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#### **3.1 Conditions precedent to the Scheme**

The Scheme is conditional on the following:

- (a) all the Conditions (other than the conditions set out in clause 3.2(d) and (e) of the Implementation Deed) having been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8.00am on the Second Court Date and immediately before Implementation, the Implementation Deed having not been terminated;
- (c) the Court making orders under section 411(4)(b) of the Corporations Act approving the Scheme;
- (d) an office copy of the Court orders approving the Scheme being lodged with ASIC under section 411(10) of the Corporations Act; and
- (e) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Target and Bidder having been satisfied.

#### **3.2 Satisfaction of Conditions**

The satisfaction or waiver of each condition in clause 3.1 is a condition precedent to the provisions of clause 4.

#### **3.3 Parties to provide certificate to Court**

Target must provide to the Court on the Second Court Date, a certificate or such other evidence as the Court requests, confirming whether or not all the Conditions have been satisfied or waived in accordance with the terms of the Implementation Deed.

#### **3.4 Termination of Implementation Deed**

Without limiting any rights under the Implementation Deed, in the event that the Implementation Deed is terminated in accordance with its terms before 8.00am on the Second Court Date, Target and Bidder are each released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme.

#### **3.5 End Date**

The Scheme will lapse and be of no further effect if the Effective Date has not occurred on or before the End Date.

### **4. THE SCHEME**

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#### **4.1 Target to lodge orders with ASIC**

Target will lodge with ASIC office copies of the Court order approving the Scheme under section 411(4)(b) of the Corporations Act as soon as practicable and by no later than 10.00am on the first Business Day after the date on which the Court makes that order.

#### **4.2 Scheme effective on Effective Date**

The Court order referred to in clause 4.1 is taken to have effect, and the Scheme comes into effect, on the Effective Date.

#### **4.3 Implementation steps**

On or before 12.00pm (Melbourne time) on the Implementation Date:

- (a) Bidder will provide evidence to target that the Scheme Consideration is or will be available for distribution to Scheme Participants in accordance with the Scheme;
- (b) all the Scheme Shares, together with all rights and entitlements attaching to those shares as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Participant (other than acts performed by Target or its directors and officers as attorney and agent for the Scheme Participants under clause 8.2); and
- (c) Target will deliver to Bidder a duly completed, executed and if applicable, stamped share transfer form or forms to transfer all of the Scheme Shares to Bidder for registration.

#### **4.4 Bidder to execute transfer forms**

Bidder will immediately execute the share transfer forms referred to in clause 4.3(c) as transferred and deliver the share transfer forms to Target for registration.

#### **4.5 Target to enter Bidder's details in Target Register**

Target will, immediately following receipt of the transfer form in respect of the Scheme Shares and on the Implementation Date, subject to Bidder complying with its obligations under clause 3, enter the name and address of Bidder in the Target Register in respect of the Scheme Shares.

#### **4.6 Bidder to provide Scheme Consideration**

In consideration for the transfer of the Scheme Shares to it, Bidder will provide the Scheme Consideration in accordance with clause 5.1 to each Scheme Participant in respect of each Target Share registered in the name of the Scheme Participant in the Target Register at the Record Date.

### **5. SCHEME CONSIDERATION**

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#### **5.1 How Scheme Consideration is to be provided**

Subject to clauses 5.3 and 5.4, Bidder will provide the Scheme Consideration to each Eligible Scheme Shareholder by:

- (a) issuing one Bidder Share to that Eligible Scheme Shareholder for every 3.73 Scheme Shares registered in the name of that Eligible Scheme Shareholder in the Target Register at the Record Date, which obligation will be satisfied by causing the name and Registered Address (at the Record Date) of that Eligible Scheme Shareholder to be entered into the Bidder Register as the holder of the Bidder Shares issued to that Eligible Scheme Shareholder; and
- (b) within 10 Business Days after the Implementation Date, procuring the dispatch to that Eligible Scheme Shareholder, if their Target Shares are held on the issuer sponsored subregister of Target, by pre-paid post to their Registered Address (at

the Record Date), of an uncertified holding statement in the name of that Eligible Scheme Shareholder relating to the number of Bidder Shares issued to that Eligible Scheme Shareholder.

## 5.2 Ineligible Overseas Shareholders

- (a) Bidder will be under no obligation under the Scheme to issue, and will not issue, any Bidder Shares to an Ineligible Overseas Shareholder, and instead:
- (i) all the Bidder Shares which would be required to be issued to any Ineligible Overseas Shareholder under the Scheme if they were an Eligible Scheme Shareholder will be issued to the Sale Agent;
  - (ii) Bidder will procure that, as soon as reasonably practicable (and in any event not more than 15 Business Days after the Implementation Date), the Sale Agent sells on the financial market conducted by ASX all of the Bidder Shares issued to the Sale Agent pursuant to clause 5.2(a)(i) in such manner, at such price and on such other terms as the Sale Agent determines in good faith (and at the risk of the Ineligible Overseas Shareholder), and remits to Bidder the Proceeds; and
  - (iii) Bidder will pay, or will procure the payment, to each Ineligible Overseas Shareholder such fraction of the Proceeds as is equal to the number of Bidder Shares which would have been issued to that Ineligible Overseas Shareholder if they were an Eligible Scheme Shareholder divided by the total number of Bidder Shares issued to the Sale Agent under clause 5.2(a)(i), promptly after the last sale of Bidder Shares by the Sale Agent, in full satisfaction of Bidder's obligations to that Ineligible Overseas Shareholder under the Scheme in respect of the Scheme Consideration.
- (b) Bidder will pay, or will procure the payment of, the relevant fraction of the Proceeds to each Ineligible Overseas Shareholder by either:
- (i) dispatching, or procuring the dispatch, to that Ineligible Overseas Shareholder by prepaid post to that Ineligible Overseas Shareholder's Registered Address (at the Record Date), a cheque in the name of that Ineligible Overseas Shareholder; or
  - (ii) making a deposit in an account in Australia notified by the Ineligible Overseas Shareholder to Target and recorded in or for the purposes of the Target Register at the Record Date, for the relevant amount, with that amount being denominated in Australian dollars.
- (c) Each Ineligible Overseas Shareholder appoints Target as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Overseas Shareholders under the Corporations Act.

## 5.3 Fractional entitlements

If a fractional entitlement to a Bidder Share arises from the calculation of the total Scheme Consideration in respect of a Scheme Participant, then any such fractional entitlement:

- (a) of less than 0.5 will be rounded down to the nearest whole number of Bidder Shares; and
- (b) of 0.5 or more will be rounded up to the nearest whole number of Bidder Shares.

#### **5.4 Shareholding splitting or division**

If Bidder is of the opinion that two or more Scheme Participants, each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.3, have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Bidder may give notice to those Scheme Participants:

- (a) setting out the names and Registered Addresses of all of them;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Participants specifically identified in the notice will, for the purposes of the other provisions of this clause 5, be taken to hold all those Scheme Shares and each of the other Scheme Participants whose names and Registered Addresses are set out in the notice will, for the purposes of the other provisions of this clause 5, be taken to hold no Scheme Shares. Bidder, in complying with the other provisions of this clause 5 relating to it in respect of the Scheme Participant specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Participants named in the notice under the terms of the Scheme.

#### **5.5 Agreement of Scheme Participants**

Each Scheme Participant to whom Bidder Shares are to be issued under the Scheme agrees:

- (a) to become a member of Bidder for the purposes of clause 5.1 and section 231 of the Corporations Act;
- (b) to have their name and address entered in the Bidder Register; and
- (c) to be bound by the constitution of Bidder as in force from time to time in respect of the Bidder Shares.

#### **5.6 Binding instruction or notifications**

Except for a Scheme Participant's tax file number, any binding instruction or notification between a Scheme Participant and Target relating to Scheme Shares at the Record Date (including, without limitation, any instructions relating to payment of dividends or to communications from Target) will, from the Record Date, be deemed to be a similarly binding instruction or notification to, and accepted by Bidder, in respect of the Bidder Shares issued to the Scheme Participant until that instruction or notification is revoked or amended in writing addressed to Bidder at the Bidder Share Registry. Any such instructions or notifications accepted by Bidder will apply to and in respect of the issue of Bidder Shares as part of the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

#### **5.7 Status of Bidder Shares**

The Bidder Shares which are issued to Scheme Participants in accordance with the Scheme will be:

- (a) duly and validly issued;

- (b) fully paid; and
- (c) rank equally in all respects with all other Bidder Shares then on issue.

#### **5.8 Appointment of Bidder as attorney and agent**

Each Scheme Participant, without need for any further act, irrevocably appoints Bidder and each of its directors and officers, jointly and severally, as that Scheme Participant's attorney and agent for the purpose of executing any form of application required for Bidder Shares to be issued to that Scheme Participant under the Scheme.

#### **5.9 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Participants will be payable to the joint holders; and
- (b) any uncertified holding statements for Bidder Shares to be issued to Scheme Participants will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Target Register on the Record Date.

### **6. DEFERRED SETTLEMENT TRADING OF BIDDER SHARES**

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Bidder will use its best endeavours to ensure that the Bidder Shares issued under the Scheme will be quoted on the financial market conducted by ASX as soon as practicable after the Effective Date, initially on a deferred settlement basis and thereafter on a normal T+3 settlement basis.

### **7. DEALINGS IN TARGET SHARES**

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#### **7.1 What Target Share dealings are recognised?**

To establish the persons who are Scheme Participants, dealings in Target Shares 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 Target Register as the holder of the Target Shares at or before the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the Target Share Registry at or before the Record Date.

#### **7.2 Target to register transfer and transmission applications**

Target will register registrable transfers or transmission applications of the kind referred to in clause 7.1(b) by, or as soon as practicable after, the Record Date.

#### **7.3 Transfers received after Record Date not recognised**

Target will not accept for registration, nor recognise for any purpose, any transfer or transmission application in respect of Scheme Shares received after the Record Date.

**7.4 Target to maintain Target Register to determine entitlements**

In order to determine entitlements to the Scheme Consideration, Target will maintain, or procure the maintenance of, the Target Register until the Scheme Consideration has been provided to Scheme Participants and the Target Register in this form will solely determine entitlements to the Scheme Consideration.

**7.5 Holding statements no effect from Record Date**

From the Record Date, all holding statements for Scheme Shares will cease to have effect as documents of title, and each entry on the Target Register at the Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Participants to the Scheme Consideration.

**7.6 Target to provide contact information for Scheme Participants**

As soon as practicable after Record Date and in any event at least 3 Business Days before the Implementation Date, Target will give to Bidder or procure that Bidder be given details of the name, Registered Address and the number of Target Shares held by each Scheme Participant, as shown in the Target Register at the Record Date, in whatever form Bidder reasonably requires.

**7.7 Suspension of trading**

It is expected that the suspension of trading in Target Shares on the stock market conducted by ASX will occur from close of business on the Effective Date. Target must apply to ASX for suspension of trading in Target Shares with effect from close of business on the Effective Date.

**7.8 Target to apply for termination of quotation of Target Shares**

On a date after the Implementation Date to be determined by Bidder, Target will apply for termination of the official quotation on the stock market conducted by ASX of Target Shares and must apply to have itself removed from the official list of ASX.

**7.9 Target Shares transferred free from encumbrance**

The Target Shares transferred to Bidder under the Scheme will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, but without prejudice to the rights (other than as they relate to or affect the Target Shares) of such third parties against the relevant Scheme Participants in respect of such mortgages, charges, liens, encumbrances and interests, including any such rights in respect of the Scheme Consideration.

**7.10 Each Scheme Participant warrants Target Shares free from encumbrance**

Each Scheme Participant is deemed to have warranted to Bidder and appointed and authorised Target as their agent to warrant to Bidder that all their Scheme Shares (including any rights and entitlements attaching to those Shares) will, as at the time of the transfer of them to Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder under the Scheme. Target undertakes in favour of each Scheme Participant that it will provide such warranty to Bidder on behalf of the Scheme Participant.



### 7.11 Bidder beneficially entitled to Scheme Shares

Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by Target of the name and address of Bidder in the Target Register as the holder of the Scheme Shares.

## 8. GENERAL PROVISIONS

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### 8.1 Target giving effect to the Scheme

Target must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that is necessary, expedient or incidental to give full effect to the Scheme and the transactions contemplated by it.

### 8.2 Scheme Participants

Each Scheme Participant:

- (a) agrees to the transfer of their Target Shares, together with all rights and entitlements attaching to those Shares, to Bidder, in accordance with the Scheme;
- (b) acknowledges that the Scheme binds Target and all Bidder 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;
- (c) consents to Target doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, expedient or incidental to Implementation and to give full effect to the Scheme and the transactions contemplated by it and Target, as agent of each Scheme Participant, may sub-delegate its functions under this clause 8.2(c) to any of its directors and officers, jointly and severally;
- (d) without the need for any further act, irrevocably appoints Target and each of its directors and officers, jointly and severally, on and from the Effective Date, as the Scheme Participant's attorney and agent, to execute any document or do any other act necessary, expedient or incidental to give full effect to the Scheme and the transactions contemplated by it, including the provision of a proper instrument of transfer of that Scheme Participant's Target Shares for the purposes of section 1071B of the Corporations Act (which may be a master transfer of all or part of the Scheme Shares);
- (e) from the Effective Date until Bidder is registered as the holder of all Scheme Shares:
  - (i) irrevocably appoints Target and each of its directors and officers, jointly and severally, as its attorney and agent (and directs Target in such capacity) to:
    - (A) appoint the chairman of Bidder or failing him as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Target;
    - (B) exercise the votes attaching to the Target Shares registered in the name of the Scheme Participant;
    - (C) sign any Target Shareholders' resolution; and

- (ii) must take all other action in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs.

From the Effective Date, no Scheme Participant may attend or vote at any of those meetings or sign any Target Shareholders resolution (whether in person, by proxy or by corporate representative) other than under this clause 8.2(e). Target undertakes in favour of each Scheme Participant that it will appoint the chairman of Bidder as the Scheme Participant's proxy or, where applicable, corporate representative in accordance with this clause 8.2(e).

### **8.3 Alteration or conditions to the Scheme**

If the Court proposes to approve the Scheme subject to any alteration or condition Target may, by its counsel or solicitors, but subject to the prior approval of Bidder (which may not be unreasonably withheld or delayed), consent on behalf of all persons concerned, including each Scheme Participant, to those alterations or conditions.

### **8.4 Scheme is binding**

The Scheme binds Target and all Target Shareholders and, to the extent of any inconsistency, overrides the constitution of Target.

### **8.5 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Target, it will be deemed to be received on the date (if any) on which it is actually received at Target's Registered Office and on no other date.

### **8.6 Enforcement of Deed Poll**

- (a) Each Scheme Participant appoints Target as its agent and attorney to enforce the Deed Poll against Bidder.
- (b) Target undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants.

### **8.7 Costs and stamp duty**

- (a) Subject to clause 8.7(b), Target will pay all the costs of the Scheme.
- (b) Bidder will pay all stamp duty and any stamp duty related fines, penalties and other stamp duty costs in respect of the Scheme (including in connection with the transfer of the Scheme Shares to Bidder) in accordance with the terms of the Scheme.

### **8.8 Governing law**

This document is governed by the law in force in Victoria.