



**VIRIDIS**  
CLEAN ENERGY GROUP

FACSIMILE

TO	Australian Stock Exchange	DATE	28 April 2010
ATTENTION	Ms Kate Kidson	FACSIMILE	+61 3 9614 0303
FROM	Duncan Jewell		
SUBJECT	Explanatory Memorandum and Notice of Meeting		

Dear Ms Kidson,

Please find attached an Explanatory Memorandum and Notice of Meeting for the Viridis Clean Energy Group (VIR).

Yours sincerely,

Duncan Jewell  
Company Secretary  
Viridis Investment Management Limited

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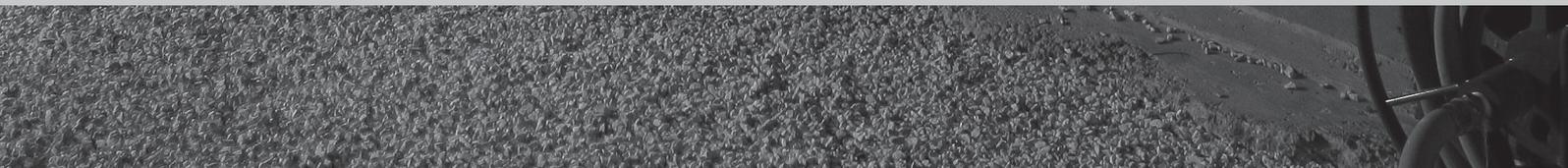
## **VIRIDIS CLEAN ENERGY GROUP EXPLANATORY MEMORANDUM AND NOTICE OF MEETING**



Notice is hereby given by Viridis Investment Management Limited (ABN 51 099 788 431; AFSL No. 222 547) as responsible entity of Viridis Clean Energy Trust I (ARSN 115 340 442) and Viridis Clean Energy Trust II (ARSN 115 340 639), together known as Viridis Clean Energy Group, that a meeting of securityholders of units in each of those trusts will be held concurrently and in conjunction with the other trust at:

**Place: Level 20, 385 Bourke Street, Melbourne**

**Date and Time: 10.00 am (Melbourne time) on 11 June 2010**



## IMPORTANT DATES

Last time and date for acceptance of proxies	10.00am, 9 June 2010
Time and date for determining eligibility to vote at the Meeting	7.00 pm, 9 June 2010
Meeting of Securityholders at the offices of Herbert Geer, Level 20, 385 Bourke Street, Melbourne	10.00 am, 11 June 2010

## IMPORTANT INFORMATION

This is an important document. You should read this Explanatory Memorandum and the accompanying Notice of Meeting (see **Annexure A**) in their entirety before making a decision as to how to vote on the resolutions and consult your professional adviser if you have any queries.

### What is this document?

This Explanatory Memorandum provides Securityholders with details of the proposed Restructure and Article 7 Constitution Amendments.

### Restructure:

The proposed Restructure involves:

- the units in Trust I and Trust II being unstapled;
- all of the Trust I units being transferred to VIML as responsible entity for Trust II (so that Trust I becomes wholly owned by Trust II);
- new Trust II units being issued to Participants in consideration for the Trust I units; and
- (after those new Trust II units have been issued) the Trust II units being consolidated (so that the number of Trust II units on issue after the consolidation is the same as the number of units that were on issue prior to the issue of the Trust II units).

To give effect to the Restructure, resolutions in respect of the amendment of the Trust I Constitution and Trust II Constitution and the unstapling of the Trust I and Trust II units are required.

### Article 7 Constitution Amendments:

This Explanatory Memorandum also provides Securityholders with details of proposed amendments to the provisions of article 7 of the Trust I Constitution and article 7 of the Trust II Constitution that are intended to:

- ensure that the existing mechanics for calculating the application price of new units will continue to apply if the Trust I units and Trust II units are unstapled;
- vary the existing application price mechanics in light of ASIC class order relief that has been granted since the Trust I Constitution and Trust II Constitution were adopted;
- provide that VIML may (subject to the Corporations Act and the ASX Listing Rules) issue financial instruments such as convertible notes, other debt instruments, quasi-debt instruments and equity-like instruments; and
- provide that the pricing mechanisms will be restricted (or enhanced) to the extent that the ASX Listing Rules or any ASIC instrument restricts (or enhances) the means by which VIML can set the application price for units or options.

The Directors consider that VIML is currently more constrained in respect of fundraising options for Trust I and Trust II than many ASX listed companies (and some listed managed investment schemes). Being able to consider a greater variety of options might enable Trust I and / or Trust II to attract funding more easily and on terms that are more favourable to Trust I and / or Trust II.

### This is not investment advice

This Explanatory Memorandum is not investment advice and does not take into account your financial position, needs and objectives. When deciding how to vote on the resolutions you should consider your particular financial position, needs and objectives. You should consult a

licensed financial adviser or other professional adviser if you are in any doubt as to how to proceed.

### New Zealand Securityholders

This Explanatory Memorandum is not a New Zealand prospectus or an investment statement and has not been registered, filed with or approved by any New Zealand regulatory authority under or in accordance with the Securities Act 1978 (or any other relevant New Zealand law). This Explanatory Memorandum may not contain all the information that an investment statement or prospectus under New Zealand law is required to contain. Securities are offered to the public of New Zealand under this Explanatory Memorandum in reliance on the Securities Act (Overseas Companies) Exemption Notice 2002 (New Zealand).

### Other foreign Securityholders

Foreign Securityholders may be treated differently under the Restructure. Please refer to **Section 1.3** for further details.

### Defined terms

Some words and expressions used in this Explanatory Memorandum are capitalised as they have defined meanings. Capitalised terms are defined in the Glossary (**Section 12**), unless otherwise defined in this Explanatory Memorandum.

### Currency

Unless otherwise specified, a reference to '\$' or 'dollar' is to Australian currency.

### Responsibility for this document

Other than the Taxation Report, the information in this Explanatory Memorandum has been prepared by VIML in its capacity as responsible entity of Trust I and Trust II. KPMG has prepared the Taxation Report (as contained in **Section 10** of this Explanatory Memorandum). KPMG is remunerated for its services.

### Regulatory information

A copy of this document has been provided to ASX. ASX and its officers do not take any responsibility for the contents of this document.

### Statements of expectation and intent

This Explanatory Memorandum includes statements based on current expectations. Statements of expectation or intent should not be taken to be a prediction that those events will occur. Actual events or consequences may differ materially from the events or results expressed or implied in any statement. No representation or warranty (either express or implied) as to the accuracy or likelihood of fulfilment of any statement of expectation or intent, or any events or consequences expected or implied in any such statement, is made by VIML, VIML's officers or any person involved in the preparation of this Explanatory Memorandum. You are cautioned not to place undue reliance on those statements.

The statements of expectation and intent in this Explanatory Memorandum reflect views held by VIML only at the date of this Explanatory Memorandum.

### Date

This Explanatory Memorandum is dated 28 April 2010.

## Key Dates

Event	Date and Time
Date of this Explanatory Memorandum	28 April 2010
Last time and date by which proxy forms for the Meeting must be received	10.00 am, 9 June 2010
Time and date for determining eligibility to vote at the Meeting	7.00 pm, 9 June 2010
Meeting to be held at the offices of Herbert Geer, Level 20, 385 Bourke Street, Melbourne	10.00 am, 11 June 2010 or such other date to which the Meeting is adjourned

*If the Restructure Resolutions voted on at the Meeting are approved by the Securityholders:*

Lodgement of the Restructure Supplemental Deeds with ASIC	Expected to occur on the same day as the Meeting
Record Date	22 June 2010
Implementation Date (being the date on which the Restructure will be implemented)	24 June 2010

*If the resolutions in respect of the Article 7 Constitution Amendments are passed, the Trust I Constitution and Trust II Constitution will be amended in accordance with those resolutions with effect from the date or dates that the Article 7 Supplemental Deeds are lodged with ASIC. Lodgement with ASIC is expected to occur on the same day as the Meeting.*

All dates after the Meeting are indicative only and are subject to the Restructure Resolutions being passed and ASX approval.

VIML reserves the right to vary these dates and times without prior notice. Any changes to the above timetable will be announced to the ASX.

Unless otherwise stated, all references to time in this Explanatory Memorandum are references to Melbourne time.

# Explanatory Memorandum

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## Corporate Directory

# 1. Overview

## 1.1. Summary of the resolutions

This Explanatory Memorandum provides Securityholders with details of:

- the proposed Restructure, including the proposed amendments to the provisions of the Trust I Constitution and Trust II Constitution that are required to facilitate the Restructure and the unstapling of the Trust I and Trust II units; and
- the proposed Article 7 Constitution Amendments, which are required to give VIML greater flexibility (in line with ASIC policy) in respect of future fundraising alternatives.

## 1.2. Restructure

If the Restructure Resolutions are passed at the Meeting, the Board intends that the Restructure will be implemented as follows:

- the units in Trust I and Trust II will be unstapled;
- all of the Trust I units will be transferred to VIML as responsible entity for Trust II (so that Trust I becomes wholly owned by Trust II);
- new Trust II units will be issued to Participants in consideration for the Trust I units (subject to the arrangements in respect of Foreign Participants that are described in **Section 1.3**); and
- after the new Trust II units have been issued, all of the Trust II units will be consolidated (so that the number of Trust II units on issue after the consolidation is the same as the number of units that were on issue prior to the issue of the Trust II units).

The units in Trust II will remain quoted on the ASX following the implementation of the above steps and will continue to be traded under the code "VIR". However, the units in Trust II will no longer trade under the name Viridis Clean Energy Group or "VCEG". Rather, the Board intends that the Trust II units will be traded under the name "Viridis Clean Energy".

## 1.3. Foreign Participants

Unless VIML is satisfied that it is lawful (under the laws of the relevant foreign jurisdiction) and not unduly onerous to issue a Foreign Participant with new Trust II units, VIML will procure that the new Trust II units to which that Foreign Participant would otherwise become entitled under the Restructure are issued to a nominee appointed by VIML.

The nominee will sell those new Trust II units and pay to the Foreign Participant the applicable pro-rata proportion of the aggregate proceeds received (after deducting any applicable fees, brokerage, stamp duty, taxes and charges).

Foreign Participants may find that they hold fewer quoted securities after the implementation of the Restructure. In particular, the Restructure involves:

- Foreign Participants (along with all other participants) disposing of their Trust I units but retaining their Trust II units (being the "**Retained Units**");
- an issue of new Trust II units ("**New Units**") to all participants other than certain Foreign Participants (as the New Units due to those Foreign Participants will be issued to the Nominee); and
- the immediate consolidation of all Trust II units (i.e. Retained Units as well as New Units).

A consequence of the above steps is that certain Foreign Participants will have less quoted securities after the Restructure compared to prior to the Restructure (due to the consolidation of their Retained Units). This may result in some Foreign Participants being left with unmarketable parcels.

This potential reduction in the number of quoted securities held should be kept in mind by Securityholders with an address outside Australia or New Zealand as it may affect trading by such Securityholders between the date of the meeting and the date that the Restructure is implemented.

## 1.4. Impact of the Restructure on Trust I and Trust II

### 1.4.1. Simplification

VIML has been seeking to simplify the structure of VCEG since late 2008. The first step in this simplification process involved the internalisation of the management of the group, which was undertaken late last year. The next step in this simplification process is the proposed Restructure.

### **1.4.2. Impact on VCEG**

If the Restructure is implemented, all of the units in Trust I will be held by VIML as responsible entity for Trust II. VIML will hold those units as trustee for the Trust II Securityholders (being the holders of quoted securities after the Restructure).

As Trust I will remain part of the group, the ultimate beneficial ownership of the assets of Trust I and Trust II will not change as a result of the Restructure.

While Trust II units will continue to be quoted on the ASX under the code "VIR", if the Restructure is implemented, Trust I and Trust II will no longer be known as Viridis Clean Energy Group or "VCEG". Rather, the Board intends that the Trust II units will be traded under the name "Viridis Clean Energy".

### **1.4.3. Impact on Securityholders**

Holders of the quoted securities will, after the Restructure, only hold units in Trust II. However, they will remain the ultimate beneficial owners of the units in Trust I. While holders of the quoted securities will no longer be able to exercise the votes attached to the Trust I units, VIML will be required to exercise those votes in a way that services the best interests of the holders of the quoted securities. The Directors consider that the Restructure is in the best interests of Securityholders.

The proportionate holdings of quoted securities after the implementation of the Restructure will be almost identical to the proportionate holdings immediately prior to implementation. The only changes will be those that may result from the treatment of Foreign Participants (who as at the end of March 2010 held less than 0.33% of the quoted securities).

## **1.5. Article 7 Constitution Amendments**

The resolutions in respect of the proposed Article 7 Constitution Amendments (resolutions 5 and 6) seek to expand the powers of VIML (as responsible entity of Trust I and Trust II) in respect of fundraising. In particular, the proposed amendments will vary the pricing mechanics in the Trust I Constitution and Trust II Constitution so that VIML has greater flexibility when setting the application price for new units. The amendments will also provide that VIML can issue financial instruments (see **Section 7.1**).

As is the case for many registered managed investment schemes, the fundraising provisions in the Trust I and Trust II constitutions are more prescriptive than the fundraising provisions in constitutions for listed companies. While the board of directors of a company will generally have the power to determine the issue price of new shares in that company, it is the constitution of a registered scheme (and not the responsible entity) that determines the price at which an interest in the scheme will be issued.

When the Trust I and Trust II constitutions were drafted, they were drafted in a manner that took advantage of ASIC class order relief, which modified the Corporations Act so that constitutions of registered schemes did not have to make adequate provision for the consideration to acquire an interest in the scheme if the constitution contained provisions to the effect of a number of subparagraphs that the class order inserted into the Corporations Act. In 2009, the ASIC class order relief was amended to grant responsible entities greater flexibility in respect of pricing. The amendments to article 7.4 of the Trust I Constitution and article 7.4 of the Trust II Constitution are intended to give effect to the amended ASIC class order relief.

## **1.6. Impact of the Article 7 Constitution Amendments on Trust I and Trust II**

### **1.6.1. Fundraising Flexibility**

If the Article 7 Constitution Amendments are passed, VIML will have greater flexibility in respect of fundraising opportunities. This will provide VIML with the opportunity to explore a greater range of fundraising options. In particular, the Trust I Constitution and Trust II Constitution will specifically provide that in certain circumstances VIML can set the application price for new units without restrictions relating to the market value of units. VIML will also be able to issue financial instruments (see **Section 7.1**).

VIML has found that some of the fundraising opportunities considered by it could not be pursued due to the way that the Trust I Constitution and Trust II Constitution are drafted.

Being able to consider a greater variety of options might enable Trust I and / or Trust II to attract funding more easily and on terms that are more favourable to Trust I and / or Trust II.

### **1.6.2. Impact on Securityholders**

Some of the Article 7 Constitution Amendments may result in Securityholders losing the right to first approve certain fundraising actions. However, most of the amendments are required to ensure that the pricing mechanics set out in the Trust I Constitution and Trust II Constitution will continue to apply if the Trust I units and Trust II units are unstapled. Accordingly, those amendments will have very little impact on Securityholders. The Directors consider that the Article 7 Constitution Amendments are in the best interests of Securityholders.

## 1.7. Directors' recommendation

**THE DIRECTORS UNANIMOUSLY RECOMMEND THAT THE SECURITYHOLDERS VOTE IN FAVOUR OF EACH OF THE RESOLUTIONS.**

In making this recommendation the Directors of VIML have considered, among other things:

- the reasons why Securityholders may vote in favour of the resolutions, as set out in **Section 1.8**; and
- the reasons why Securityholders may vote against the resolutions, as set out in **Section 1.9**.

## 1.8. Why you might vote in favour of the resolutions

### Restructure Resolutions:

The following are the reasons why Securityholders may vote in favour of the Restructure Resolutions:

- The revised structure of the group will remove the risk that Securityholders will in future be subject to tax without having received a cash distribution sufficient to pay the tax liability, or that alternatively VIML could be subject to tax if it is unable to make a cash distribution.
- The structure of the group after the Restructure will provide greater flexibility for the purpose of achieving stated business objectives.
- The revised structure may improve liquidity as the structure is likely to be easier to understand.
- Securityholders may find it easier to administer their tax affairs.
- The revised structure will simplify VCEG's financial reporting.
- The majority of the costs to be incurred by the group in connection with the Restructure have already been incurred.

### Resolutions in respect of the Article 7 Constitution Amendments:

The following are the reasons why Securityholders may vote in favour of the resolutions in respect of the Article 7 Constitution Amendments:

- The Article 7 Constitution Amendments will enable VIML to undertake a broader variety of fundraising activities. Some of those activities may be commercially more attractive and ultimately result in better results for Securityholders.
- The amendments will, in certain circumstances, enable VIML to take advantage of ASIC class order relief and issue new Trust I and Trust II units without restrictions relating to the market value of those units, which may improve VIML's ability to attract investor support for a new issue.
- The amendments reflect ASIC policy, as set out in ASIC Class Order [05/26].

## 1.9. Why you might vote against the resolutions

### Restructure Resolutions:

A Securityholder may wish to vote against the Restructure Resolutions if:

- The individual circumstances of the Securityholder mean that the Securityholder will suffer adverse tax consequences as a result of the Restructure.
- The Securityholder has an address outside the Commonwealth of Australia or New Zealand, in which case the Securityholder may be a Foreign Participant that is unable to receive the new Trust II units (see **Section 1.3** for further details).

### Resolutions in respect of the Article 7 Constitution Amendments:

If the resolutions in respect of the Article 7 Constitution Amendments are passed, VIML will have greater flexibility in issuing new units than would have been possible prior to the amendments. Depending on the terms of any new issue, this could dilute the value of existing Securityholders' units.

A Securityholder may wish to vote against the Article 7 Constitution Amendments if the Securityholder would prefer to restrict VIML's ability to raise funds to those methods already permitted by the Trust I Constitution and Trust II Constitution.

## 2. Frequently asked questions

Question	Answer	Where to find more information
What is this Explanatory Memorandum?	This Explanatory Memorandum sets out the information that is material for you to make a decision as to whether to vote in favour of the Restructure Resolutions and the Article 7 Constitution Amendments.	
What is the Restructure?	<p>The Restructure is the process by which VCEG will be restructured. The Restructure involves the following key steps:</p> <ul style="list-style-type: none"> <li>• the Trust I units and Trust II units will be unstapled;</li> <li>• the Trust I units will be transferred to VIML as responsible entity of Trust II;</li> <li>• new Trust II units will be issued to Participants in consideration of the transfer of the Trust I units; and</li> <li>• the Trust II units will be consolidated.</li> </ul> <p>Further details can be found in <b>Section 6</b>.</p>	<b>Section 6</b>
What amendments will be made to the Trust I Constitution?	<p>There are two sets of amendments to be made to the Trust I Constitution.</p> <ol style="list-style-type: none"> <li>1. The amendments set out in the Trust I Supplemental Deed: Restructure, which is attached at <b>Annexure B</b>, relate to the Restructure. A summary of those changes can be found in <b>Section 6</b>.</li> <li>2. The amendments set out in the Trust I Supplemental Deed: Article 7, which is attached at <b>Annexure D</b>, relate to the Article 7 Constitution Amendments. A summary of those changes can be found in <b>Section 7</b>.</li> </ol>	<b>Section 6</b> <b>Section 7</b> <b>Annexure B</b> <b>Annexure D</b>
What amendments will be made to the Trust II Constitution?	<p>There are also two sets of amendments to be made to the Trust II Constitution.</p> <ol style="list-style-type: none"> <li>1. The amendments set out in the Trust II Supplemental Deed: Restructure, which is attached at <b>Annexure C</b>, relate to the Restructure. A summary of those changes can be found in <b>Section 6</b>.</li> <li>2. The amendments set out in the Trust II Supplemental Deed: Article 7, which is attached at <b>Annexure E</b>, relate to the Article 7 Constitution Amendments. A summary of those changes can be found in <b>Section 7</b>.</li> </ol>	<b>Section 6</b> <b>Section 7</b> <b>Annexure C</b> <b>Annexure E</b>
What are the consequences of unstapling the Trust I and Trust II units?	Unstapling the Trust I units from the Trust II units will mean that those units no longer need to be transferred or otherwise dealt with together. Trust I units will be able to be issued or transferred without Trust II units being issued or transferred at the same time.	
What is the consideration for units in Trust I?	<p>In consideration for transferring their Trust I units, Participants (other than some Foreign Participants) will be issued new Trust II units at a ratio of 8.22 to 1.</p> <p>However, given that the Trust II units will be consolidated immediately after the issue of the new Trust II units (at a ratio of 9.22 to 1), Securityholders (other than some Foreign Participants) will not notice a change in the number of Trust II units held by them.</p>	<b>Section 6</b>

Question	Answer	Where to find more information
Can the Restructure be terminated?	If the Restructure Resolutions are passed at the Meeting then the Restructure will go ahead, unless any of the events listed in <b>Section 6.6</b> have occurred.	<b>Section 6.6</b>
What are the taxation implications of the Restructure?	The taxation implications of the Restructure will vary depending on the personal circumstances of the Securityholder. A detailed taxation report has been included at <b>Section 10</b> .	<b>Section 10</b>
Is there an Expert's Report	<p>VIML considers that an Expert's Report is unnecessary as the Restructure will not:</p> <ul style="list-style-type: none"> <li>• result in any changes to the proportionate holdings of holders of quoted securities (except to the extent that Foreign Participants are affected);</li> <li>• involve the introduction of new securityholders; or</li> <li>• result in any "leakage" of business or assets (as Trust I will remain part of the group).</li> </ul>	
Is Court approval required?	<p>Trustees such as VIML are able to seek judicial guidance or reassurance in respect of proposed actions. Generally, that guidance will relate to whether the trustee has the power to undertake a particular action.</p> <p>The Board is of the view that VIML does not need to seek judicial guidance, primarily because VIML has the power under the Trust I Constitution and Trust II Constitution to propose the various resolutions and take such actions as are required to give effect to the various constitution amendments and implement the Restructure.</p>	
Will my interest as a Securityholder change on the implementation of the Restructure?	Holders of Stapled Securities will find that after the implementation of the Restructure they no longer hold Stapled Securities but instead hold units in Trust II. Following the implementation of the Restructure, each Stapled Security will effectively become a Trust II unit (as the Trust I unit will have been transferred).	
What if I do not vote on the resolutions or vote against the resolutions?	<p>Except as set out below, if a resolution is approved by the requisite majority then that resolution will be implemented even if you did not vote on the resolution or voted against the resolution.</p> <p><b>Restructure:</b></p> <p>In order for the Restructure to go ahead, the Restructure Resolutions need to be passed. The Restructure Resolutions are the first four resolutions (which relate to the unstapling of the Trust I and Trust II units and the Restructure related amendments to the Trust I Constitution and the Trust II Constitution).</p> <p>If any of the Restructure Resolutions are not passed then the Restructure will not go ahead and the Trust I and Trust II units will remain stapled. For example, if the two resolutions in respect of the unstapling are passed but either of the resolutions in respect of the Restructure Supplemental Deeds are not passed, then the Restructure will not go ahead and the Trust I and Trust II units will remain stapled.</p> <p>The Restructure is not dependent on the Article 7 Constitution Amendments. Accordingly, provided that the Restructure Resolutions are passed (and none of the events described in <b>Section 6.6</b> have occurred) then the Restructure will go ahead, regardless of whether the resolutions in respect of the Article 7 Constitution Amendments are passed.</p>	<b>Section 4</b> <b>Annexure A</b>

Question	Answer	Where to find more information
	<p><b>Article 7 Constitution Amendments:</b></p> <p>Both of the resolutions in respect of the Article 7 Constitution Amendments (being resolutions 5 and 6) need to be passed in order for either of those resolutions to be effective. In other words, if either resolution 5 or 6 are not passed then neither of the Article 7 Supplemental Deeds will be executed and lodged.</p> <p>The Article 7 Constitution Amendments are not dependent on the Restructure Resolutions. Accordingly, if one or more of the Restructure Resolutions are not passed but both resolutions 5 and 6 are passed then the Article 7 Constitution Amendments will be made.</p>	
When and where is the Meeting?	The Meeting has been called for 11 June 2010 at the offices of Herbert Geer, Level 20, 385 Bourke Street, Melbourne, commencing at 10:00 am.	<b>Annexure A</b>
Am I entitled to vote?	If you are registered as a Securityholder on the register as at 7:00 pm on 9 June 2010, you will be entitled to vote at the Meeting, unless you are otherwise excluded in the manner set out in the Notice of Meeting.	<b>Annexure A</b>
Where and when do I send my proxy form?	<p>If you cannot attend the Meeting in person, you should complete the enclosed proxy form and return it to Computershare Investor Services Pty Limited:</p> <ul style="list-style-type: none"> <li>• in person at: Yarra Falls, 452 Johnston Street, Abbotsford VIC 3067;</li> <li>• by mail to: GPO Box 242, Melbourne VIC 3001; or</li> <li>• by fax to: 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia),</li> </ul> <p>as soon as possible and in any event by 10:00 am on 9 June 2010.</p>	<b>Proxy Form</b>
Any other questions?	If you have any queries about the Meeting please contact Computershare Investor Services Pty Limited on 1300 850 505 (within Australia) or +61 3 9415 4000 (outside Australia). If you are in doubt as to whether to vote in favour of or against the resolutions, you should consult your financial or other professional adviser.	

### 3. Action required by Securityholders

#### 3.1. Action required by Securityholders

**Step 1 Read the entire document carefully**

This is an important document. You should read the Explanatory Memorandum and the accompanying Notice of Meeting (see **Annexure A**) in their entirety and consult your professional adviser if you have any queries.

**Step 2 Vote on the resolutions**

You may vote in person or by proxy.

If you wish to **vote in person**, you should attend the Meeting at the offices of Herbert Geer, Level 20, 385 Bourke Street, Melbourne at 10.00 am on 11 June 2010.

If you wish to **vote by proxy**, you must complete and return the enclosed proxy form so that it is received no later than 10:00 am on 9 June 2010.

Completed proxy forms may be lodged using the enclosed reply paid envelope or delivered to Computershare Investor Services Pty Limited:

- **In person at:** Yarra Falls, 452 Johnston Street, Abbotsford VIC 3067
- **By mail to:** GPO Box 242, Melbourne VIC 3001
- **By fax to:** 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia)

Refer to the enclosed proxy form for more information about how to complete a proxy form.

#### 3.2. Meeting details

**Location:** Herbert Geer, Level 20, 385 Bourke Street, Melbourne

**Date:** 11 June 2010

**Time:** 10:00 am

The Notice of Meeting is set out in **Annexure A** of this Explanatory Memorandum.

## 4. Explanation of the resolutions

### RESTRUCTURE RESOLUTIONS

#### **Resolution 1: Approval of the amendments to the Trust I Constitution for the purposes of the Restructure**

Resolution 1 approves the amendment of the Trust I Constitution in accordance with and on the terms of the Trust I Supplemental Deed: Restructure, which is attached as **Annexure B**.

The amendments all relate to the Restructure and are summarised in **Section 6**.

The Trust I Constitution provides that, if the Corporations Act allows, the Trust I Constitution may be amended by resolution or by deed executed by the responsible entity of Trust I. If the Trust I Constitution is amended by resolution, the responsible entity of Trust I may give effect to the amendments by executing a supplemental deed.

The Corporations Act provides that the constitution of a registered scheme may be modified by a special resolution of the members of the scheme or by the responsible entity if the responsible entity considers the change will not adversely affect members' rights. The Corporations Act also provides that the responsible entity must lodge with ASIC a copy of the modification and the modification cannot take effect until the copy has been lodged.

While VIML as responsible entity of Trust I does not expect that the changes will adversely affect the Securityholders, VIML recognises that the Restructure will result in Securityholders being compelled to transfer their Trust I units. Accordingly, VIML is giving the Securityholders the opportunity to approve the changes to the Trust I Constitution.

#### **Resolution 2: Approval of the amendments to the Trust II Constitution for the purposes of the Restructure**

Resolution 2 approves the amendment of the Trust II Constitution in accordance with and on the terms of the Trust II Supplemental Deed: Restructure, which is attached as **Annexure C**.

The amendment set out in the Trust II Supplemental Deed: Restructure, relates to the Restructure and is summarised in **Section 6**.

As with the Trust I Constitution, the Trust II Constitution provides that, if the Corporations Act allows, the Trust II Constitution may be amended by resolution or by deed executed by the responsible entity of Trust II. If the Trust II Constitution is amended by resolution, the responsible entity of Trust II may give effect to the amendments by executing a supplemental deed.

While VIML as responsible entity of Trust I does not expect that the amendment will adversely affect the Securityholders, VIML is giving the Securityholders the opportunity to approve the changes to the Trust II Constitution.

#### **Resolution 3: Approval of the unstapling by the Trust I securityholders**

Resolution 3 is an approval by the Trust I securityholders of the unstapling of the Trust I units from the Trust II units.

The Trust I and Trust II units are stapled together on the terms and conditions set out in the Stapling Deed Poll dated 1 August 2005. Unless the Trust I and Trust II units are unstapled the Restructure cannot be implemented as, among other things, the terms of the Stapling Deed Poll prohibit VIML from registering any transfer of a Trust I unit unless there is a matching transfer of the Trust II unit to which the Trust I unit is stapled.

With respect to unstapling, the Stapling Deed Poll provides that:

- unless VIML in its capacity as responsible entity of Trust I and Trust II otherwise determines in accordance with the relevant provisions of the Trust I Constitution and the Trust II Constitution, all Trust I units and Trust II units will remain stapled; and
- unstapling must not occur unless it has been approved in accordance with the relevant provisions of the Trust I Constitution and of the Trust II Constitution.

The Trust I Constitution provides that if Trust I units are stapled to Trust II units, subject to the Corporations Act and approval by ordinary resolution (and while the Trust I units are officially quoted, the ASX Listing Rules) VIML may at any time apply to have the Stapled Securities unstapled. The Trust II Constitution contains a corresponding provision.

The approval of Resolution 3 is sought for the purposes of complying with the Stapling Deed Poll, the Trust I Constitution and the Trust II Constitution.

#### **Resolution 4: Approval of the unstapling by the Trust II securityholders**

Resolution 4 is an approval by the Trust II securityholders of the unstapling of the Trust II units from the Trust I units.

The explanation provided in respect of Resolution 3 applies to Resolution 4.

#### **ARTICLE 7 CONSTITUTION AMENDMENTS**

#### **Resolution 5: Approval of the amendments to article 7 the Trust I Constitution**

Resolution 5 approves the amendment of the Trust I Constitution in accordance with and on the terms of the Trust I Supplemental Deed: Article 7, which is attached as **Annexure D**.

The amendments set out in the Trust I Supplemental Deed: Article 7 are summarised in **Section 7**.

The Trust I Constitution and Corporations Act requirements in respect of amendments are summarised above (under the explanation of resolution 1).

While VIML as responsible entity of Trust I does not expect that the changes will adversely affect the Securityholders, VIML recognises that the Article 7 Constitution Amendments will mean that VIML will be able to take advantage of ASIC relief that will enable it to raise funds in circumstances that may have previously have required Securityholder approval. Accordingly, VIML is giving the Securityholders the opportunity to approve the changes to the Trust I Constitution.

#### **Resolution 6: Approval of the amendments to article 7 the Trust II Constitution**

Resolution 6 approves the amendment of the Trust II Constitution in accordance with and on the terms of the Trust II Supplemental Deed: Article 7, which is attached as **Annexure E**.

The amendments set out in the Trust II Supplemental Deed: Article 7 are summarised in **Section 7**.

As with the Trust I Constitution, the Trust II Constitution provides that, if the Corporations Act allows, the Trust II Constitution may be amended by resolution or by deed executed by the responsible entity of Trust II. If the Trust II Constitution is amended by resolution, the responsible entity of Trust II may give effect to the amendments by executing a supplemental deed.

**RESOLUTIONS 1, 2, 3 AND 4 ARE CONDITIONAL ON ALL OF THOSE RESOLUTIONS BEING PASSED.**

**RESOLUTIONS 5 AND 6 ARE CONDITIONAL ON BOTH THOSE RESOLUTIONS BEING PASSED.**

## **5. Description of Viridis Clean Energy Group**

### **5.1. Overview of Viridis Clean Energy Group**

VCEG is an energy infrastructure fund that invests in a diversified global portfolio of clean energy assets. Listed on the ASX in 2005, VCEG invests in operating assets utilising commercially proven technologies. The principal investment focus is on assets that generate electricity or other consumable energy produced from renewable, waste or inherently low emission energy sources, including wind, hydro, biomass, geothermal, solar, waste fuel, coal seam methane and natural gas.

### **5.2. Directors of VIML**

VIML has an experienced Board currently consisting of four Directors. The independent Chairman has a casting vote.

The directors of VIML are:

- Andrew J. Berry - Independent Chairman
- Robert Webster - Independent Director
- Edward Northam - Managing Director
- Walter Pahor - Director

### **5.3. Current focus and strategy of VCEG**

The overall strategy of VCEG is to invest in a diversified global portfolio of clean energy assets with strong cash flow generation and the potential for long-term growth.

As announced to the ASX on 12 April 2010, the Board of VIML is currently focussing on debt reduction, principally from asset sales.

## 6. Detailed description of the Restructure and Restructure Resolutions

If the Restructure Resolutions are passed at the Meeting, the Board intends that the Restructure will be implemented as follows:

- The units in Trust I and Trust II will be unstapled.  
To facilitate the unstapling, VIML as responsible entity for each of Trust I and Trust II has proposed that the Securityholders pass ordinary resolutions approving the unstapling at the Meeting. See **Section 4** for further details in respect of these resolutions.
- All of the Trust I units will be transferred to VIML as responsible entity for Trust II (so that Trust I becomes wholly owned by Trust II).

To facilitate this transfer, VIML as responsible entity for Trust I proposes that the Trust I Constitution be amended in accordance with and on the terms of the Trust I Supplemental Deed: Restructure.

The amendments to that constitution, as set out in the Trust I Supplemental Deed: Restructure will:

- give the responsible entity of Trust I the power to do such things and take such actions as it considers necessary in connection with the Restructure;
  - set out how the responsible entity of Trust I is to determine the identity of the Participants;
  - require the responsible entity of Trust I to transfer the Trust I units to VIML as responsible entity for Trust II immediately after the new Trust II units have been issued to the Participants and / or the Nominee (if required);
  - appoint the responsible entity of Trust I and each of its directors as attorney for each of the Participants for the purposes of giving effect to the Restructure; and
  - bind the responsible entity of Trust I and all Participants, including those who do not attend the Meeting or vote against the Restructure Resolutions.
- New Trust II units will be issued to Participants in consideration for the Trust I units (subject to the arrangements for Foreign Participants that are described in **Section 1.3**).

To facilitate this issue of Trust II units:

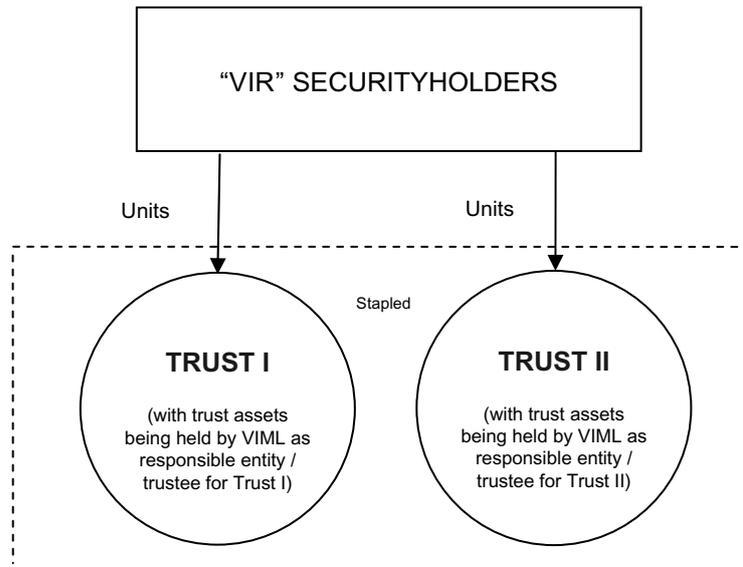
- VIML as responsible entity for Trust II proposes that the Trust II Constitution be amended in accordance with and on the terms of the Trust II Supplemental Deed: Restructure. The amendments to that constitution, as set out in the Trust II Supplemental Deed: Restructure will give VIML the power to issue the new Trust II units in consideration for the transfer of the Trust I units; and
  - VIML as responsible entity for Trust II has executed the Trust II Deed Poll, a copy of which is set out in **Annexure F**. The Trust II Deed Poll requires VIML as responsible entity for Trust II to issue the new Trust II units to the Participants on the implementation date (subject to the Restructure Resolutions being passed).
- After the new Trust II units have been issued, the Trust II units will be consolidated so that the number of Trust II units on issue after the consolidation is the same as the number of units that were on issue prior to the issue.

This consolidation is required so that the trading price of the Trust II units on the ASX does not drop solely as a result of an increase in the total number of Trust II units on issue. In other words, the consolidation is required to prevent a dilution in the value of the Trust II units.

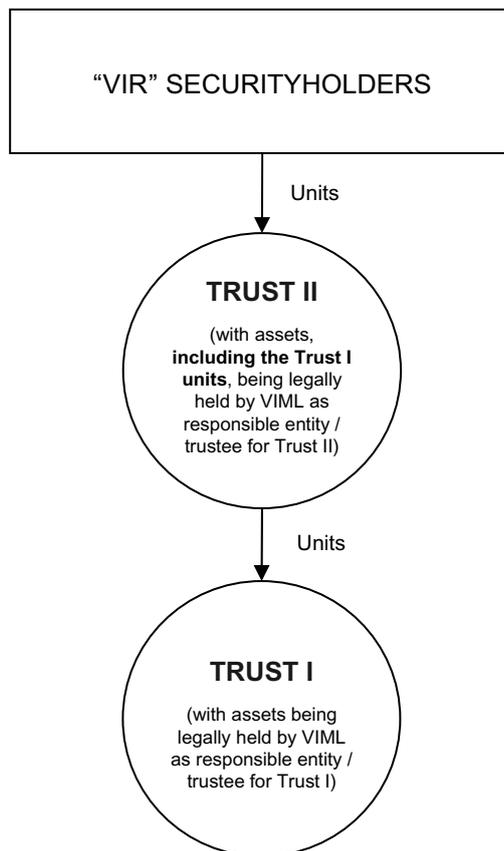
The units in Trust II will remain quoted on the ASX following the implementation of the above steps and will continue to be traded under the code "VIR". However, the units in Trust II will no longer trade under the name Viridis Clean Energy Group or "VCEG". Rather, the Board intends that the Trust II units will be traded under the name "Viridis Clean Energy".

Diagrams setting out the current structure of VCEG and the post- Restructure structure of VCEG are set out below.

**Current structure of VCEG:**



**Post- Restructure structure of VCEG:**



**6.1. Financial impact of the Restructure**

The consolidated financial position of Trust I and Trust II following the implementation of the Restructure is expected to be the same as prior to the Restructure. Please refer to **Section 9** for further details.

## 6.2. Advantages of the Restructure

The advantages of the Restructure include:

- the removal of the risk that Securityholders will in future be subject to tax without having received a cash distribution sufficient to pay the tax liability, or that alternatively the Responsible Entity could be subject to tax if it is unable to make a cash distribution;
- the creation of a more flexible group structure for the purpose of achieving stated business objectives;
- the potential for improved liquidity due to the structure being easier to understand; and
- simplified financial reporting obligations for VCEG.

## 6.3. Disadvantages of the Restructure

The disadvantages of the Restructure include:

- possible adverse tax consequences being suffered by a Securityholder (due to the individual circumstances of that Securityholder); and
- the inability of some Foreign Participants to receive the new Trust II units (see **Section 1.3** for further details).

## 6.4. Estimate of costs of the Restructure

Costs of approximately \$650,000 will be borne by VIML in its capacity as responsible entity of VCEG. This includes legal, financial, accounting and tax advisers' costs in relation to the Restructure, the cost of commissioning the Taxation Report as well as the costs of producing and circulating this Explanatory Memorandum (including printing, postage, shareholder registry services). Most of the costs to be incurred by VIML in connection with the Restructure will still be payable by VCEG regardless of whether the Restructure is implemented.

## 6.5. Intentions if Restructure Resolutions are not approved

If the Restructure Resolutions are not approved, VCEG and VIML will continue to operate as they currently do. That is, Trust I and Trust II will continue as stapled securities and the Securityholders will continue to hold securities in both Trust I and Trust II.

## 6.6. Conditions of the Restructure

If any of the following events occur, the Restructure may not be able to be implemented:

- **regulatory action:** A government agency initiating discussions, actions or investigations in connection with the Restructure which restrains or materially adversely affect the implementation of the Restructure;
- **legal restraints:** a material legal restraint arising which prevents the implementation of the Restructure;
- **third party consents:** a failure to obtain a third party approval which VIML consider is reasonably necessary to implement the Restructure; or
- **VIML:** VIML determining that the Restructure is not in the best interests of Securityholders.

## 6.7. Tax implications of the Restructure

As a result of the Restructure, existing Securityholders will instead only hold units in Trust II. For completeness, we note that after the implementation of the Restructure any distributions from Trust II to holders of Trust II units will be in the form of franked or unfranked dividends or returns of capital as pre-tax distributions from Trust I will no longer be available. At present, Securityholders receive franked or unfranked dividends or returns of capital from Trust II in addition to pre-tax distributions or returns of capital from Trust I.

Under the existing structure, Securityholders are subject to tax at their respective marginal rates on receipt of distributions from Trust I and Trust II. In the revised structure, this will continue to be the case although rather than receiving some portion of their distribution in a pre-tax form the distributions of taxable profit will now be in the form of dividends.

Australian resident Securityholders may utilise any franking credits attaching to a dividend paid by Trust II to offset their Australian tax liability. To the extent that they have excess franking credits, Australian resident individual Securityholders and superannuation funds can receive refunds of these excess credits. Australian resident corporate Securityholders may utilise any excess franking credits received to frank any dividends paid in the future.

Prior to the Restructure, distributions from Trust I to non-resident Securityholders comprising interest income were subject to interest withholding tax. Interest withholding tax is generally applied at the rate of 10%. Following the Restructure, Securityholders may receive franked dividends from Trust II in lieu of distributions of interest on a pre-tax basis from Trust I. Given that tax may have been borne on this income in Trust II at a rate of 30%, it is possible that a non-resident Securityholder may indirectly bear additional tax leakage.

Under the proposed Restructure, tax may be paid in Trust II at an earlier point in time than may otherwise have been the case if the relevant income had been distributed to Securityholders in a pre-tax form and subject to tax in the hands of the Securityholders.

The taxation implications of the Restructure will vary depending on the personal circumstances of each Securityholder. A detailed taxation report has been included at **Section 10**.

## **7. Detailed description of the Article 7 Constitution Amendments and resolutions**

### **7.1. Details of the Article 7 Constitution Amendments**

The Article 7 Constitution Amendments involve amendments being made to article 7 of the Trust I Constitution and article 7 of the Trust II Constitution. Article 7 in each of those constitutions relates to the application price for new units. The amendments will:

- ensure that the existing mechanics for calculating the application price of new units will continue to apply if the Trust I units and Trust II units are unstapled;
- vary the existing application price mechanics in light of ASIC class order relief that has been granted since the Trust I Constitution and Trust II Constitution were adopted (in particular, the amendments to article 7.4 are being made in light of ASIC Class Order [09/462], which removes the 10% discount limit on placements without approval of a members);
- provide that, consistent with the rights of many other listed entities, VIML may (subject to the Corporations Act and the ASX Listing Rules) issue financial instruments, such as convertible notes, other debt instruments, quasi-debt instruments and equity-like instruments; and
- provide that the pricing mechanisms will be restricted (or enhanced) to the extent that the ASX Listing Rules or any ASIC instrument restricts (or enhances) the means by which VIML can set the application price for units or options.

### **7.2. Intentions if the resolutions in respect of the Article 7 Constitution Amendments are not made**

If the resolutions in respect of the Article 7 Constitution Amendments are not passed then (except as provided below) the proposed amendments to article 7 of the Trust I Constitution and article 7 of the Trust II Constitution will not be made. VIML may continue to consider fundraising possibilities from time to time but would need to do so within the context and possibilities of the existing Trust I Constitution and Trust II Constitution.

If the Restructure Resolutions are passed but the resolutions in respect of the Article 7 Constitution Amendments are not passed, VIML may exercise its powers pursuant to the Trust I Constitution and Trust II Constitution to amend those constitutions, without Securityholder approval, to the extent required to ensure that the existing mechanics for calculating the application price of new units will continue to apply if the Trust I units and Trust II units are unstapled.

### **7.3. Advantages of the Article 7 Constitution Amendments**

The following are the reasons why Securityholders may vote in favour of the resolutions in respect of the Article 7 Constitution Amendments:

- The Article 7 Constitution Amendments will enable VIML to undertake a broader variety of fundraising activities. Some of those activities may be commercially more attractive and ultimately result in better results for Securityholders.
- The amendments will enable VIML, in certain circumstances, to take advantage of ASIC class order relief and issue new Trust I and Trust II units without restrictions relating to the market value of those units, which may improve VIML's ability to attract investor support for a new issue.
- The amendments reflect ASIC policy, as set out in Class Order [05/26].

### **7.4. Disadvantages of the Article 7 Constitution Amendments**

If the resolutions in respect of the Article 7 Constitution Amendments are passed, VIML will have greater flexibility in issuing new units than would have been possible prior to the amendments. Depending on the terms of any new issue, this could dilute the value of existing Securityholders' units.

A Securityholder may wish to vote against the Article 7 Constitution Amendments if the Securityholder would prefer to restrict VIML's ability to raise funds to those methods already permitted by the Trust I Constitution and Trust II Constitution.

## 8. Directors' recommendation

**THE DIRECTORS UNANIMOUSLY RECOMMEND THAT THE SECURITYHOLDERS VOTE IN FAVOUR OF THE RESOLUTIONS.**

In making this recommendation the Directors of VIML have considered:

- the reasons why Securityholders may vote in favour of or against the resolutions, as summarised at **Sections 1.8** and **1.9** respectively; and
- in respect of the Restructure Resolutions, the findings of the Taxation Report, as contained in the Taxation Report set out in **Section 10** of this Explanatory Memorandum and summarised at **Section 6.7**.

## **9. Financial information**

### **9.1. Financial position of VCEG following the Restructure**

The consolidated financial position of Trust I and Trust II following the implementation of the Restructure is expected to be the same as prior to the Restructure.

Currently, the consolidated statement of financial position for VCEG represents the consolidation of the financial position of Trust I, Trust II and the entities they control, with Trust II being identified as the parent entity of the consolidated group and the financial position of Trust I being included as a minority interest in the consolidated statement of financial position.

Following the Restructure, Trust II will remain the parent entity of the consolidated group and Trust I will be one of the entities which Trust II controls. As there will be no change to the parent entity or the entities forming the consolidated group, the net assets of the group will remain the same. The financial position of Trust I will be consolidated in the same manner as all other controlled entities.

## 10. Taxation report



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The Directors  
Viridis Investment Management Limited as the  
Responsible Entity for the Viridis Clean Energy  
Group  
Level 1  
167 Flinders Lane  
Melbourne VIC 3000

Our ref 8269429\_1.DOC

21 April 2010

Dear Directors

### **Taxation Report**

This letter sets out the general Australian taxation implications of the Restructure. The comments in relation to Australian taxation deal only with the Australian taxation implications of the Restructure for Securityholders holding their stapled securities on capital account. They do not apply to Securityholders who are banks, insurance companies and taxpayers carrying on a business of trading in shares or otherwise holding their stapled securities on revenue account.

These comments are general in nature and are based on the law in force in Australia at the time of issue of this Explanatory Memorandum. The precise taxation implications will depend upon each Securityholder's specific circumstances.

Accordingly, all persons should seek their own independent taxation advice before reaching conclusions as to the possible taxation consequences of the Restructure. Neither VIML, VCEG, nor any of its officers, nor its taxation or other advisers, accepts any liability or responsibility in respect of any statement concerning the taxation consequences of the Restructure.

### **Disposal of Trust I securities – Australian Securityholders**

As a result of the Restructure, Australian Securityholders holding units in Trust I on capital account will trigger a capital gains tax ("CGT") event, being the disposal of a CGT asset. Securityholders should make either:

- a capital gain if the capital proceeds from disposal exceed the cost base of their Trust I units, or
- a capital loss if the capital proceeds from disposal are less than the reduced cost base of their Trust I units.

Broadly, the cost base and reduced cost base of a Trust I unit will be the sum of the cost of acquiring the asset (i.e. the price on acquisition) plus any incidental costs incurred in acquiring the units. Special rules also apply to modify the cost base and reduced cost base of Trust I units. For example, Trust I Securityholders will need to take into account any returns of capital and tax deferred distributions received in respect of Trust I units.

Trust I Securityholders should seek their own advice in respect of the cost base or reduced cost base of their unitholdings. To assist Securityholders and their advisors with calculating the cost base or reduced cost base, at the end of this letter is a schedule outlining the capital returns/tax-deferred distributions made by Trust I from inception to date as well as the historic Net Tangible Assets per security for Trust I and Trust II at each time new stapled securities were issued.

The capital proceeds received by Securityholders will be the market value of the Trust II units received in exchange for the Trust I units.

### ***Scrip for scrip roll-over relief***

Trust I Securityholders may be eligible for scrip for scrip roll-over relief if certain conditions are satisfied. Scrip for scrip roll-over enables a Securityholder to disregard a capital gain they make from a unit that is transferred as part of the Restructure to the extent that the unitholder receives a replacement unit in exchange. Scrip for scrip roll-over does not apply where a Securityholder holds their investment on revenue account or where the Securityholder makes a capital loss.

Based on our understanding of the Restructure, the relevant conditions for roll-over relief should be satisfied. Accordingly, relief should be available to Australian resident Securityholders in Trust I who transfer their units in exchange for units in Trust II and would otherwise, make a capital gain.

Trust I Securityholders who wish to benefit from the scrip for scrip roll-over must choose to do so. Generally, the way in which a tax return is prepared by the Securityholder is sufficient evidence of the making of the choice.

In the event that scrip for scrip rollover relief is not available to a Securityholder, then the tax consequences of the restructure for Australian resident investors holding their investment on capital account will be as set out above under “Disposal of Trust I securities – Australian Securityholders”.

### **Disposal of Trust I securities – Non-resident Securityholders**

Non-residents holding Trust I units on capital account should be exempt from CGT. Broadly, non-residents who hold interests in CGT assets (including units in a fixed trust) are exempt from the Australian CGT regime where the underlying value of the units is not principally derived from Australian real property (i.e. “land rich” investments).

Based on our understanding of Trust I, this exemption should apply as Trust I is not a land rich trust. Accordingly, any capital gain or loss made by a non-resident investor (holding their investment on capital account) on disposal of units in Trust I should be disregarded.

### **Cost base of new Trust II units**

Under the CGT regime, an entity's cost base in an asset broadly consists of the money paid in respect of acquiring it, and the market value of any other property given in respect of acquiring it (worked out as at the time of the acquisition). Where Trust I Securityholders have chosen to obtain scrip for scrip rollover relief, the cost base of new units in Trust II will be the cost base of the Trust I securities when they were initially acquired by the Securityholder, reduced by any returns of capital (or 'tax deferred distributions') received. Accordingly, the cost base of Trust II units will vary for each Securityholder, depending on the purchase price of Trust I units, any incidental costs allocated to the purchase of Trust I units and any returns of capital received.

Alternatively, where scrip for scrip rollover relief has not been obtained, the cost base of new Trust II units will be the market value of the Trust I units exchanged by the Securityholder at the time they are acquired by VIML (i.e. the market value of consideration provided for Trust II units).

### **Future distributions**

Any future distributions of profit made by Trust II will be in the form of dividends, as Trust II is a public trading trust and treated for tax purposes as a company. Australian resident Securityholders are required to include the amount of any dividends distributed in their assessable income when paid. Such dividends may be franked to the extent that they are paid out of after-tax profits.

The tax consequences arising from receipt of a franked dividend will vary depending on each Securityholder's circumstances. Certain Securityholders may be required to gross-up dividends included in assessable income for franking credits, and claim a tax offset equal to the franking credit. Where this offset exceeds income tax payable, a tax refund may arise for some Securityholders.

Dividends paid to non-resident Securityholders will be subject to dividend withholding tax. The rate of dividend withholding tax is dependant upon the country of residency of the investor. The withholding tax rate for 'non-treaty' countries is 30%. This withholding tax is reduced to the extent that the dividend is franked.

Returns of capital may also be paid to Securityholders and will be non-assessable to the Securityholder provided that Securityholders have not received returns of capital in excess of their respective cost base.

However, where these returns of capital are treated by the Commissioner as having been paid out of profits, the Commissioner may deem them to be unfranked dividends. These deemed

dividends are unfrankable by Trust II and are fully assessable in the hands of the Securityholders. The Commissioner may also make a determination to reduce the amount of franking credits that are available to Trust II for future distributions.

### **Unit consolidation**

Following the Restructure, Trust II intends to consolidate its unit registry to reduce the number of units on issue. No tax event occurs as a result of the consolidation.

On the basis that the Securityholder of the original units and the new units is the same beneficial owner (i.e. beneficial ownership does not change), then each element of the cost base and reduced cost base of the new unit is the sum of the corresponding elements of the original units.

### **Stamp Duty**

No stamp duty will be payable on the grant of an entitlement, exercise of an entitlement or subsequent disposal of the new Trust II units.

### **Goods and Services Tax (GST)**

The disposal of Trust I units and the acquisition of the new units in Trust II, acquired as a result of the restructure, will be classified as either a GST free (non-resident Securityholders) or input taxed (Australian Securityholders) “financial supply” for Australian GST purposes. Australian GST will not apply to any capital proceeds received for the disposal of Trust I units or in respect of any consideration for new Trust II units issued.

All persons should seek their own tax advice with regard to their entitlement to recover GST (if any) on any costs incurred by them in relation to these transactions.

### **Information to assist Securityholders**

#### *Split of VCEG issue prices up to 31 March 2010 between Trust I and Trust II*

<b>Date of issue</b>	<b>Type of issue</b>	<b>Issue price per stapled security</b>	<b>Issue price of unit in Trust I</b>	<b>Issue price of unit in Trust II)</b>
14 September 2005	New stapled security	\$1.000000	\$0.800000	\$0.200000
21 December 2006	Rights issue	\$0.900000	\$0.720000	\$0.180000
5 September 2007	DRP	\$0.978245	\$0.815465	\$0.162780
14 February 2008	DRP	\$0.757607	\$0.639572	\$0.118035



***Tax deferred distributions made by Trust I\****

Payment date	Tax-deferred distribution made per unit	Taxable component per unit	Total distribution
31 March 2006	\$0.0189	\$0.0061	\$0.0250
11 September 2006	\$0.0351	\$0.0112	\$0.0463
15 February 2007	\$0.0490	\$0.0000	\$0.0490
5 September 2007	\$0.0490	\$0.0000	\$0.0490
14 February 2008	\$0.0469	\$0.0047	\$0.0516
4 September 2008	\$0.0454	\$0.0046	\$0.0500
16 February 2009	\$0.0063	\$0.0260	\$0.0323

\*It is noted that Trust II has not made any distributions in the period from 31 March 2006 to the date of this Explanatory Memorandum

\* \* \* \* \*

**General tax reform**

Our tax advice is based on current taxation law as at the date our advice is provided. You will appreciate that the tax law is frequently being changed, both prospectively and retrospectively. A number of key tax reform measures have been implemented, a number of other key reforms have been deferred and the status of some key reforms remains unclear at this stage.

Unless special arrangements are made, this advice will not be updated to take account of subsequent changes to the tax legislation, case law, rulings and determinations issued by the Australian Commissioner of Taxation or other practices of taxation authorities. It is your responsibility to take further advice, if you are to rely on our advice at a later date.

We are, of course, unable to give any guarantee that our interpretation will ultimately be sustained in the event of challenge by the Australian Commissioner of Taxation.



### **Third Party**

These comments are made specifically in response to Viridis Investment Management Limited's request for advice on behalf of the Viridis Clean Energy Group. Accordingly, neither the firm nor any member or employee of the firm undertakes responsibility in any way whatsoever to any person or company other than Viridis Clean Energy Group for any errors or omissions in the advice given, however caused.

### **FSRA warning**

KPMG's Tax practice is not licensed to provide financial product advice under the Corporations Act and taxation is only one of the matters that must be considered when making a decision on a financial product. You should consider taking advice from an Australian Financial Services Licence holder before making any decision on a financial product.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Poulos', with a long, sweeping underline.

Peter Poulos  
Partner

## 11. Additional information

### 11.1. Regulatory relief

#### 11.1.1. ASIC

Relief has been granted from sections 601FC(1)(d), 606, 1012B(3) and 1012C(3) and (4) of the Corporations Act as follows:

- relief from section 601FC(1)(d) to enable VIML to issue the Trust II units to all Trust II members except certain Foreign Participants;
- relief from section 606 to enable VIML to acquire relevant interests in units in Trust I as a result of VIML acquiring the Trust I units under the Restructure;
- relief from section 1012B(3) to enable VIML to issue the new Trust II units without a product disclosure statement; and
- relief from subsections 1012C(3) and (4) to enable Securityholders who participated in the Restructure to offer their Trust II units for sale in circumstances that would otherwise require a product disclosure statement due to subsection 1012C(6) (which deals with sales amounting to indirect issues).

#### 11.1.2. ASX

VIML as responsible entity of Trust II has been granted waivers from the requirements of Listing Rules 7.1 and 10.11 to the extent necessary to permit VIML to issue securities in Trust II to Securityholders in consideration for the transfer of the securities in Trust I without obtaining the approval of Securityholders under those rules, provided that certain conditions are met (including Securityholders approving the amendments to the Trust I and Trust II constitutions that relate to the Restructure).

### 11.2. Consents

#### 11.2.1. Consents to be named

The following persons have given and have not, before the date of this Explanatory Memorandum, withdrawn their written consent to be named in this Explanatory Memorandum in the form and context in which they are named:

- Herbert Geer as legal adviser to VIML; and
- KPMG as tax adviser to VIML.

#### 11.2.2. Disclaimer

Each person referred to in **Section 11.2.1**:

- does not make, or purport to make, any statement in this Explanatory Memorandum other than those statements made in the capacity and to the extent the person has provided its consent, as referred to above; and
- to the maximum extent permitted by law, expressly disclaims all liability in respect of, and takes no responsibility for, any part of this Explanatory Memorandum other than a reference to its name and statement made by it and included in this Explanatory Memorandum, with that person's consent.

### 11.3. Availability of documents

Trust I and Trust II (which have been trading as Viridis Clean Energy Group) are disclosing entities for the purposes of the Corporations Act and as such they are subject to periodic reporting and continuous disclosure obligations. Publicly disclosed information about Trust I and Trust II is available on the ASX website at [www.asx.com.au](http://www.asx.com.au).

Trust I and Trust II are also required to lodge various documents with ASIC. Copies of documents lodged with ASIC by VCEG may be obtained from, or inspected at, ASIC offices.

VIML will provide free of charge to any Securityholder who requests it before the Meeting a copy of:

- the audited financial statements of VCEG for the financial year ended 30 June 2009;
- the Constitution of Trust I (both the current VCET I Constitution and the VCET I Constitution showing all amendments proposed to be made if the amendments to the Constitution in accordance with the Trust I Supplemental Deed: Restructure and the Trust I Supplemental Deed: Article 7 are approved by Securityholders at the Meeting);

- the Constitution of Trust II (both the current Trust II Constitution and the Trust II Constitution showing all amendments proposed to be made if the amendments to the Constitution in accordance with the Trust II Supplemental Deed: Restructure and Trust II Supplemental Deed: Article 7 are approved by Securityholders at the Meeting); and
- each announcement to the ASX made by VCEG after lodgment with ASIC of the financial statements referred to above.

#### **11.4. No further information**

All material information known to the Directors about the resolutions is set out in this Explanatory Memorandum, or has previously been disclosed to the market.

## 12. Glossary

**AFSL** means Australian financial services licence

**Article 7 Constitution Amendments** means the proposed amendments to article 7 of the Trust I Constitution and article 7 of the Trust II Constitution, as described in **Section 7**

**Article 7 Supplemental Deeds** means the Trust I Supplemental Deed: Article 7 and the Trust II Supplemental Deed: Article 7, copies of which are contained in **Annexures D** and **E**

**ASIC** means Australian Securities and Investments Commission

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

**ASX Listing Rules** means the Listing Rules of ASX

**Board** means the board of directors of VIML

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

**Directors** means the directors of VIML

**Effective Date** means the date on which the Restructure Supplemental Deeds are lodged with ASIC

**Explanatory Memorandum** means this Explanatory Memorandum and the Annexures, including the Notice of Meeting

**Foreign Participant** means a Participant whose address, as shown in the Register as at 7pm on the Record Date, is a place outside Australia or New Zealand

**Meeting** means the meeting of Securityholders and any adjournment of the meeting

**Nominee** means the person nominated by VIML for the purposes of receiving new Trust II units that would otherwise be due to Foreign Participants, as described in **Section 1.3**

**Notice of Meeting** means the notice of meeting issued by VIML for the purposes of convening the Meeting, a copy of which is contained in **Annexure A** to this Explanatory Memorandum

**Participant** means a Securityholder registered as a holder of Stapled Securities on the Record Date

**Record Date** means the date that is 5 business days after the date on which the Trust I Supplemental Deed become effective or such other date as may be determined by VIML

**Restructure** means the Restructure that VIML proposes to implement in order to restructure Trust I and Trust II so that Trust I becomes wholly owned by Trust II, as described in **Section 6**

**Restructure Resolutions** means resolutions 1 to 4 as set out in the Notice of Meeting

**Restructure Supplemental Deeds** means Trust I Supplemental Deed: Restructure and the Trust II Supplemental Deed: Restructure, copies of which are contained in **Annexures B** and **C**

**Securityholders** means persons holding Stapled Securities

**Stapled Security** means an interest in VCEG, comprising a unit in Trust I stapled to a unit in Trust II

**Taxation Report** means the report prepared by KPMG as contained in **Section 10** of this Explanatory Memorandum

**Trust I** means the Viridis Clean Energy Trust I (ARSN 115 340 442)

**Trust I Constitution** means the constitution of Trust I

**Trust I Supplemental Deed: Restructure** means the proposed supplemental deed to amend the Trust I Constitution for the purposes of the Restructure, a form of which is contained in **Annexure B** to this Explanatory Memorandum

**Trust I Supplemental Deed: Article 7** means the proposed supplemental deed to amend article 7 of the Trust I Constitution, a form of which is contained in **Annexure D**

**Trust II** means the Viridis Clean Energy Trust II (ARSN 115 340 639)

**Trust II Constitution** means the constitution of Trust II

**Trust II Supplemental Deed: Restructure** means the proposed supplemental deed to amend the Trust II Constitution for the purposes of the Restructure, a copy of which is contained in **Annexure C**

**Trust II Supplemental Deed: Article 7** means the proposed supplemental deed to amend the Trust II Constitution, a form of which is contained in **Annexure E**

**VCEG** means Viridis Clean Energy Group comprising Trust I and Trust II

**VIML** means Viridis Investment Management Limited (ABN 51 099 788 431) (AFSL 222 547)

# Annexures

# Annexure A - Notice of Meeting

## NOTICE OF EXTRAORDINARY GENERAL MEETING OF THE SECURITYHOLDERS OF VIRIDIS CLEAN ENERGY TRUST I (ARSN 115 340 442) AND VIRIDIS CLEAN ENERGY TRUST II (ARSN 115 340 639)

Notice is given that a joint meeting of the Securityholders of Viridis Clean Energy Trust I and Viridis Clean Energy Trust II (together, “VCEG”) will be held at the offices of Herbert Geer, Level 20, 385 Bourke Street, Melbourne, Victoria on 11 June 2010 at 10:00 am, Melbourne time, or if the Meeting is adjourned, such date and time as determined by Viridis Investment Management Limited (“**Responsible Entity**”).

Please refer to the accompanying Explanatory Memorandum, of which this Notice of Meeting forms part, for further information about the items of business.

### Quorum

The quorum for the Meeting is at least two Securityholders present in person or by proxy. If a quorum is not present within 15 minutes after the scheduled time for the Meeting, the Meeting will be adjourned to a place and time determined by the Responsible Entity.

### **AGENDA**

#### **Resolution 1: Amendments to Trust I Constitution**

To consider and, if thought fit, pass the following resolution as a special resolution in accordance with section 601GC(1)(a) of the Corporations Act:

*“That, subject to resolutions 2, 3 and 4 being passed:*

- (a) the constitution of Viridis Clean Energy Trust I be amended in accordance with the provisions of the supplemental deed as annexed to the Notice of Meeting and Explanatory Memorandum dated 28 April 2010 (“**Trust I Supplemental Deed: Restructure**”); and*
- (b) Viridis Investment Management Limited, as responsible entity of Viridis Clean Energy Trust I, be authorised to execute the Trust I Supplemental Deed: Restructure and lodge a copy of the Trust I Supplemental Deed: Restructure with the Australian Securities and Investments Commission to give effect to the amendments to the constitution.”*

#### **Resolution 2: Amendments to Trust II Constitution**

To consider and, if thought fit, pass the following resolution as a special resolution in accordance with section 601GC(1)(a) of the Corporations Act:

*“That, subject to resolutions 1, 3 and 4 being passed:*

- (a) the constitution of Viridis Clean Energy Trust II be amended in accordance with the provisions of the supplemental deed as annexed to the Notice of Meeting and Explanatory Memorandum dated 28 April 2010 (“**Trust II Supplemental Deed: Restructure**”); and*
- (b) Viridis Investment Management Limited, as responsible entity of Viridis Clean Energy Trust II, be authorised to execute the Trust II Supplemental Deed: Restructure and lodge a copy of the Trust II Supplemental Deed: Restructure with the Australian Securities and Investments Commission to give effect to the amendments to the constitution.”*

#### **Resolution 3: Approval of unstapling by Trust I securityholders**

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

*“That, subject to resolutions 1, 2 and 4 being passed:*

- (a) the holders of units in Viridis Clean Energy Trust I (“**Trust I**”) approve, for all purposes, the unstapling of the units in Trust I from the units in Viridis Clean Energy Trust II (“**Trust II**”) so that units in Trust I and Trust II are no longer linked together and can be transferred and otherwise dealt with separately; and*
- (b) the directors of Viridis Investment Management Limited be authorised to do all such things and take all such actions as may be necessary to give effect to the unstapling of the units in Trust I from the units in Trust II.”*

#### **Resolution 4: Approval of unstapling by Trust II securityholders**

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

*“That, subject to resolutions 1, 2 and 3 being passed:*

- (a) the holders of units in Viridis Clean Energy Trust II (“**Trust II**”) approve, for all purposes, the unstapling of the units in Trust II from the units in Viridis Clean Energy Trust I (“**Trust I**”) so that units in Trust II and Trust I are no longer linked together and can be transferred and otherwise dealt with separately; and*
- (b) the directors of Viridis Investment Management Limited be authorised to do all such things and take all such actions as may be necessary to give effect to the unstapling of the units in Trust II from the units in Trust I.”*

#### **Resolution 5: Amendments to article 7 of the Trust I Constitution**

To consider and, if thought fit, pass the following resolution as a special resolution in accordance with section 601GC(1)(a) of the Corporations Act:

*“That, subject to resolution 6 being passed:*

- (a) article 7 of the constitution of Viridis Clean Energy Trust I be amended in accordance with the provisions of the supplemental deed as annexed to the Notice of Meeting and Explanatory Memorandum dated 28 April 2010 (“**Trust I Supplemental Deed: Article 7**”); and*
- (b) Viridis Investment Management Limited, as responsible entity of Viridis Clean Energy Trust I, be authorised to execute the Trust I Supplemental Deed: Article 7 and lodge a copy of the Trust I Supplemental Deed: Article 7 with the Australian Securities and Investments Commission to give effect to the amendments to the constitution.”*

#### **Resolution 6: Amendments to article 7 of Trust II Constitution**

To consider and, if thought fit, pass the following resolution as a special resolution in accordance with section 601GC(1)(a) of the Corporations Act:

*“That, subject to resolution 5 being passed:*

- (a) article 7 of the constitution of Viridis Clean Energy Trust II be amended in accordance with the provisions of the supplemental deed as annexed to the Notice of Meeting and Explanatory Memorandum dated 28 April 2010 (“**Trust II Supplemental Deed: Article 7**”); and*
- (b) Viridis Investment Management Limited, as responsible entity of Viridis Clean Energy Trust II, be authorised to execute the Trust II Supplemental Deed: Article 7 and lodge a copy of the Trust II Supplemental Deed: Article 7 with the Australian Securities and Investments Commission to give effect to the amendments to the constitution.”*

## INFORMATION FOR SECURITYHOLDERS

### Majority required

**Resolution 1** will not be passed unless:

- at least 75% of the votes entitled to be cast on that resolution are cast in favour of the resolution; and
- Resolutions 2, 3 and 4 are passed.

**Resolution 2** will not be passed unless:

- at least 75% of the votes entitled to be cast on that resolution are cast in favour of the resolution; and
- Resolutions 1, 3 and 4 are passed.

**Resolution 3** will not be passed unless:

- at least 50% of the votes entitled to be cast on that resolution are cast in favour of the resolution; and
- Resolutions 1, 2 and 4 are passed.

**Resolution 4** will not be passed unless:

- at least 50% of the votes entitled to be cast on that resolution are cast in favour of the resolution; and
- Resolutions 1, 2 and 3 are passed.

**Resolutions 5** will not be passed unless:

- at least 75% of the votes entitled to be cast on that resolution are cast in favour of the resolution; and
- resolution 6 is passed.

**Resolution 6** will not be passed unless:

- at least 75% of the votes entitled to be cast on that resolution are cast in favour of the resolution; and
- resolution 5 is passed.

### Voting Exclusion Statement

Under section 253E of the Corporations Act, VIML and its associates (including the Directors) are not entitled to vote on a resolution if they have an interest in the resolution or matter other than as a Securityholder.

While some of the Directors are Securityholders, no Director has an interest in the resolutions other than in their capacity as a Securityholder. Accordingly, the Directors are entitled to exercise all votes held by them.

### **Eligibility to Vote**

The Responsible Entity has determined that for the purpose of voting at the Meeting, Stapled Securities will be taken to be held by the persons who are the registered holders of those Stapled Securities at 7.00 pm on 9 June 2010. Accordingly, transactions registered after that time will be disregarded in determining entitlement to attend and vote at the Meeting.

### **Voting**

Each of the resolutions is to be decided on a show of hands by the required majority of holders present in person or by proxy and voting on the show of hands or, if a poll is properly demanded, on a poll, by the required majority of votes cast by holders present in person or by proxy and voting on the poll .

### **Jointly held Stapled Securities**

If your Stapled Securities are jointly held, only one of the joint holders is entitled to vote. If both joint holders are present at the Meeting, only the vote of the person named first in the register counts.

### **Meeting Attendance**

If you propose to attend the Meeting, please bring the enclosed proxy form with you. This will assist in registering your attendance.

Unless you are appointing a proxy, you will not need to complete the proxy form.

### **Proxies**

If you do not plan to attend the Meeting, you are entitled to appoint a proxy to attend and vote on your behalf and you are encouraged to do so. You can appoint a proxy by completing and returning the enclosed proxy form.

Proxy forms must be received by Computershare Investor Services Pty Limited, no later than 10.00 am on 9 June 2010.

A proxy need not be a Securityholder. The proxy form must specify the proxy's name or the name of the office held by the proxy. To be valid, the form appointing the proxy may be lodged in one of the ways described in the proxy form accompanying this Notice of Meeting. You can simply return the form in the reply paid envelope enclosed with the Explanatory Memorandum. Alternatively, you can deliver the proxy form to the registry of Viridis Clean Energy Group, Computershare Investor Services Pty Limited in person at Yarra Falls, 452 Johnston Street, Abbotsford VIC 3067, or by mail to GPO Box 242, Melbourne VIC 3001, or by fax to 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia).

A Securityholder entitled to attend and vote at the Meeting is entitled to appoint no more than two proxies. If two proxies are appointed, each proxy may be appointed to represent a specified number or portion of your votes. If no such number is specified, each proxy may exercise half your votes. If you wish to appoint two proxies, please refer to the back of the proxy form for instructions.

### **Corporate Securityholders**

To vote at the Meeting (other than by proxy), a corporation that is a Securityholder must appoint a person to act as its representative. The appointment must comply with section 253B of the Corporations Act. The representative must bring to the Meeting evidence of his or her appointment including any authority under which it is signed.

### **Enquiries**

Securityholders seeking further information on the Meeting should contact Computershare Investor Services Pty Limited on 1300 850 505 within in Australia or +61 3 9415 4000 outside Australia between 9:00 am and 5:00 pm, Monday to Friday.

By Order of the Board

A handwritten signature in black ink, appearing to read 'A. Berry', written in a cursive style.

Andrew J. Berry

Chair

Viridis Investment Management Limited

# **Annexure B – Trust I Supplemental Deed: Restructure**

**VIRIDIS INVESTMENT MANAGEMENT LIMITED**  
**as responsible entity for VIRIDIS CLEAN ENERGY TRUST I**

## **SUPPLEMENTAL DEED**

herbertgeer

Level 20 385 Bourke Street Melbourne 3000 Australia

Telephone +613 9670 6123

Facsimile +613 9670 5670

Reference ARB:1339030

Adam Brooks

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# SUPPLEMENTAL DEED

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(b) In this deed:

**Restructure**

means the arrangement under which:

- (a) the Units are unstapled from the Trust II units;
- (b) all of the Units are transferred to VIML as responsible entity for Trust II (so that the Trust becomes wholly owned by Trust II);
- (c) new Trust II units are issued in consideration for the Units; and
- (d) after those new Trust II units have been issued, the Trust II units are consolidated (so that the number of Trust II units on issue after the consolidation is the same as the number of units that were on issue prior to the issue of the Trust II units)

**Restructure Resolutions**

means the resolutions of the Members set out in the notice of meeting and explanatory memorandum dated [•] 2010

**1.2 Benefit of this deed**

This deed is made by VIML with the intent that the benefit of this deed shall enure to the benefit of the Members jointly and severally.

**2. LODGEMENT WITH ASIC**

VIML must:

- (a) lodge a copy of this deed with ASIC within 1 Business Day after it is executed; and
- (b) lodge a consolidated copy of the Constitution with ASIC if ASIC directs VIML to do so.

**3. AMENDMENTS TO THE CONSTITUTION**

With effect on and from the lodging of this deed with ASIC, the Constitution is amended as follows:

- (a) In article 6.1(c), by replacing the word "*Subject*" with the words "*While Stapling applies, subject*".

(b) In article 6.3, by replacing the words *“If an instrument of transfer”* with the words *“Subject to article 13.8, if an instrument of transfer”*.

(c) By inserting a new article 13.8 as follows:

***“Powers in respect of Restructure***

*Notwithstanding any other provision of this Constitution, RE has the power to do all such things and take all such actions as it considers necessary in connection with the Restructure, including without limitation, carrying out or causing to be carried out each the steps outlined in article 13A.”*

(d) By inserting a new article 13.9 as follows:

***“Specific Restructure Powers***

*For the purposes of article 13.8 but without limiting that article, if the Restructure Resolutions are approved by the Members, RE will have the power to:*

(a) *transfer Units;*

(b) *execute any documents including any transfer forms in respect of the Units as agent or attorney for or on behalf of all or any Members;*

(c) *seek suspension from trading of Units;*

(d) *seek the removal of the Trust from the ASX and the cessation of quotation of the Units if necessary; and*

(e) *suspend the registration of transfers of Units.”*

(e) By inserting a new article 13A immediately following the existing article 13 as set out below:

***“13A Restructure***

***13A.1 Participants and Dealings in Units***

(a) *In determining the persons who are Participants, RE must recognise the persons shown in the Register at 7 pm on the Record Date.*

(b) *For the purposes of article 13A.1(a), for dealings of the type effected using a CS Facility, RE must only recognise transferees registered in the Register as the holder of relevant Units by 7pm on the Record Date.*

(c) *For the purposes of article 13A.1(a), for all dealings other than dealings effected using a CS Facility, RE must register, by 7pm on the Record Date, transmission applications or transfers:*

(A) *that occurred before the close of business on the Deferred Settlement Start Date; and*

(B) *in respect of which a registrable transmission application or transfer in registrable form is received where the Register is kept on or before the close of business on the Record Date.*

- (d) *RE will not accept for registration, nor recognise for the purpose of establishing the persons who are Participants, any transfer or transmission in respect of Units received after the close of business on the Deferred Settlement Start Date or received before that date but not in registrable form.*
- (e) *As from the Record Date, all Unit certificates and holding statements for Restructure Units in the name of Participants will cease to have effect as documents of title in respect of those Restructure Units.*
- (f) *For the purposes of this article 13A.1, RE must procure, subject to guidance or directions from the ASX, that trading in respect of the Securities occurs on a deferred settlement basis (as defined in the Listing Rules) from the Deferred Settlement Start Date.*

### **13A.2 Transfer**

- (a) *On the Implementation Date, RE must, or must procure that, contemporaneously with the Consideration Units being issued to the Participants and the Nominee (if any), the Restructure Units are transferred to Viridis Investment Management Limited as responsible entity for Trust II and the Register is updated to record these transfers.*
- (b) *RE and each Participant acknowledge and agree that Viridis Investment Management Limited as responsible entity for Trust II will, unless it is satisfied that it is lawful (under the laws of the relevant foreign jurisdiction) and not unduly onerous to issue a Foreign Participant with Consideration Units, issue to the Nominee those Consideration Units to which the Foreign Participant would otherwise have been entitled.*

### **13A.3 Covenants by RE and Members**

- (a) *Each Participant and RE must do all things as may be necessary or desirable to give full effect to the Restructure and the transactions contemplated by it.*
- (b) *Each Participant, without the need for any further act:*
  - (i) *irrevocably appoints RE and each of its directors, jointly and severally, as that Participant's attorney and agent for the purpose of; and*
  - (ii) *consents to RE and each of its directors,*

*doing all things and executing any document necessary to give full effect to the Restructure and this article 13A and the transactions contemplated by them.*
- (c) *Each Participant appoints RE to enforce the Trust II Deed against Trust II on behalf of and as agent and attorney for the Participant.*
- (d) *RE, as agent and attorney of each Participant, may sub-delegate its functions, authorities or powers under this article 13A.3 to all or any of its directors (jointly, severally or jointly and severally).*

- (e) *Each Participant agrees to the transfer of all of their Restructure Units in accordance with this article 13A and the modification or variation (if any) of the rights attaching to their Restructure Units arising from this article 13A.*

**13A.4 Effect of article 13A**

*This article 13A and any other articles of the Constitution as amended by the Supplemental Deed:*

- (a) *binds RE and all Participants, including those who do not attend the Restructure Meeting, those who do not vote at that meeting and those who vote against the Restructure Resolutions at that meeting; and*
- (b) *overrides the other provisions of this Constitution to the extent of any inconsistency.*

**13A.5 RE's discretion to amend the terms of the Restructure**

*RE may amend the terms of the Restructure if such amendment is not inconsistent with the approvals given by Members or such amendment does not adversely affect the rights of the Members whose Units are to be transferred under the Restructure and this article 13A shall apply to the Restructure as amended.”.*

- (f) In article 31, by inserting the following definitions in alphabetical order:

**“Consideration Units** *means the Trust II Units to be issued to the Participants in consideration of the transfer of the Restructure Units.”*

**“Deferred Settlement Start Date** *means the date which is 4 Business Days prior to the Record Date or such other date as may be determined by VIML.”*

**“Effective** *means the coming into effect, pursuant to section 601GC(2) of the Corporations Act, of the Supplemental Deed making amendments to this Constitution to facilitate the Restructure.”*

**“Effective Date** *means the date on which the Supplemental Deed has become Effective.”*

**“Foreign Participant** *means a Participant whose address in the Register is a place outside the Commonwealth of Australia or New Zealand.”*

**“Implementation Date** *means the date that is 2 Business Days after the Record Date or such other date as may be determined by VIML.”*

**“Meeting Date** *means the date of the meeting at which the Restructure Resolutions are approved.”*

- “Nominee** means the person appointed to receive all Consideration Units that would be due to Foreign Participants but which, due to uncertainty about the laws of the Foreign Participants’ countries of residence (as shown in Register), will not be issued to those Foreign Participants.”
- “Participants** means each Member who is registered in the Register as a holder of Restructure Units as at the Record Date.”
- “Record Date** means the date that is 5 Business Days after the Effective Date or such other date as may be determined by VIML.”
- “Restructure** means the arrangement under which:
- (a) the Units are unstapled from the Trust II units;
  - (b) all of the Units are transferred to Viridis Investment Management Limited as responsible entity for Trust II (so that the Trust becomes wholly owned by Trust II);
  - (c) new Trust II units are issued in consideration for the Units; and
  - (d) after those new Trust II units have been issued, the Trust II units are consolidated (so that the number of Trust II units on issue after the consolidation is the same as the number of units that were on issue prior to the issue of the Trust II units).”
- “Restructure Meeting** means the meeting of Members to approve the Restructure Resolutions.”
- “Restructure Resolutions** means the resolutions of the Members set out in the notice of meeting and explanatory memorandum dated [•] 2010.”
- “Restructure Units** means the Units on issue as at the Record Date.”
- “Supplemental Deed** means the supplemental deed dated [•] 2010 entered into by RE to amend this Constitution to facilitate the implementation of the Restructure.”
- “Trust II Deed Poll** means the deed poll dated [•] executed by Viridis Investment Management Limited as responsible entity for Trust II in favour of the Participants.”

**4. NO RESETTLEMENT**

VIML confirms that it is not by this deed intending to:

- (a) settle or redeclare the Trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

**EXECUTED as a deed.**

**EXECUTED** by **VIRIDIS INVESTMENT MANAGEMENT LIMITED** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST I** in accordance with Section 127(1) of the Corporations Act 2001 (Cth) in the presence of:

Signature of  
 Director .....

Print name.....

Signature of  
 Director/Secretary .....

Print name.....

# **Annexure C - Trust II Supplemental Deed: Restructure**

**VIRIDIS INVESTMENT MANAGEMENT LIMITED**  
**as responsible entity for VIRIDIS CLEAN ENERGY TRUST II**

## **SUPPLEMENTAL DEED**

herbertgeer

Level 20 385 Bourke Street Melbourne 3000 Australia

Telephone +613 9670 6123

Facsimile +613 9670 5670

Reference ARB:1339030

Adam Brooks

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**SUPPLEMENTAL DEED**

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### 3. AMENDMENTS TO THE CONSTITUTION

With effect on and from the lodging of this deed with ASIC, the Constitution is amended as follows:

- (a) In article 6.1(c), by replacing the word "*Subject*" with the words "*While Stapling applies, subject*".
- (b) By inserting a new article 7.12 as follows:

***"7.12 Units issued in consideration for units in Trust I***

*Despite any other provision of this article 7, if:*

- (a) the Members resolve to unstaple the Units from the units in Trust I; and*
- (b) RE determines that the Trust is to acquire all of the issued units in Trust I,*

*then, in consideration for the units in Trust I, RE may issue up to a total of 1,636,000,000 Units ("**Consideration Units**"), provided that immediately after the issue of those Consideration Units all of the Units on issue are consolidated so that the total number of Units on issue immediately after the consolidation is equal to or substantially equal to the number of Units that were on issue immediately prior to the issue of the Consideration Units."*

### 4. NO RESETTLEMENT

VIML confirms that it is not by this deed intending to:

- (a) settle or redeclare the Trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

**EXECUTED as a deed.**

**EXECUTED** by **VIRIDIS INVESTMENT MANAGEMENT LIMITED** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST II** in accordance with Section 127(1) of the Corporations Act 2001 (Cth) in the presence of:

Signature of  
Director .....

Print name.....

Signature of  
Director/Secretary .....

Print name.....

**Annexure D - Trust I Supplemental Deed: Article 7**

**VIRIDIS INVESTMENT MANAGEMENT LIMITED**  
**as responsible entity for VIRIDIS CLEAN ENERGY TRUST I**

## **SUPPLEMENTAL DEED**

herbertgeer

Level 20 385 Bourke Street Melbourne 3000 Australia

Telephone +613 9670 6123

Facsimile +613 9670 5670

Reference ARB:1339030

Adam Brooks

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**THIS SUPPLEMENTAL DEED** is made the                      day of                      2010.

**PARTIES**                      **VIRIDIS INVESTMENT MANAGEMENT LIMITED (“VIML”)** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST I** (the “Trust”) of Level 1, 167 Flinders Lane, Melbourne, Victoria 3000

**RECITALS:**

- A.**            VIML is the responsible entity of the Trust, which was established under the Constitution.
- B.**            The Trust has been registered by ASIC as a managed investment scheme pursuant to section 601EB of the Corporations Act.
- C.**            VIML proposes to amend the Constitution.
- D.**            Article 27 of the Constitution provides that the Constitution may be amended, if the Corporations Act allows, by Resolution (as defined in the Constitution) and that if the Constitution is amended by Resolution (as defined in the Constitution), VIML (as responsible entity of the Trust) may give effect to the amendments by executing a supplemental deed.
- E.**            Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be modified by special resolution of the Trust’s Members.
- F.**            At a meeting held on [•] 2010, convened in accordance with the Corporations Act and the Constitution, the Trust’s Members approved a special resolution to make the amendments to the Constitution contained in this deed.
- G.**            Pursuant to section 601GC(2) of the Corporations Act, VIML must lodge a copy of this deed with ASIC and the amendments to the Constitution contained in this deed cannot take effect until a copy of this deed is lodged with ASIC.

**OPERATIVE PROVISIONS:**

**1.            INTERPRETATION**

**1.1          Interpretation**

The interpretation provisions set out at article 31 of the Constitution apply to this deed.

**1.2          Benefit of this deed**

This deed is made by VIML with the intent that the benefit of this deed shall enure to the benefit of the Members jointly and severally.

## 2. LODGEMENT WITH ASIC

VIML must:

- (a) lodge a copy of this deed with ASIC within 1 Business Day after it is executed; and
- (b) lodge a consolidated copy of the Constitution with ASIC if ASIC directs VIML to do so.

## 3. AMENDMENTS TO THE CONSTITUTION

With effect on and from the lodging of this deed with ASIC, the Constitution is amended as follows:

- (a) By deleting article 7.3 and inserting a new article 7.3 as follows:

***“7.3 Application Price - Market Price***

*Where the Units are Officially Quoted or form part of Stapled Securities that are Officially Quoted and such quotation has not been suspended (other than temporarily), in addition to any power RE has to issue Units under this Constitution, RE may issue Unit or Options at any time to any person at an Application Price as follows:*

- (a) *Units at a price determined by RE provided that:*
  - (i) *where Stapling does not apply, the Application Price of the Units is equal to the Market Price for the Units on the Business Day prior to the date on which the offer or issue is made;*
  - (ii) *where Stapling applies, the aggregate of the Application Price of that Unit and the application price of the Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the date on which the offer or issue is made; and*
- (b) *(if permitted by the Corporations Act) Options at the consideration for the issue of the Option specified in the terms and conditions of issue, where the Units to be issued pursuant to the exercise of those Options are to be issued at a price determined by RE, provided that:*
  - (i) *where Stapling does not apply, the Application Price of the Units to be issued pursuant to the exercise of those Options is equal to the Market Price for Units on the Business Day prior to the date on which the Option is issued;*

(ii) *where Stapling applies, the Units to be issued pursuant to the exercise of those Options are to be Stapled to the Attached Securities and the aggregate of the Application Price of that Unit and the application price of the Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the date on which the Option is issued.*"

(b) By deleting article 7.4 and inserting a new article 7.4 as follows:

***"7.4 Issues of Units without Member approval***

*RE may issue Units at any Application Price determined by RE, being a price other than the Application Price calculated in accordance with article 7.3 where:*

- (a) *the Units are Officially Quoted or form part of Stapled Securities that are Officially Quoted and such quotation is not suspended;*
- (b) *the issue is not to RE or any associate of RE; and*
- (c) *the issue of Units (when aggregated with any other issue of Units pursuant to this article 7.4 up to one year previously) does not comprise more than 15% (or such greater percentage as may be permitted from time to time by both the Corporations Act and the ASX Listing Rules) of the Units on issue in the Trust in the same class as the Units comprised in the issue."*

(c) By replacing the heading for article 7.5 with the following heading:

***"7.5 Issue of Units with Member Approval"***

(d) By deleting article 7.5(a) and inserting a new article 7.5(a) as follows:

*"(a) the Units are Officially Quoted or form part of Stapled Securities that are Officially Quoted and such quotation is not suspended;"*

(e) By deleting article 7.6(e) and inserting a new article 7.6(e) as follows:

*"(e) the Application Price of those Units is:*

- (i) *where Stapling does not apply, not less than 50% of the Market Price of the Units on the Business Day prior to the date on which the intention to make the offer or issue is announced on ASX; or*
- (ii) *where Stapling applies, when aggregated with the application price of the Attached Securities to which those Units are Stapled, not less than 50% of the Market Price of Stapled Securities on the Business Day prior to the date on which the intention to make the offer or issue is announced on ASX."*

- (f) By deleting article 7.7(g) and inserting a new article 7.7(g) as follows:

*“(g) the exercise price of the Options is:*

- (i) where Stapling does not apply, not less than 50% of the Market Price of the Units immediately prior to the date upon which the Option is issued; or*
- (ii) where Stapling applies, when aggregated with the exercise price of the options over the Attached Securities to which the Units to be issued pursuant to those Options will be Stapled, not less than 50% of the Market Price of Stapled Securities immediately prior to the date upon which the Option is issued.”*

- (g) By deleting article 7.9 and inserting a new article 7.9 as follows:

***“7.9 Issue of Units - Unit purchase plan***

*RE may set the Application Price of Units issued in accordance with ASIC Class Order [CO 09/425] or any ASIC class orders that amend or replace that class order.”*

- (h) By inserting a new article 7.12 as follows:

***“7.12 Other financial instruments***

*Subject to the Corporations Act and the ASX Listing Rules, RE may issue financial instruments including convertible notes, other debt instruments, quasi-debt instruments and equity-like instruments, on such terms as RE determines, provided that the Application Price is for any Units that may be issued pursuant to a financial instrument is determined in a manner consistent with article 7.3, 7.4 or 7.5.”*

- (i) By inserting a new 7.13 as follows:

***“7.13 Other restrictions or permitted mechanisms***

*Where any law, the Corporations Act, the ASX Listing Rules or any ASIC instrument, or waiver or permission granted by ASIC or ASX:*

- (a) restricts or prohibits any of the means by which RE is permitted to determine Unit or Option pricing (including Application Prices) under this article 7, the relevant provisions of this Constitution do not operate to the extent and for the duration of that restriction or prohibition; or*
- (b) enhances or increases the ability of RE to determine the Application Price of a unit or a mechanism to calculate the pricing of Units or Options, RE may issue Units or Options at a price determined in the manner permitted.”*

**4. NO RESETTLEMENT**

VIML confirms that it is not by this deed intending to:

- (a) resettle or redeclare the Trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

**EXECUTED as a deed.**

**EXECUTED** by **VIRIDIS INVESTMENT MANAGEMENT LIMITED** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST I** in accordance with Section 127(1) of the Corporations Act 2001 (Cth) in the presence of:

Signature of  
 Director .....

Print name.....

Signature of  
 Director/Secretary .....

Print name.....

**Annexure E - Trust II Supplemental Deed: Article 7**

**VIRIDIS INVESTMENT MANAGEMENT LIMITED**  
**as responsible entity for VIRIDIS CLEAN ENERGY TRUST II**

## **SUPPLEMENTAL DEED**

herbertgeer

Level 20 385 Bourke Street Melbourne 3000 Australia

Telephone +613 9670 6123

Facsimile +613 9670 5670

Reference ARB:1339030

Adam Brooks

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# SUPPLEMENTAL DEED

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## 2. LODGEMENT WITH ASIC

VIML must:

- (a) lodge a copy of this deed with ASIC within 1 Business Day after it is executed; and
- (b) lodge a consolidated copy of the Constitution with ASIC if ASIC directs VIML to do so.

## 3. AMENDMENTS TO THE CONSTITUTION

With effect on and from the lodging of this deed with ASIC, the Constitution is amended as follows:

- (a) By deleting article 7.3 and inserting a new article 7.3 as follows:

***“7.3 Application Price - Market Price***

*Where the Units are Officially Quoted or form part of Stapled Securities that are Officially Quoted and such quotation has not been suspended (other than temporarily), in addition to any power RE has to issue Units under this Constitution, RE may issue Unit or Options at any time to any person at an Application Price as follows:*

- (a) *Units at a price determined by RE provided that:*
  - (i) *where Stapling does not apply, the Application Price of the Units is equal to the Market Price for the Units on the Business Day prior to the date on which the offer or issue is made;*
  - (ii) *where Stapling applies, the aggregate of the Application Price of that Unit and the application price of the Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the date on which the offer or issue is made; and*
- (b) *(if permitted by the Corporations Act) Options at the consideration for the issue of the Option specified in the terms and conditions of issue, where the Units to be issued pursuant to the exercise of those Options are to be issued at a price determined by RE, provided that:*
  - (i) *where Stapling does not apply, the Application Price of the Units to be issued pursuant to the exercise of those Options is equal to the Market Price for Units on the Business Day prior to the date on which the Option is issued;*

(ii) *where Stapling applies, the Units to be issued pursuant to the exercise of those Options are to be Stapled to the Attached Securities and the aggregate of the Application Price of that Unit and the application price of the Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the date on which the Option is issued.”*

(b) By deleting article 7.4 and inserting a new article 7.4 as follows:

**“7.4 Issues of Units without Member approval**

*RE may issue Units at any Application Price determined by RE, being a price other than the Application Price calculated in accordance with article 7.3 where:*

- (a) *the Units are Officially Quoted or form part of Stapled Securities that are Officially Quoted and such quotation is not suspended;*
- (b) *the issue is not to RE or any associate of RE; and*
- (c) *the issue of Units (when aggregated with any other issue of Units pursuant to this article 7.4 up to one year previously) does not comprise more than 15% (or such greater percentage as may be permitted from time to time by both the Corporations Act and the ASX Listing Rules) of the Units on issue in the Trust in the same class as the Units comprised in the issue.”*

(c) By replacing the heading for article 7.5 with the following heading:

**“7.5 Issue of Units with Member Approval”**

(d) By replacing article 7.5(a) and inserting a new article 7.5(a) as follows:

*“(a) the Units are Officially Quoted or form part of Stapled Securities that are Officially Quoted and such quotation is not suspended;”*

(e) By deleting article 7.6(e) and inserting a new article 7.6(e) as follows:

*“(e) the Application Price of those Units is:*

- (i) *where Stapling does not apply, not less than 50% of the Market Price of the Units on the Business Day prior to the date on which the intention to make the offer or issue is announced on ASX; or*
- (ii) *where Stapling applies, when aggregated with the application price of the Attached Securities to which those Units are Stapled, not less than 50% of the Market Price of Stapled Securities on the Business Day prior to the date on which the intention to make the offer or issue is announced on ASX.”*

- (f) By deleting article 7.7(g) and inserting a new article 7.7(g) as follows:

*“(g) the exercise price of the Options is:*

- (i) where Stapling does not apply, not less than 50% of the Market Price of the Units immediately prior to the date upon which the Option is issued; or*
- (ii) where Stapling applies, when aggregated with the exercise price of the options over the Attached Securities to which the Units to be issued pursuant to those Options will be Stapled, not less than 50% of the Market Price of Stapled Securities immediately prior to the date upon which the Option is issued.”*

- (g) By deleting article 7.9 and inserting a new article 7.9 as follows:

***“7.9 Issue of Units - Unit purchase plan***

*RE may set the Application Price of Units issued in accordance with ASIC Class Order [CO 09/425] or any ASIC class orders that amend or replace that class order.”*

- (h) By inserting a new article 7.13 as follows:

***“7.13 Other financial instruments***

*Subject to the Corporations Act and the ASX Listing Rules, RE may issue financial instruments including convertible notes, other debt instruments, quasi-debt instruments and equity-like instruments, on such terms as RE determines, provided that the Application Price is for any Units that may be issued pursuant to a financial instrument is determined in a manner consistent with article 7.3, 7.4 or 7.5.”*

- (i) By inserting a new 7.14 as follows:

***“7.14 Other restrictions or permitted mechanisms***

*Where any law, the Corporations Act, the ASX Listing Rules or any ASIC instrument, or waiver or permission granted by ASIC or ASX:*

- (a) restricts or prohibits any of the means by which RE is permitted to determine Unit or Option pricing (including Application Prices) under this article 7, the relevant provisions of this Constitution do not operate to the extent and for the duration of that restriction or prohibition; or*
- (b) enhances or increases the ability of RE to determine the Application Price of a unit or a mechanism to calculate the pricing of Units or Options, RE may issue Units or Options at a price determined in the manner permitted.”*

**4. NO RESETTLEMENT**

VIML confirms that it is not by this deed intending to:

- (a) resettle or redeclare the Trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

**EXECUTED as a deed.**

**EXECUTED** by **VIRIDIS INVESTMENT MANAGEMENT LIMITED** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST II** in accordance with Section 127(1) of the Corporations Act 2001 (Cth) in the presence of:

Signature of  
 Director .....

Print name.....

Signature of  
 Director/Secretary .....

Print name.....

# Annexure F - Trust II Deed Poll

**VIRIDIS INVESTMENT MANAGEMENT LIMITED**  
**as responsible entity for VIRIDIS CLEAN ENERGY TRUST II**

## **DEED POLL**

**herbertgeer**

Level 20 385 Bourke Street Melbourne 3000 Australia  
Telephone +613 9670 6123  
Facsimile +613 9670 5670  
Reference ARB:1339030  
Adam Brooks

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**DEED POLL**

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**ANNEXURE A**

**TRUST I SUPPLEMENTAL DEED**

THIS DEED POLL is made the 22<sup>nd</sup> day of April 2010.

BY **VIRIDIS INVESTMENT MANAGEMENT LIMITED ("VIML")** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST II ("Trust II")** of Level 1, 167 Flinders Lane, Melbourne, Victoria 3000

**RECITALS:**

- A. VIML is the responsible entity of Trust II.
- B. VIML is also the responsible entity of Viridis Clean Energy Trust I ("**Trust I**"), which is another managed investment scheme pursuant to section 601EB of the Corporations Act.
- C. Units in Trust I and Trust II are stapled and traded on the Australian Securities Exchange.
- D. VIML (acting in its capacity as responsible entity of Trust I and Trust II) has proposed the Restructure.
- E. Pursuant to the Restructure it is proposed that VIML as responsible entity for Trust II will acquire all of the issued units of Trust I, will issue Trust II units to the transferors of those Trust I units and, following that issue, will consolidate the Trust II units.
- F. Pursuant to this deed poll VIML agrees to take all such actions as may be necessary in connection with the actions described in Recital E.

**OPERATIVE PROVISIONS:**

**1. INTERPRETATION**

**1.1 Definitions**

Unless otherwise provided, capitalised terms in this deed poll have the meanings given to them in the supplemental deed annexed to this deed poll as **Annexure A ("Trust I Supplemental Deed")**, which is to be executed by VIML as responsible entity of Trust I in the event that the Restructure Resolutions (as defined in the Trust I Supplemental Deed) are passed.

**1.2 Interpretation**

In this deed unless the contrary intention appears:

- (a) a reference to a person includes a reference to a corporation firm association or other entity, and vice versa;
- (b) the singular includes the plural and vice versa;
- (c) a reference to any gender includes a reference to all other genders;
- (d) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- (e) an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally;

- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) an agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally; and
- (h) if an act required to be done under this deed on or by a given day is done after 5:30 pm on that day, it is taken to be done on the following day.

### 1.3 Headings

Headings are inserted for convenience only and do not affect the interpretation of this deed.

### 1.4 Weekends and Holidays

Where any act is required by this deed to be done on a given day and that day is not a Business Day then the act is required to be done on the next following Business Day.

### 1.5 Benefit of this deed

This deed is made by VIML with the intent that the benefit of this deed shall enure to the benefit of the unit holders of Trust I and Trust II jointly and severally.

## 2. FACILITATION OF RESTRUCTURE

Subject to the Restructure Resolutions being passed by the required majorities, VIML agrees that on the Implementation Date it will do all such things and take all such actions as are necessary to:

- (a) if required, appoint a Nominee and procure that the Nominee:
  - (i) sells any Consideration Units issued to it; and
  - (ii) pays the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to the Foreign Participants who were not issued Consideration Units.
- (b) issue the Consideration Units to the Participants or the Nominee;
- (c) take transfer of all of the Restructure Units from the Participants; and
- (d) consolidate the units in Trust II so that the number of units on issue following the consolidation is the same as the number of units that were on issue immediately prior to the issue of the Consideration Units.

## 3. GOVERNING LAW

This deed is governed by the laws of the State of Victoria.

**EXECUTED as a deed.**

**EXECUTED** by **VIRIDIS INVESTMENT MANAGEMENT LIMITED** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST I** in accordance with Section 127(1) of the Corporations Act 2001 (Cth) in the presence of:

Signature of Director .....

Print name..... *EDUARDO NORTON*

Signature of Director/Secretary .....

Print name..... *DUNCAN JEWELL*

**ANNEXURE A**  
**TRUST I SUPPLEMENTAL DEED**

**VIRIDIS INVESTMENT MANAGEMENT LIMITED**  
as responsible entity for VIRIDIS CLEAN ENERGY TRUST I

## **SUPPLEMENTAL DEED**

herbertgeer

Level 20 385 Bourke Street Melbourne 3000 Australia

Telephone +613 9670 6123

Facsimile +613 9670 5670

Reference ARB:1339030

Adam Brooks

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**SUPPLEMENTAL DEED**

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**THIS SUPPLEMENTAL DEED** is made the                      day of                      2010.

**PARTIES**                      **VIRIDIS INVESTMENT MANAGEMENT LIMITED** (“**VIML**”) as responsible entity for **VIRIDIS CLEAN ENERGY TRUST I** (the “**Trust**”) of Level 1, 167 Flinders Lane, Melbourne, Victoria 3000

**RECITALS:**

- A.**        VIML is the responsible entity of the Trust, which was established under the Constitution.
- B.**        The Trust has been registered by ASIC as a managed investment scheme pursuant to section 601EB of the Corporations Act.
- C.**        VIML is also the responsible entity of Trust II, which is another managed investment scheme pursuant to section 601EB of the Corporations Act.
- D.**        VIML (acting in its capacity as responsible entity of the Trust and Trust II) has proposed the Restructure.
- E.**        The Constitution must be amended to facilitate the Restructure.
- F.**        Article 27 of the Constitution provides that the Constitution may be amended, if the Corporations Act allows, by Resolution and that if the Constitution is amended by Resolution, VIML (as responsible entity of the Trust) may give effect to the amendments by executing a supplemental deed.
- G.**        Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be modified by special resolution of the Members.
- H.**        At a meeting held on [•] 2010, convened in accordance with the Corporations Act and the Constitution, the Members approved the Restructure Resolutions, including a special resolution to make the amendments to the Constitution contained in this deed.
- I.**        Pursuant to section 601GC(2) of the Corporations Act, VIML must lodge a copy of this deed with ASIC and the amendments to the Constitution contained in this deed cannot take effect until a copy of this deed is lodged with ASIC.

**OPERATIVE PROVISIONS:**

**1.        INTERPRETATION**

**1.1      Interpretation**

- (a)        Other than as set out below in **Section 1.1(b)**, the interpretation provisions set out at article 31 of the Constitution apply to this deed.

(b) In this deed:

**Restructure**

means the arrangement under which:

- (a) the Units are unstapled from the Trust II units;
- (b) all of the Units are transferred to VIML as responsible entity for Trust II (so that the Trust becomes wholly owned by Trust II);
- (c) new Trust II units are issued in consideration for the Units; and
- (d) after those new Trust II units have been issued, the Trust II units are consolidated (so that the number of Trust II units on issue after the consolidation is the same as the number of units that were on issue prior to the issue of the Trust II units)

**Restructure Resolutions**

means the resolutions of the Members set out in the notice of meeting and explanatory memorandum dated [•] 2010

**1.2 Benefit of this deed**

This deed is made by VIML with the intent that the benefit of this deed shall enure to the benefit of the Members jointly and severally.

**2. LODGEMENT WITH ASIC**

VIML must:

- (a) lodge a copy of this deed with ASIC within 1 Business Day after it is executed; and
- (b) lodge a consolidated copy of the Constitution with ASIC if ASIC directs VIML to do so.

**3. AMENDMENTS TO THE CONSTITUTION**

With effect on and from the lodging of this deed with ASIC, the Constitution is amended as follows:

- (a) In article 6.1(c), by replacing the word "*Subject*" with the words "*While Stapling applies, subject*".

- (b) In article 6.3, by replacing the words *"If an instrument of transfer"* with the words *"Subject to article 13.8, if an instrument of transfer"*.

- (c) By inserting a new article 13.8 as follows:

***"Powers in respect of Restructure"***

*Notwithstanding any other provision of this Constitution, RE has the power to do all such things and take all such actions as it considers necessary in connection with the Restructure, including without limitation, carrying out or causing to be carried out each the steps outlined in article 13A."*

- (d) By inserting a new article 13.9 as follows:

***"Specific Restructure Powers"***

*For the purposes of article 13.8 but without limiting that article, if the Restructure Resolutions are approved by the Members, RE will have the power to:*

- (a) *transfer Units;*
- (b) *execute any documents including any transfer forms in respect of the Units as agent or attorney for or on behalf of all or any Members;*
- (c) *seek suspension from trading of Units;*
- (e) *seek the removal of the Trust from the ASX and the cessation of quotation of the Units if necessary; and*
- (f) *suspend the registration of transfers of Units."*
- (e) By inserting a new article 13A immediately following the existing article 13 as set out below:

***"13A Restructure"***

***13A.1 Participants and Dealings in Units***

- (a) *In determining the persons who are Participants, RE must recognise the persons shown in the Register at 7 pm on the Record Date.*
- (b) *For the purposes of article 13A.1(a), for dealings of the type effected using a CS Facility, RE must only recognise transferees registered in the Register as the holder of relevant Units by 7pm on the Record Date.*

- (c) *For the purposes of article 13A.1(a), for all dealings other than dealings effected using a CS Facility, RE must register, by 7pm on the Record Date, transmission applications or transfers:*
- (A) *that occurred before the close of business on the Deferred Settlement Start Date; and*
- (B) *in respect of which a registrable transmission application or transfer in registrable form is received where the Register is kept on or before the close of business on the Record Date.*
- (d) *RE will not accept for registration, nor recognise for the purpose of establishing the persons who are Participants, any transfer or transmission in respect of Units received after the close of business on the Deferred Settlement Start Date or received before that date but not in registrable form.*
- (e) *As from the Record Date, all Unit certificates and holding statements for Restructure Units in the name of Participants will cease to have effect as documents of title in respect of those Restructure Units.*
- (f) *For the purposes of this article 13A.1, RE must procure, subject to guidance or directions from the ASX, that trading in respect of the Securities occurs on a deferred settlement basis (as defined in the Listing Rules) from the Deferred Settlement Start Date.*

### **13A.2 Transfer**

- (a) *On the Implementation Date, RE must, or must procure that, contemporaneously with the Consideration Units being issued to the Participants and the Nominee (if any), the Restructure Units are transferred to Viridis Investment Management Limited as responsible entity for Trust II and the Register is updated to record these transfers.*
- (b) *RE and each Participant acknowledge and agree that Viridis Investment Management Limited as responsible entity for Trust II will, unless it is satisfied that it is lawful (under the laws of the relevant foreign jurisdiction) and not unduly onerous to issue a Foreign Participant with Consideration Units, issue to the Nominee those Consideration Units to which the Foreign Participant would otherwise have been entitled.*

### **13A.3 Covenants by RE and Members**

- (a) *Each Participant and RE must do all things as may be necessary or desirable to give full effect to the Restructure and the transactions contemplated by it.*

- (b) *Each Participant, without the need for any further act:*
- (i) *irrevocably appoints RE and each of its directors, jointly and severally, as that Participant's attorney and agent for the purpose of; and*
  - (ii) *consents to RE and each of its directors,*
- doing all things and executing any document necessary to give full effect to the Restructure and this article 13A and the transactions contemplated by them.*
- (c) *Each Participant appoints RE to enforce the Trust II Deed against Trust II on behalf of and as agent and attorney for the Participant.*
- (d) *RE, as agent and attorney of each Participant, may sub-delegate its functions, authorities or powers under this article 13A.4 to all or any of its directors (jointly, severally or jointly and severally).*
- (e) *Each Participant agrees to the transfer of all of their Restructure Units in accordance with this article 13A and the modification or variation (if any) of the rights attaching to their Restructure Units arising from this article 13A.*

#### **13A.5 Effect of article 13A**

*This article 13A and any other articles of the Constitution as amended by the Supplemental Deed:*

- (a) *binds RE and all Participants, including those who do not attend the Restructure Meeting, those who do not vote at that meeting and those who vote against the Restructure Resolutions at that meeting; and*
- (b) *overrides the other provisions of this Constitution to the extent of any inconsistency.*

#### **31A.6 RE's discretion to amend the terms of the Restructure**

*RE may amend the terms of the Restructure if such amendment is not inconsistent with the approvals given by Members or such amendment does not adversely affect the rights of the Members whose Units are to be transferred under the Restructure and this article 13A shall apply to the Restructure as amended."*

(f) In article 31, by inserting the following definitions in alphabetical order:

<b>“Consideration Units</b>	<i>means the Trust II Units to be issued to the Participants in consideration of the transfer of the Restructure Units.”</i>
<b>“Deferred Settlement Start Date</b>	<i>means the date which is 4 Business Days prior to the Record Date or such other date as may be determined by VIML.”</i>
<b>“Effective</b>	<i>means the coming into effect, pursuant to section 601GC(2) of the Corporations Act, of the Supplemental Deed making amendments to this Constitution to facilitate the Restructure.”</i>
<b>“Effective Date</b>	<i>means the date on which the Supplemental Deed has become Effective.”</i>
<b>“Foreign Participant</b>	<i>means a Participant whose address in the Register is a place outside the Commonwealth of Australia or New Zealand.”</i>
<b>“Implementation Date</b>	<i>means the date that is 2 Business Days after the Record Date or such other date as may be determined by VIML.”</i>
<b>“Meeting Date</b>	<i>means the date of the meeting at which the Restructure Resolutions are approved.”</i>
<b>“Nominee</b>	<i>means the person appointed to receive all Consideration Units that would be due to Foreign Participants but which, due to uncertainty about the laws of the Foreign Participants' countries of residence (as shown in Register), will not be issued to those Foreign Participants.”</i>
<b>“Participants</b>	<i>means each Member who is registered in the Register as a holder of Restructure Units as at the Record Date.”</i>
<b>“Record Date</b>	<i>means the date that is 5 Business Days after the Effective Date or such other date as may be determined by VIML.”</i>
<b>“Restructure</b>	<i>means the arrangement under which:</i> <ul style="list-style-type: none"> <li>(a) <i>the Units are unstapled from the Trust II units;</i></li> <li>(b) <i>all of the Units are transferred to Viridis Investment Management Limited as responsible entity for Trust II (so that the Trust becomes wholly owned by Trust II);</i></li> </ul>

- (c) *new Trust II units are issued in consideration for the Units; and*
- (d) *after those new Trust II units have been issued, the Trust II units are consolidated (so that the number of Trust II units on issue after the consolidation is the same as the number of units that were on issue prior to the issue of the Trust II units)."*

**“Restructure Meeting** *means the meeting of Members to approve the Restructure Resolutions.”*

**“Restructure Resolutions** *means the resolutions of the Members set out in the notice of meeting and explanatory memorandum dated [•] 2010.”*

**“Restructure Units** *means the Units on issue as at the Record Date.”*

**“Supplemental Deed** *means the supplemental deed dated [•] 2010 entered into by RE to amend this Constitution to facilitate the implementation of the Restructure.”*

**“Trust II Deed Poll** *means the deed poll dated [•] executed by Viridis Investment Management Limited as responsible entity for Trust II in favour of the Participants.”*

**4. NO RESETTLEMENT**

VIML confirms that it is not by this deed intending to:

- (a) *resettle or redeclare the Trust declared under the Constitution; or*
- (b) *cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.*

**EXECUTED as a deed.**

**EXECUTED** by **VIRIDIS INVESTMENT MANAGEMENT LIMITED** as responsible entity for **VIRIDIS CLEAN ENERGY TRUST I** in accordance with Section 127(1) of the Corporations Act 2001 (Cth) in the presence of:

Signature of Director .....

Print name .....

Signature of Director/Secretary.....

Print name .....

## Corporate Directory

<p><b>Responsible Entity</b></p> <p>Viridis Investment Management Limited          ABN 51 099 788 431          AFSL 222 547</p>	<p><b>Registered Office</b></p> <p>Level One          167 Flinders Lane          Melbourne VIC 3000</p>
<p><b>Directors</b></p> <p>Andrew J. Berry, Independent Chairman          Robert Webster, Independent Director          Walter Pahor, Director          Edward Northam, Managing Director</p>	<p><b>Legal Adviser</b></p> <p>Herbert Geer          Level 20          385 Bourke Street          Melbourne VIC 3000</p>
<p><b>Company Secretary</b></p> <p>Duncan Jewell</p>	<p><b>Tax Adviser</b></p> <p>KPMG          147 Collins Street          Melbourne VIC 3000</p>
<p><b>Registry</b></p> <p>Computershare Investor Services Pty Limited          Yarra Falls          452 Johnston Street          Abbotsford VIC 3067</p>	<p><b>Auditor</b></p> <p>PricewaterhouseCoopers          Freshwater Place          2 Southbank Boulevard          Southbank VIC 3006</p>