

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

r8.05

LIST E

No of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSEY
Second and Third Plaintiffs

AFFIDAVIT OF ROBERT GARTON SMITH

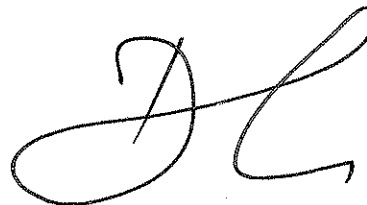
Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

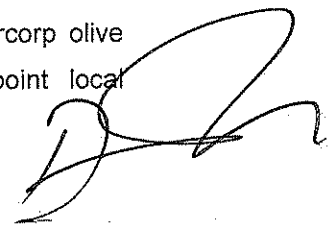
Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

I, ROBERT GARTON SMITH of 19 Little High Street, Fremantle, Western Australia, make oath and say that:

1. I am the full time Managing Director of the responsible entity Primary Securities Ltd, the holder of Australian Financial Services Licence No 224107. I have degrees in law and commerce and a post graduate degree in financial planning. I am also a practising solicitor.
2. I make this affidavit from my own personal knowledge of the facts, save where I state to the contrary.

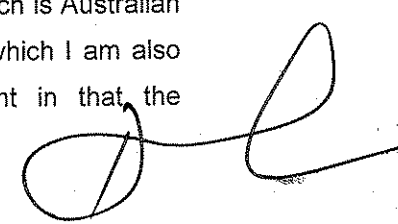


3. Now produced and shown to me marked RGS-1 is a letter from the Australian Securities and Investments Commission (ASIC) dated 10 June 2009 to Primary Securities Ltd with draft conditions attached offering to vary the Australian Financial Services Licence of Primary Securities Ltd to add the seven Timbercorp olive schemes (details of which are named therein). On page 4 of the letter is our Consent Notice which was sent back to ASIC on 10 June 2009.
4. The board of Primary Securities Ltd has consented to being responsible entity of all of the Timbercorp olive schemes. Now produced and shown to me marked RGS-2 is a true copy of that signed consent.
5. Now produced and shown to me marked RGS-3 is a letter to Clarendon Lawyers dated 2 July 2009 which sets out certain qualifications in relation to the consent of Primary Securities Ltd.
6. Primary Securities Ltd has prepared an Action Plan for the first three months of taking over the Timbercorp olive schemes, if appointed as temporary responsible entity. Now produced and shown to me marked RGS-4 is a copy of that plan.
7. Now produced and shown to me marked RGS-5 is a letter from Primary Securities Ltd to the Administrators of Timbercorp Securities Ltd dated 28 June 2009, Korda Mentha. The facts set out in that letter are true to the best of my knowledge, information and belief.
8. Now produced and shown to me marked RGS-6 is a letter from Korda Mentha to Primary Securities Ltd dated 2 July 2009.
9. Primary Securities Ltd is a contract responsible entity, that is, Primary Securities Ltd normally acts as responsible entity for hire for companies that do not have managed investment experience or competence but who wish to carry out some activity which requires registration and operation as a managed investment scheme. Primary Securities Ltd has been responsible entity for many agricultural schemes. Primary Securities has responsible officers in the areas of securities, real estate, mortgages, forestry, viticulture, citrus, apricots, olives, timber storage and film.
10. Primary Securities takes responsibility for the operation of the scheme, carries out compliance and corporate duties, and represents investors and (in the case of agricultural schemes) sub-contracts the agricultural activities to sub-contractors which have the necessary resources, skills, experience and equipment to operate the agricultural activity. Primary Securities oversees and monitors the agricultural activity through its own experts in relation to the relevant activity.
11. In the case of olives, our olives expert, and the responsible officer on our licence, is Cosimo Faiello. Now produced and shown to me marked RGS-7 is Mr Faiello's curriculum vitae:
12. Like the administrators of Timbercorp Securities Limited, Primary Securities Ltd does not itself have the resources or any plant and equipment to operate the Timbercorp olive schemes. However, it proposes in the first instance to seek to appoint local



subcontractors to carry out pruning over the first three months or alternatively the current Timbercorp sub-contractor, Boundary Bend Ltd as overall caretaker for the first three months or so with a view to reviewing arrangements with all parties, seeking capital if required and negotiating final contracts on appropriate terms, provided that is in the interest of Growers and provided appropriate terms can be agreed with Boundary Bend Ltd. Primary Securities has had a series of co-operative discussions with a non-executive director of Boundary Bend Ltd (Craig Ball) who was delegated to deal with us, over more than two months as to the basis on which the two companies might work together, though these discussions have been at a very preliminary level.

13. Craig Ball has said to me (and I truly believe) that Boundary Bend Ltd will be pleased to deal with any company which is appointed as responsible entity for the Timbercorp olive schemes with a view to securing a long term contract on appropriate terms.
14. I believe that it is in the best interest of Growers in the Timbercorp olive schemes that Primary Securities Ltd be appointed as a temporary responsible entity so that the schemes can be continued and contracts be entered into with appropriate parties on appropriate terms.
15. Primary Securities Ltd has carried out careful due diligence in relation to the contracts in the Timbercorp olive schemes and is not aware of any liabilities or obligations which prevent it from becoming responsible entity. That is, there do not appear to be any "poison pills" for an incoming responsible entity. There are some issues which need to be resolved with the Administrators (referred to in paragraphs 19 and following in this affidavit).
16. If it is appointed as responsible entity, or temporary responsible entity, for the olive schemes, Primary Securities Ltd proposes to unilaterally change some arrangements and is aware that any changes to contracts will have to be approved by the Australian Taxation Office. Its tax solicitors have already commenced dealings with the ATO in relation to this. I refer to the Action Plan which is exhibit RGS-4, item 2. I have an appointment with the ATO Product Ruling section in Perth to discuss these matters in more detail on Thursday.
17. An important question in this case is whether or not the schemes are viable. One of Primary Securities' executive directors (Tony Treadgold) is an analyst and we also use the services of Marty Sammon, an agricultural analyst in Melbourne who has done some preliminary calculations for Primary Securities, and who will be part of our team (see the Action Plan which is exhibit RGS-4). Marty Sammon is also currently in discussion with the expert for the Grower group, Paul Millar.
18. We are concerned about whether or not Growers will pay their fees. We have some experience of taking over an agricultural scheme from an administrator (having taken over the five Australian Growth forestry schemes, the responsible entity for which is Australian Growth Managers Ltd, a related company to Primary Securities Ltd, of which I am also managing director). In that case, the circumstances were different in that, the



administrators failed to carry out any agricultural activities for almost two years before the administration ended, and on one of the schemes, the administrators had failed to plant thousands of seedlings and many Growers had no trees on their Woodlots. Initially, many Growers refused to pay their fees. Over all the schemes, two thirds of Growers (in terms of Woodlot numbers) resumed making payment of their fees and the balance were terminated, allowing all Growers without trees to be reallocated to Woodlots with trees.

19. Given the importance of the Growers paying fees, it is also important that the administrators cooperate in relation to the delivery to us of data necessary in order to render invoices to Growers. Now produced and shown to me marked RGS-8 is a letter from Primary Securities Ltd to the administrators Korda Mentha sent by fax on 7 July 2009 relating to this matter.
20. The only other matter which is of concern is that there are some preliminary contractual issues which will need to be resolved. These issues are alluded to in the letter from Korda Mentha (RGS-6), final paragraph. The previous management of Timbercorp Securities Ltd has deliberately structured some of its contracts so that rights are declared not to be held by Timbercorp Securities Ltd as responsible entity but "in its personal capacity". Now produced and shown to me marked RGS-9 is a letter from Primary Securities Ltd to the administrators Korda Mentha sent by fax on 7 July 2009 relating to this matter.

SWORN by the said ROBERT GARTON SMITH)
at Fremantle in the State of Western Australia)
this 8th day of July 2009)

Before me:.....

Teresino M. Gabriele
Justice of the Peace W.A.
Number 1364

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First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSEY
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS1" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

Before me:.....


Exhibit "RGS-1"
Letter from ASIC dated 10 June 2009 to Primary Securities Ltd with draft conditions attached offering to vary the Australian Financial Services Licence of Primary Securities Ltd

**ASIC**Australian Securities & Investments Commission
GPO Box 9827 in your Capital City

Our Reference: 17717/09
Direct Phone: 03 9280 3600
Direct Facsimile: 03 9280 3251
Email: linda.jones@asic.gov.au

10 June 2009

Ms Barbara Boyd
Primary Securities Ltd
13 Nairn Street
FREMANTLE WA 6959

Dear Ms Boyd

**APPLICATION FOR VARIATION TO AN AUSTRALIAN FINANCIAL SERVICES LICENCE
PRIMARY SECURITIES LTD**

I refer to the application dated 30 April 2009 by Primary Securities Ltd for a variation to an Australian Financial Services Licence ("AFS Licence").

I am the officer authorised by the Australian Securities and Investments Commission ("ASIC") to assess the application for variation.

REQUIREMENTS

I have considered the application and, in the absence of any further relevant information coming to the attention of ASIC and, subject to the following requirements being met, I am minded to grant the application for variation of the licence conditions in the terms of the attached draft licence conditions:

1. Primary Securities Ltd must lodge a Notification of Change of Responsible Entity (Form 5107) of the following schemes with ASIC by 10 August 2009:

- 2001 Timbercorp Olive Project ARSN 094 382 082
- 2002 Timbercorp Olive Project ARSN 098 233 455
- 2003 Timbercorp Olive Project ARSN 104 648 473

- 2004 Timbercorp Olive Project ARSN 108 744 378
- 2006 Timbercorp Olive Project ARSN 119 182 179
- 2007 Timbercorp Olive Project ARSN 123 155 715
- 2008 Timbercorp Olive Project ARSN 129 307 722
- Fernvale Unit Trust Mis ARSN 085 332 289

Please scan and email (or fax) the above signed form 5107's directly to Linda Jones and please post the originals to Linda Jones in Melbourne.

TIME PERIOD TO COMPLY WITH REQUIREMENTS

If I have not received a response satisfying the requirements set out above by 24 June 2009, a decision will be made on the application based on all material received to date. Please note that subject to your right to be heard under section 914A(3) of the Corporations Act 2001 ("the Act"), I may be minded to refuse the application.

However, in limited circumstances, I may be prepared to extend the period for compliance with the requirements. If an application for an extension is to be made you should contact Linda Jones as soon as possible.

PROPOSED LICENCE CONDITIONS TO APPLY

Please note that under sub-section 914A(3) of the Act, ASIC may only vary the conditions on the licence after giving the licensee an opportunity to appear at a private hearing and make submissions in relation to the matter.

If Primary Securities Ltd agrees that the terms of the draft licence conditions are appropriate and therefore does not wish to appear at a hearing and/or make a submission, I ask that the attached "consent notice" be signed and returned to Linda Jones by 24 June 2009. Please note that when the final varied licence is issued, Primary Securities Ltd must remove from display the prior copy of the licence certificate issued to Primary Securities Ltd.

If Primary Securities Ltd does not agree that the attached draft licence conditions are appropriate and would like to appear at a hearing and/or make a written submission, I ask that you notify Linda Jones as soon as possible so that appropriate arrangements may be made. Enclosed for your information is a copy ASIC's *Information Sheet on Administrative Hearings*.

TIME PERIOD TO RESPOND

As noted above, I ask that Primary Securities Ltd either return the signed consent notice or confirm its wish to appear at a hearing and/or provide a written submission by 24 June 2009.

If Primary Securities Ltd is not in a position to respond by this time, please contact Linda Jones as soon as possible so that we may discuss alternative arrangements.

ENQUIRIES

Please do not hesitate to contact Linda Jones on 03 9280 3600 or by email linda.jones@asic.gov.au if you require further information.

Yours sincerely

George Podaras
Senior Manager, Licensing
Registry Services & Licensing

Encls:

1. Consent Notice
2. Draft licence condition/s
3. ASIC's *Information Sheet on Administrative Hearings*.

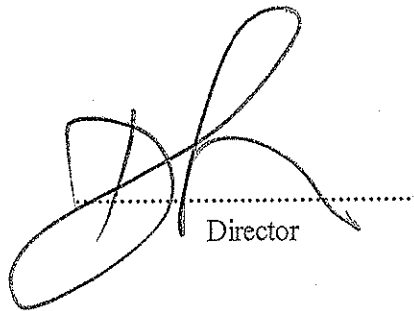
CONSENT NOTICE

Primary Securities Ltd [ABN 96 089 812 635] does not wish to submit a written submission and/or appear at a hearing pursuant to sub-section 914A(3) of the Corporations Act in relation to its request for variation of licence conditions.

Primary Securities Ltd [ABN 96 089 812 635] consents to the varying of conditions as set out in the draft licence conditions enclosed with ASIC's letter dated 10 June 2009.

10/6/09

Date

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned over a dotted line.

Director

Barbara Boyd

Director/Secretary

Australian Financial Services Licence

PRIMARY SECURITIES LTD

ABN: 96 089 812 635

Licence No: 224107

was licensed as an Australian Financial Services Licensee pursuant to section 913B of the Corporations Act 2001. The conditions of the licence are hereby varied from the date hereunder. The licensee shall continue to be licensed as an Australian Financial Services Licensee subject to the conditions and restrictions which are prescribed, and to the conditions contained in this licence and attached schedules.

DRAFT ONLY

Authorisation

1. This licence authorises the licensee to carry on a financial services business to:

(a) provide financial product advice for the following classes of financial products:

(i) interests in managed investment schemes excluding investor directed portfolio services; and

(ii) securities;

(b) deal in a financial product by:

(i) issuing, applying for, acquiring, varying or disposing of a financial product in respect of the following classes of financial products:

(A) interests in managed investment schemes limited to:

(1) own managed investment scheme only; and

(B) securities; and

(ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of products:

(A) deposit and payment products limited to:

(1) basic deposit products; and

(B) general insurance products;

(c) operate the following kinds of registered managed investment schemes (including the holding of any incidental property) in its capacity as responsible entity:

(i) "Cool Climate Apricot Project" scheme (ARSN: 118 011 626),

(A) a scheme that is promoted to raise funds solely to finance primary

production ventures as an active commercial enterprise limited to:

(1) horticulture;

(ii) "Viento Kangaroo Island Plantations 2002" scheme (ARSN: 095 697 591),

(A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:

(1) forestry;

(iii) "Moora Citrus Project" scheme (ARSN: 119 497 675),

(A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:

(1) horticulture;

(iv) "Catalina Loan Trust" scheme (ARSN: 129 398 107),

(A) a scheme which only holds the following types of property:

(1) mortgages;

(v) "Clarion All Suites Hotel Broadwater" scheme (ARSN: 093 257 240),

(A) a scheme which only holds the following types of property:

(1) direct real property;

(vi) "Primary Property Trust No. 1" scheme (ARSN: 135 560 128),

(A) a scheme which only holds the following types of property:

(1) direct real property;

(vii) "Primary Property Trust No. 2" scheme (ARSN: 135 560 164),

Australian Financial Services Licence

PRIMARY SECURITIES LTD

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was licensed as an Australian Financial Services Licensee pursuant to section 913B of the Corporations Act 2001. The conditions of the licence are hereby varied from the date hereunder. The licensee shall continue to be licensed as an Australian Financial Services Licensee subject to the conditions and restrictions which are prescribed, and to the conditions contained in this licence and attached schedules.

DRAFT ONLY

Authorisation

- (A) a scheme which only holds the following types of property:
- (1) direct real property;
- (viii) "Primary Property Trust No. 3" scheme (ARSN: 135 560 208),
- (A) a scheme which only holds the following types of property:
- (1) direct real property;
- (ix) "2001 Timbercorp Olive Project" scheme (ARSN: 094 382 082),
- (A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:
- (1) horticulture;
- (x) "2002 Timbercorp Olive Project" scheme (ARSN: 098 233 455),
- (A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:
- (1) horticulture;
- (xi) "2003 Timbercorp Olive Project" scheme (ARSN: 104 648 473),
- (A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:
- (1) horticulture;
- (xii) "2004 Timbercorp Olive Project" scheme (ARSN: 108 744 378),
- (A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:
- (1) horticulture;
- (1) horticulture;
- (xiii) "2006 Timbercorp Olive Project" scheme (ARSN: 119 182 179),
- (A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:
- (1) horticulture;
- (xiv) "2007 Timbercorp Olive Project" scheme (ARSN: 123 155 715),
- (A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:
- (1) horticulture;
- (xv) "2008 Timbercorp Olive Project" scheme (ARSN: 129 307 722),
- (A) a scheme that is promoted to raise funds solely to finance primary production ventures as an active commercial enterprise limited to:
- (1) horticulture; and
- (xvi) "Fernvale Unit Trust Mis" scheme (ARSN: 085 332 289),
- (A) a scheme which only holds the following types of property:
- (1) direct real property; and
- (d) provide the following custodial or depository services:
- (i) operate custodial or depository services other than investor directed portfolio services;
- to retail and wholesale clients.

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ABN: 96 089 812 635

Licence No: 224107

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Schedule of Conditions

Key Person Requirements

2. If any of the following officer(s) or key person(s) cease to be officers of the licensee or to perform duties on behalf of the licensee with respect to its financial services business:

- (a) Richard John HURN;
- (b) Bernard DELL;
- (c) Robert GARTON SMITH;
- (d) Earnscy WEAVER;
- (e) Peter John WISHART;
- (f) Denis Richard BROWN;
- (g) Patricia Mary FLANAGAN;
- (h) Anne Yvonne THOUME; and
- (i) Cosimo FAIELLO;

the licensee must notify ASIC in writing within 5 business days of the following matters:

- (j) the date the officer or key person ceased to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business; and
- (k) the name, address, date of commencement, educational qualifications and experience of any replacement officer or key person the licensee has appointed to perform duties on behalf of the licensee with respect to its financial services business; and
- (l) if the licensee does not have a replacement officer or key person, detailed reasons as to why the licensee has not nominated a replacement; and
- (m) a detailed description of how the licensee will continue to comply with the Act and the conditions of this licence following the officer or key person(s) identified above, or any replacement of such person, ceasing to be an officer of the licensee or to perform duties on behalf of the licensee with respect to its financial services business.

Compliance Measures to Ensure Compliance with Law and Licence

3. The licensee must establish and maintain compliance measures that ensure, as far as is reasonably practicable, that the licensee complies with the provisions of the financial services laws.

Training Requirements for Representatives

4. The licensee must for any natural person who provides financial product advice to retail clients on behalf of the licensee (including the licensee if he or she is a natural person):
- (a) identify the tasks and functions that person performs on behalf of the licensee; and
 - (b) determine the appropriate knowledge and skills requirements required to competently perform those tasks and functions; and

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ABN: 96 089 812 635

Licence No: 224107

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Schedule of Conditions

- (c) implement procedures for continuing training.
- 5. The licensee must ensure that any natural person who provides financial product advice to retail clients on behalf of the licensee (including the licensee if he or she is a natural person):
 - (a) has completed training courses at an appropriate level that are or have been approved by ASIC in writing that are relevant to those functions and tasks; or
 - (b) has been individually assessed as competent by an assessor that is or has been approved by ASIC in writing; or
 - (c) in respect of financial product advice on basic deposit products and facilities for making non-cash payments that are related to a basic deposit product, has completed training courses that are or have been assessed by the licensee as meeting the appropriate level that are relevant to those functions and tasks.
- 6. Condition 5 does not apply in relation to:
 - (a) a natural person who is a customer service representative and who provides financial product advice:
 - (i) derived from a script approved by a natural person who complies with paragraphs 5(a), (b) and (c) ("qualified person"); or
 - (ii) under the direct supervision of a qualified person present at the same location; or
 - (b) a natural person who is a para-planner or trainee adviser and who provides financial product advice under the direct supervision of a qualified person who is, in addition to the licensee, responsible for:
 - (i) ensuring that any financial product advice that is provided by the para-planner or trainee adviser for which a Statement of Advice must be given, is reflected in a Statement of Advice that has been reviewed by the qualified person before the Statement of Advice is given, to ensure that the Statement of Advice would comply with all of the requirements of the Act; and
 - (ii) managing and leading any verbal explanation of the financial product advice to the client,where the licensee has established procedures to ensure that the natural person does not provide financial product advice to retail clients on behalf of the licensee, other than in the manner specified in this paragraph, and the licensee monitors whether or not those procedures are effective.
- 7. Condition 5 does not apply in relation to financial product advice:
 - (a) given to retail clients in advertising to which section 1018A of the Act applies, provided that:
 - (i) this licence authorises the provision of financial product advice; and
 - (ii) a responsible officer of the licensee approves such advertising before its publication or dissemination to retail clients; or
 - (b) for which there is an exemption under the Act from the obligation to hold a licence.

Notification to Current or Former Representative's Clients

- 8. Where, under Division 8 of Part 7.6 of the Act:

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PRIMARY SECURITIES LTD

ABN: 96 089 812 635

Licence No: 224107

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Schedule of Conditions

- (a) ASIC makes a banning order against a current or former representative of the licensee; or
- (b) the Court makes an order disqualifying a current or former representative of the licensee; the licensee must, if directed in writing by ASIC, take all reasonable steps to provide the following information in writing to each retail client to whom the representative had provided personal advice within the 3 years prior to the date of the banning order or disqualification order:
 - (c) the name of the representative; and
 - (d) any authorised representative number allocated to the representative by ASIC; and
 - (e) the terms of the banning or disqualification order; and
 - (f) contact details of the licensee for dealing with enquiries and complaints regarding the banning or disqualification or the conduct of the representative as a representative of the licensee.

Financial Requirements for Market Participants and Clearing Participants

9. Where the licensee is a market participant in a licensed market, or a clearing participant in a licensed CS facility, conditions 10 to 19 (inclusive) do not apply to the licensee.

Base Level Financial Requirements

10. The licensee must:

- (a) be able to pay all its debts as and when they become due and payable; and
- (b) either:
 - (i) have total assets that exceed total liabilities as shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's total assets would currently not exceed its total liabilities; or
 - (ii) have adjusted assets that exceed adjusted liabilities calculated at the balance date shown in the licensee's most recent balance sheet lodged with ASIC and have no reason to suspect that the licensee's adjusted assets would currently not exceed its adjusted liabilities; and
- (c) meet the cash needs requirement by complying with one of the following five options:
 - (i) Option 1 (reasonable estimate projection plus cash buffer) – refer to definition of "Option 1" under this licence; or
 - (ii) Option 2 (contingency based projection) – refer to definition of "Option 2" under this licence; or
 - (iii) Option 3 (financial commitment by an Australian ADI or comparable foreign institution) – a requirement that an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider gives the licensee an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of the demand to the licensee's creditors or a trustee for the licensee's creditors, that the licensee reasonably expects will apply for at least three months, taking into account all commercial contingencies for which the licensee should reasonably plan; or

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Schedule of Conditions

- (iv) Option 4 (expectation of support from an Australian ADI or comparable foreign institution)—a requirement that the licensee:
- (A) is a subsidiary of an Australian ADI or a corporation approved by ASIC in writing for the purpose of this condition; and
 - (B) reasonably expects that (based on access to cash from its related bodies corporate) it will have adequate resources (when needed) to meet its liabilities for at least the next three months (including any additional liabilities that the licensee might incur during that period), taking into account all adverse commercial contingencies for which the licensee should reasonably plan; and
 - (C) ensures that a responsible officer of the licensee has documented that the officer has the reasonable expectation for at least the following three month period together with the reasons for forming the expectation, the contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; or
- (v) Option 5 (parent entity prepares cash flow projections on a consolidated basis)—a requirement that the licensee ensures that:
- (A) the cash flows of the licensee and each of its related bodies corporate, other than any body regulated by APRA ("licensee group"), are managed on a consolidated basis; and
 - (B) there is a body corporate within the licensee group of which all members of the licensee group are subsidiaries that is not a body regulated by APRA ("parent entity"); and
 - (C) the parent entity complies with Option 1 or Option 2 as if it were the licensee, cash flows of any member of the licensee group were cash flows of the licensee and any cash held by a member of the licensee group, other than as trustee or as trustee of a relevant trust, were so held by the licensee; and
 - (D) a report by the parent entity's auditor that is a registered company auditor is given to ASIC with the licensee's annual audit report under condition 20 of this licence, in relation to each financial year of the licensee and for any other period that ASIC requests, by a date that ASIC requests, with respect to compliance by the parent entity with Option 1 or Option 2 as they would apply in accordance with subparagraph (C), reflecting the report that would be required from the auditor of a licensee, for that period purporting to comply with Option 1 or Option 2; and
 - (E) either of the following applies:
 - Alternative A—the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee's liabilities which the licensee reasonably expects will apply for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan; or
 - Alternative B—the licensee reasonably expects that (based on access to cash from members of the licensee group), it will have adequate resources to meet its liabilities (including any additional liabilities that the licensee might incur while the commitment applies) for at least the next three months taking into account all adverse commercial contingencies for which the licensee should reasonably plan and a responsible officer of the licensee has documented that the officer has the

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reasonable expectation in respect of at least the following three months together with the reasons for forming the expectation, the contingencies for which the licensee considers it is reasonable to plan, the assumptions made concerning the contingencies and the basis for selecting those assumptions; and

- (F) the licensee has no reason to believe that the parent entity has not complied with the requirement at subparagraph (C) or has failed to comply in a material respect with its obligations under Chapter 2M of the Act or, if the parent entity is not a company, under any other laws (whether law in Australia or not) relating to financial reporting that apply to it.

For 5 years after the end of the last financial year that includes a part of the period to which any document prepared for subparagraph (c)(iv)(C) or Alternative B in subparagraph (c)(v)(E) relates, the licensee must keep the document and give it to ASIC if ASIC requests.

Financial Requirements for Managed Investments and Custody Services

11. The licensee must hold at least \$5 million net tangible assets ("NTA"), unless for each registered scheme operated by the licensee at least one of the following is satisfied:

- (a) all the scheme property and other assets of the scheme(s) not held by members are held by a custodian appointed by the licensee, that has \$5 million NTA or is an eligible custodian; or
- (b) all the scheme property and other assets of the scheme(s) not held by members are special custody assets or the Tier \$500,000 class assets held by the licensee or a custodian appointed by the licensee (or a sub-custodian appointed by that custodian), where the person holding the scheme property or other assets is:
 - (i) the licensee and the licensee has \$500,000 NTA; or
 - (ii) the custodian or sub-custodian and the custodian has \$500,000 NTA or is an eligible custodian; or
- (c) the only scheme property and other assets of the scheme(s) that are not held under paragraph (a) or (b) of this condition are special custody assets, each of which is held by:
 - (i) the licensee; or
 - (ii) an eligible custodian; or
 - (iii) a custodian that has the same level of NTA as the licensee is required to have under the remainder of this condition; or
 - (iv) the members of the scheme;

Where paragraph (a), (b) or (c) of this condition is satisfied, the licensee must hold NTA of 0.5% of the value of:

- (d) assets (including mortgages held by members of a mortgage scheme and managed as part of the scheme); plus
- (e) any other scheme property not counted in calculating the value of assets;

of the registered scheme(s) operated by the licensee with a minimum NTA requirement of \$50,000 and a maximum NTA requirement of \$5 million.

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12. The custodian need not have the required NTA under paragraph 11(c)(iii) of this licence if the only assets it holds for the scheme are those contained in paragraphs (a), (c) or (g) of the definition of "special custody assets" under this licence, or if the audited trust account is a regulated trust account, described in paragraph (d) of the definition of "special custody assets" under this licence.
13. The licensee must have at least \$5 million NTA where the licensee provides a custodial or depository service that:
- (a) has custody of client assets other than incidentally to another financial service provided by the licensee or a related body corporate; or
 - (b) holds IDPS property or other assets of an IDPS.

Financial Requirements for Holding Client Money or Property

14. If at any time the licensee:
- (a) is required to hold money in a separate account under Division 2 of Part 7.8 of the Act; or
 - (b) holds money or other property on trust for a client or is required to do so under Regulation 7.8.07(2) of the Corporations Regulations or otherwise; or
 - (c) has the power to dispose of a client's property under power of attorney or otherwise;
- the licensee must ensure that the licensee has at least \$50,000 in surplus liquid funds ("SLF") unless the total value of the money and property for all clients is less than \$100,000 excluding:
- (d) money that has satisfied a client's liability on an insurance contract where the licensee is acting under a binder or section 985B of the Act applies, or property acquired by investment of that money; or
 - (e) the value of property where the licensee merely holds a document of title, and the client has legal title to the property.

Financial Requirements for Licensee Transacting with Clients

15. If the licensee incurs actual or contingent monetary liabilities by entering into a transaction with a client(s) in the course of providing a financial service to the client(s), the licensee must have adjusted surplus liquid funds ("ASLF") of the sum of:
- (a) \$50,000; plus
 - (b) 5% of adjusted liabilities between \$1 million and \$100 million; plus
 - (c) 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding \$100 million, up to a maximum ASLF of \$100 million.
- This condition does not apply to the licensee if:
- (d) the total of:
 - (i) the current liabilities that would be included in the calculation of the licensee's adjusted liabilities; and
 - (ii) the contingent liabilities that if crystallised would be a current liability and be included in the calculation of the licensee's adjusted liabilities,

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is less than \$100,000; or

- (e) the licensee has no:
 - (i) liabilities to clients that would be included in calculating its adjusted liabilities; or
 - (ii) contingent liabilities to clients which if crystallised would be included in calculating its adjusted liabilities,

other than under debentures the licensee issued under Chapter 2L of the Act.

For the purpose of paragraphs (d) and (e), the licensee may disregard a liability or a contingent liability that:

- (f) is a contingent liability that is neither a derivative nor a liability from underwriting securities or managed investment products; or
- (g) the licensee reasonably estimates has a probability of less than 5% of becoming an actual liability; or
- (h) is covered by money or property that the licensee holds in a separate account under Part 7.8 of the Act or on trust for clients; or
- (i) is adequately secured as defined in paragraph (a) or (b) of the definition of "adequately secured" under this licence; or
- (j) is a liability incurred by entering into a transaction on a licensed market that is to be settled using a clearing and settlement facility, the operation of which is authorised by an Australian CS facility licence; or
- (k) is under a foreign exchange contract and the licensee is required to have \$10 million of tier one capital under another condition of this licence because the licensee has entered a foreign exchange contract as principal; or
- (l) is under a derivative where:
 - (i) the licensee does not make a market in derivatives; and
 - (ii) the licensee entered into the dealing for the purposes of managing a financial risk; and
 - (iii) either the licensee's dealings in derivatives are not a significant part of its business or of the business of it and its related bodies corporate taken together; and
 - (iv) the licensee did not enter into the dealing on the instructions of another person; or
- (m) is under a foreign exchange contract where the licensee:
 - (i) does not make a market in foreign exchange contracts; and
 - (ii) entered into the contract for the purposes of enabling a payment in one of the currencies under the foreign exchange contract; and
 - (iii) did not enter into the foreign exchange contract on the instruction of another person.

In this condition, a reference to a client includes a person who acquires or disposes of financial products in a transaction that the licensee entered into at a price the licensee stated in the course of making a market.

Reporting Triggers and Requirements for Financial Requirement Conditions of this Licence

16. The licensee must ensure the reporting requirements under conditions 17 and 18 of this licence are met where either paragraph (a) or paragraph (b) applies:
- (a) the trigger points described in paragraphs (i) and (ii) below occur:

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- (i) the licensee has adjusted liabilities of more than \$1 million and less than or equal to \$100 million; and
- (ii) the licensee has an ASLF of less than 5.5% of adjusted liabilities; or
- (b) the trigger points described in paragraphs (i), (ii) and (iii) below occur:
 - (i) the licensee has adjusted liabilities of more than \$100 million; and
 - (ii) the licensee does not have \$100 million ASLF; and
 - (iii) the licensee has an ASLF that is less than \$500,000 above the minimum ASLF required under condition 15 of this licence.
- 17. Where the licensee's ASLF is below the trigger points, the licensee must not enter into any transactions with clients that could give rise to further liabilities, contingent liabilities or other financial obligations until the licensee's board or other governing body has certified in writing that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A of the Act.
- 18. Where the licensee's board or other governing body has made the certification required under condition 17, the licensee must ensure that the licensee's board or other governing body certifies in writing at least monthly that, having conducted reasonable enquiry into its financial position, there is no reason to believe that the licensee will fail to comply with its obligations under section 912A of the Act until the licensee's ASLF continuously exceeds the trigger point for a period exceeding one month.
- 19. The licensee must keep each certification issued by the licensee's board or other governing body under conditions 17 and 18 of this licence for at least 5 years from the date of such certification. The licensee must provide ASIC with a copy of each certification within 3 business days of the date of each certification.

Audit Opinion on Financial Requirements

- 20. The licensee must lodge with ASIC an opinion by a registered company auditor ("the audit opinion") addressed to the licensee and ASIC for the following periods:
 - (a) for each financial year, at the same time the licensee is required to lodge a balance sheet under Part 7.8 of the Act; and
 - (b) for any period of time that ASIC requests, by the date ASIC requests the audit opinion to be lodged; that states whether during:
 - (c) any part of the period for which the licensee:
 - (i) relied on being a market participant or a clearing participant, on a positive assurance basis, the licensee was a participant in the market conducted by:
 - (A) ASX; or
 - (B) SFE, that restricted its financial services business to participating in the market and incidental business supervised by SFE; and

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- (ii) relied on being a body regulated by APRA, on a positive assurance basis, the licensee was a body regulated by APRA; and
- (d) any remaining part of the period:
 - (i) in the auditor's opinion, the licensee:
 - (A) complied with all the financial requirements under conditions 10 to 19 (inclusive) of this licence other than paragraph 10(c) of this licence, except for paragraph (e) of the definition of "Option 1" under this licence if the licensee purports to comply with "Option 1"; and
 - (B) except for any period stated in the report when the licensee purports to comply with subparagraph 10(c)(iii), (iv) or (v), had at all times a projection (covering at least the following 3 months) that purports to, and appears on its face to comply with, paragraph (a) of the definition of "Option 1" or paragraph (a) of the definition of "Option 2" under this licence (depending on which option the licensee purports to be complying with); and
 - (C) except for any period stated in the report when the licensee purports to comply with subparagraph 10(c)(iii), (iv) or (v), correctly calculated the projections on the basis of the assumptions the licensee adopted for the projections described in subparagraph (d)(i)(B) of this condition; and
 - (D) for any period when the licensee relied on subparagraph 10(c)(iii) of this licence, has obtained from an Australian ADI or a foreign deposit-taking institution approved in writing by ASIC as an eligible provider an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee, or the amount for which the licensee is liable to its creditors at the time of demand to the licensee's creditors or a trustee for the licensee's creditors; and
 - (E) for any period when the licensee relied on subparagraph 10(c)(iv), following an examination of the documents prepared for subparagraph 10(c)(iv)(C), the licensee complied with subparagraph 10(c)(iv)(A) and subparagraph 10(c)(iv)(C) for the period to which the report relates; and
 - (F) for any period when the licensee relied on subparagraph 10(c)(v), the licensee complied with subparagraph 10(c)(v)(A) and (B); and
 - (G) for any period when the licensee relied on Alternative A in subparagraph 10(c)(v)(E), the parent entity has provided an enforceable and unqualified commitment to pay on demand from time to time an unlimited amount to the licensee or to meet the licensee's liabilities.
 - (ii) except for any period stated in the report when the licensee purports to comply with subparagraph 10(c)(iii), (iv) or (v), following an examination of the documents the licensee relies on in complying with "Option 1" or "Option 2" as defined under this licence, the auditor has no reason to believe that:
 - (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions of this licence; or
 - (B) the licensee failed to comply with the cash needs requirement using either "Option 1" or "Option 2" as defined under this licence (as applicable) except for:
 - (1) paragraphs (a), (c) and (e) of the definition of "Option 1" as defined under this licence; or
 - (2) paragraphs (a) and (c) of the definition of "Option 2" as defined under this licence; or

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- (C) if the licensee relied on "Option 1" as defined under this licence, the assumptions the licensee adopted for its projection were unreasonable; or
- (D) if the licensee relied on "Option 2" as defined under this licence, the basis for the selection of assumptions to meet the requirements for its projection adopted was unreasonable; and
- (iii) for any period when the licensee relied on subparagraph 10(c)(iv), following an examination of the documents prepared for subparagraph 10(c)(iv)(C), the auditor has no reason to believe that:
 - (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions in this licence; and
 - (B) the basis for the selection of the assumptions adopted was unreasonable; and
- (iv) for any period when the licensee relied on subparagraph 10(c)(v) under Alternative B, following an examination of the documents prepared for Alternative B, the auditor has no reason to believe that:
 - (A) the licensee did not satisfy the requirements of paragraph 912A(1)(h) of the Act for managing the risk of having insufficient financial resources to comply with the conditions in this licence; or
 - (B) the basis for the selection of the assumptions adopted was unreasonable.

Professional Indemnity Compensation Requirements

21. The licensee must maintain an insurance policy covering professional indemnity and fraud by officers that:
- (a) is adequate having regard to the nature of the activities carried out by the licensee under the licence; and
 - (b) covers claims amounting in aggregate to whichever is the lesser of:
 - (i) \$5 million; or
 - (ii) the sum of the value of all IDPS property of all IDPS for which it is the operator and all scheme property of all registered schemes for which it is the responsible entity.

External Disputes Resolution Requirements

22. Where the licensee provides financial services to retail clients, the licensee must be a member of one or more External Disputes Resolution Scheme(s) ("EDRS") which covers, or together cover, complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.
23. Where the licensee ceases to be a member of any EDRS, the licensee must notify ASIC in writing within 3 business days:
- (a) the date the licensee ceases membership of the EDRS(s); and
 - (b) the reasons the licensee's membership of the EDRS(s) has ceased (including circumstances where the EDRS is no longer operating, failure by the licensee to renew their membership of the EDRS or where the EDRS has terminated the licensee's membership of the EDRS); and
 - (c) details of the new EDRS(s) the licensee intends to or has joined (including the date the membership commences and the name of the EDRS); and

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- (d) details that provide confirmation that the licensee is covered by EDRS(s) covering complaints made by retail clients in relation to the provision of all of the financial services authorised by this licence.

Agreement with Holder of Financial Product on Trust

24. If the licensee:

- (a) operates a registered scheme in the capacity of a responsible entity; or
- (b) operates an IDPS as an IDPS operator; or
- (c) provides a custodial or depository service;

and in the course of operating that scheme or providing that service the licensee enters into an arrangement:

- (d) with another person ("holder") to hold scheme property, IDPS property or to hold financial products on trust for or on behalf of the licensee or another person; or
- (e) between a responsible entity or IDPS operator in that capacity and another person ("master custodian") under which the master custodian is authorised to arrange for a third person ("subcustodian") directly or indirectly to hold scheme property or IDPS property; or
- (f) with a subcustodian arranged by a master custodian;

the licensee must ensure that at all times:

- (g) the arrangement is covered by a contract that is in writing; and
- (h) the contract clearly specifies:
 - (i) the nature of the arrangement and the obligations of each party; and
 - (ii) the rights that the parties will have in relation to ongoing review and monitoring of the holder or any subcustodian or for an agreement made by the licensee with a master custodian ("master agreement"), the master custodian and the standards against which their performance will be assessed; and
 - (iii) how the holder, any subcustodian or for a master agreement, the master custodian will certify that it complies with, and will continue to comply with, the requirements of ASIC Policy Statement 133 when read in conjunction with ASIC Policy Statements 148 and 167 (as each of those Policy Statements is in force as at the date of this licence); and
 - (iv) how instructions will be given to the holder, subcustodian or for a master agreement, the master custodian; and
 - (v) how the client of the licensee will be compensated if the client suffers any loss due to a failure by the holder, any subcustodian, or for a master agreement, the master custodian, to comply with its duties or to take reasonable care based on the standards applying in the relevant markets for the assets held and the extent to which the holder, any subcustodian, or for a master agreement, the master custodian, must maintain a minimum level of professional indemnity insurance; and
 - (vi) that the holder, any subcustodian and for a master agreement, the master custodian is prohibited from taking a charge, mortgage, lien or other encumbrance over, or in relation to, the assets held under the arrangement unless it is for expenses and outlays made within the terms of the contract (but not

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- including any unpaid fees of the holder, master custodian or subcustodian) or in accordance with the licensee's instructions; and
- (vii) in the case of a responsible entity or IDPS operator who has a master agreement, what should be in the written contract with any subcustodian used in accordance with these conditions including the liability of the subcustodian to the master custodian and the licensee when acts or omissions of the subcustodian are in breach of the subcustodian's obligations; and
 - (viii) how records of the assets held will be kept and maintained by the holder, any subcustodian or for a master agreement, the master custodian; and
 - (ix) requirements for reporting by the holder, any subcustodian or for a master agreement, the master custodian, including notifications of any dealing in or transfers of the assets; and
 - (x) requirements for the holder to provide all reasonable access and assistance to any registered company auditor engaged to conduct an audit in relation to the licensee.

The contract is not required to contain the matters specified in paragraph (iii), (v) or (vi) or to be in writing to the extent that the licensee establishes by documentary evidence that it is not practicable for the licensee to:

- (a) hold the relevant financial products (being property outside Australia) itself; or
- (b) engage a custodian that is willing to include such matters in the contract to hold that property on reasonable commercial terms;

and provided that the licensee has disclosed to the client that these terms will not be included.

Property

25. The licensee must ensure that at all times:

- (a) in relation to a registered scheme for which the licensee is the responsible entity, the holder of any scheme property complies with the requirements of ASIC Policy Statement 133 (as in force as at the date of this licence) relating to the holding of scheme property and maintains proper records identifying the scheme property; and
- (b) in relation to any custodial or depository service that the licensee provides other than as the operator of an IDPS, the holder of any property, complies with the requirements of ASIC Policy Statement 133 except requirements expressed to apply to duties under s601FC(1)(i), when read with ASIC Policy Statements 148 and 167 (as each of those Policy Statements is in force as at the date of this licence), and maintains proper records in relation to the financial products held.

Prohibition to Operate Managed Discretionary Account Service

26. The licensee must not provide an MDA service to a retail client except when operating a registered scheme.

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Protection of Underlying Land in Primary Production Schemes

27. The licensee must, by the time specified in condition 28, ensure (in relation to each scheme) that an instrument that confers the right, for the purpose of the scheme, to use the land on which any primary production will occur in the operation of the scheme, is lodged for registration under State or Territory land titles law, in the name of:
- (a) the members collectively; or
 - (b) each member in relation to that portion of the land on which the primary production business in which the member has an interest is being conducted; or
 - (c) the custodian where it holds the interest as trustee for the members; or
 - (d) the licensee, either:
 - (i) as trustee for the members; or
 - (ii) beneficially in the course of and in accordance with its duties as responsible entity; or
 - (e) any nominee of the members that is entitled to hold scheme property, where it holds the interest as trustee for the members; or
 - (f) a company, provided that, for the duration of the scheme:
 - (i) all the issued shares in the company are held by all the members of the scheme; and
 - (ii) the proportion of shares held by each member is the same as the proportion of interests in the scheme held by that member; and
 - (iii) the constitution of the company contains provisions that can only be modified by unanimous resolution of members of the company and that prohibit:
 - (A) disposing of, or otherwise dealing with, the land in whole or part except after the primary production business to which the scheme relates is completed; and
 - (B) the conduct by the company of any business or activity other than the making of the land available for primary production to occur in the operation of the scheme or any other business or activity that the company may be required to conduct by law; or
 - (g) the custodian or another person as agent for the licensee for the purpose of the licensee holding the interest on trust for members.
28. The time specified for the purpose of lodgement under condition 27 is either:
- (a) prior to or immediately after the issue of the interest in the scheme; or
 - (b) if each of the requirements in subparagraphs (i) to (v) is satisfied - as soon as reasonably practicable and in any event within 15 months of the end of the income year in which the first payment ("the payment") is made by the member under the scheme:
 - (i) the only primary production under the scheme is the establishment and tending of trees for felling in Australia; and
 - (ii) the licensee intends to establish the trees within 18 months of the end the income year in which the payment is made; and

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- (iii) at the time of the issue of the interest in the scheme the licensee reasonably believes that there is no material risk that:
- (A) an interest in land will not be granted to the member; or
 - (B) an instrument of the kind referred to in condition 27 in relation to that interest in land will not be lodged for registration;
- within 15 months of the end of the income year in which the payment is made; and
- (iv) the licensee uses its best endeavours to cause:
- (A) an interest in land to be granted to the member; and
 - (B) an instrument of the kind referred to in condition 27 in relation to that interest in land to be lodged for registration,
- as soon as reasonably practicable, and in any event within 15 months of the end of the income year in which the payment is made; and
- (v) the Product Disclosure Statement ("PDS") under which interests in the scheme are offered prominently discloses:
- (A) the extent to which any interest in land on which any primary production will occur under the scheme has been secured at the date of the PDS; and
 - (B) the steps proposed for securing any further interest in land necessary for primary production under the scheme; and
 - (C) that there is a risk that the licensee will be unable to secure an interest in land for grant to a person applying for an interest in the scheme under the PDS within 15 months of the end of the income year in which the payment is made; and
 - (D) in the event that no such grant occurs within that time, the licensee will, within 14 days after receiving a written request from the member, issue to the member a full refund of the amount the member has invested.

In this condition, "income year" has the meaning given in section 995-1 of the Income Tax Assessment Act 1997.

29. The licensee must use its best endeavours to cause each instrument which is lodged for registration under condition 27 to be registered as soon as possible after lodgement and to be registered in such a way that it cannot be adversely affected by any existing or subsequent mortgagee, secured creditor or transferee (other than in connection with a borrowing or other transaction that is entered into by the licensee in accordance with the constitution of the scheme and its duties as responsible entity).

Retention of Financial Services Guides, Statements of Advice and Material Relating to Personal Advice

30. Where the licensee provides financial product advice to retail clients, the licensee must ensure that copies (whether in material, electronic or other form) of the following documents are retained for at least the period specified:

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- (a) each Financial Services Guide ("FSG") (including any Supplementary FSG) given by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity - for a period commencing on the date of the FSG and continuing for at least 7 years from when the document was last provided to a person as a retail client; and
- (b) a record of the following matters relating to the provision of personal advice to a retail client (other than personal advice for which a Statement of Advice ("SOA") is not required or for which a record of the advice is kept in accordance with subsection 946B(3A)):
 - (i) the client's relevant personal circumstances within the meaning of subparagraph 945A(1)(a)(i); and
 - (ii) the inquiries made in relation to those personal circumstances within the meaning of subparagraph 945A(1)(a)(ii); and
 - (iii) the consideration and investigation conducted in relation to the subject matter of the advice within the meaning of paragraph 945A(1)(b); and
 - (iv) the advice, including reasons why advice was considered to be "appropriate" within the meaning of paragraphs 945A(1)(a) to (c),
for a period of at least 7 years from the date that the personal advice was provided;
- (c) any SOA provided by or on behalf of the licensee, or by any authorised representative of the licensee while acting in that capacity - for a period of at least 7 years from the date the document was provided to the client.

31. The licensee must establish and maintain measures that ensure, as far as is reasonably practicable, that it and its representatives comply with their obligation to give clients an FSG as and when required under the Act. The licensee must keep records about how these measures are implemented and monitored.

Terms and Definitions

In this licence references to sections, Parts and Divisions are references to provisions of the Corporations Act 2001 ("the Act") unless otherwise specified. Headings contained in this licence are for ease of reference only and do not affect interpretation. Terms used in this licence have the same meaning as is given to them in the Act (including, if relevant, the meaning given in Chapter 7 of the Act) and the following terms have the following meanings:

adequately secured means:

- (a) secured by an enforceable charge over financial products (other than financial products issued by the licensee or its associate) if:
 - (i) the financial products are:
 - (A) regularly traded on:
 - (1) a financial market (as defined in subsection 767A(1) of the Act and disregarding subsection 767A(2) of the Act) operated by a market licensee or a licensee other than the licensee or its associate that in the reasonable opinion of the licensee produces sufficiently reliable prices to assess the value of the security provided by the charge;
 - (2) an ASIC-approved foreign market under ASIC Policy Statement 72 as at the date of this licence; or

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- (3) a foreign market approved in writing for the purpose by ASIC; or
- (B) interests in a registered scheme for which withdrawal prices are regularly quoted by the responsible entity and the licensee believes on reasonable grounds that withdrawal may be effected within 5 business days; and
- (ii) the market value of these financial products equals not less than 120% of the amount owing or not less than 109% of the amount owing if the financial products are debt instruments; or
- (b) secured by a registered first mortgage over real estate that has a fair market valuation at least equal to 120% of the amount owing; or
- (c) owing from an eligible provider; or
- (d) secured by an enforceable charge over amounts owing to another licensee which themselves are adequately secured.

adjusted assets means the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M of the Act if the licensee were a reporting entity:

- (a) minus the value of excluded assets that would be included in the calculation; and
- (b) minus the value of any receivable of the licensee that would be included in the calculation, up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable; and
- (c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC up to the amount of the bond; and
- (d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities; and
- (e) plus
 - (i) the amount of any eligible undertaking that is not an asset; or
 - (ii) if the eligible undertaking is for an unlimited amount, an unlimited amount;provided that if the eligible undertaking is given by a person who is an eligible provider only because of paragraph (b) of the definition of "eligible provider" under this licence, the amount added may be no more than one quarter of the eligible provider's net assets (excluding intangible assets) as shown in the most recent audited financial statements lodged with ASIC; and
- (f) for calculating ASLF, plus the value of any current assets of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as assets of the licensee except to the extent the value exceeds the sum of:
 - (i) the current liabilities of the trust as if they would appear on the balance sheet as assets of the licensee; and
 - (ii) any adjustments to ASLF that are a result of current assets, liabilities and contingent liabilities of the trust for accounting purposes being included in calculating adjustments; and

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- (g) for calculating ASLF, plus the value of the applicable percentage as set out in paragraphs (c)(i) and (iii) of the definition of "standard adjustments" under this licence of the value of any current assets that would be acquired in return for paying a contingent liability as set out in paragraphs (c)(i) and (iii) of the definition of "standard adjustments" under this licence up to the value of the applicable percentage of the relevant contingent liability.

adjusted liabilities means the amount of total liabilities as they would appear on a balance sheet at the time of calculation made up for lodgement as part of a financial report under Chapter 2M of the Act if the licensee were a reporting entity:

- (a) minus the amount of any liability under any subordinated debt approved by ASIC; and
- (b) minus the amount of any liability that is the subject of an enforceable right of set-off, if the corresponding receivable is excluded from adjusted assets; and
- (c) minus the amount of any liability under a credit facility that is made without recourse to the licensee; and
- (d) for calculating ASLF, plus the amount of the total current liabilities of any trust (other than a registered scheme) of which the licensee is trustee as if they would appear on the balance sheet as liabilities of the trustee; and
- (e) plus the value of any assets that are encumbered as a security against another person's liability where the licensee is not also liable, but only up to the amount of that other person's liability secured or the value of the assets encumbered after deducting any adjustments under this licence, whichever is lower.

adjusted surplus liquid funds or ASLF means surplus liquid funds minus either:

- (a) the standard adjustments (refer to the definition of "standard adjustments" under this licence); or
- (b) such other adjustments as ASIC may from time to time consent to in writing.

clearing participant means a clearing participant in the licensed clearing and settlement facility ("CS Facility") as defined in the operating rules of Australian Clearing House Pty Limited ("ACH"), as at the date of this licence, that complies with those operating rules relating to financial requirements, taking into account any waiver by ACH.

customer service representative means call centre staff or front desk staff who deal with initial queries from customers.

eligible custodian means:

- (a) an Australian ADI; or
- (b) a market participant or a clearing participant; or
- (c) a subcustodian appointed by a person of the kind referred to in (a) or (b) of this definition.

eligible provider means:

- (a) an Australian ADI; or

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- (b) an entity (other than a registered scheme of which the licensee or the licensee's associate is the responsible entity):
 - (i) whose ordinary shares are listed on a licensed market or an ASIC-approved foreign exchange under ASIC Policy Statement 72 as at the date of this licence; and
 - (ii) that had net assets (excluding intangible assets) of more than \$50 million, as shown in the most recently audited financial statements of the provider lodged with ASIC; and
 - (iii) that the licensee has no reason to believe no longer has net assets of at least that amount; or
- (c) an Australian government (i.e. the Commonwealth or a State or Territory government) or a government of a country that is a member of the Organisation for Economic Co-operation and Development ("OECD country government"), or an agency or instrumentality of an Australian or OECD country government; or
- (d) a foreign deposit-taking institution that is regulated by an ASIC - approved regulator; or
- (e) a foreign deposit-taking institution approved in writing by ASIC for this purpose; or
- (f) an Australian CS facility licensee; or
- (g) an entity approved by ASIC in writing for this purpose.

eligible undertaking means the amount of a financial commitment that is:

- (a) payable on written demand by the licensee (disregarding any part previously paid or any amount that would be repayable as a current liability or, for calculating NTA, as a liability by the licensee if money were paid), provided by an eligible provider in the form of an undertaking to pay the amount of the financial commitment to the licensee, and that:
 - (i) is an enforceable and unqualified obligation; and
 - (ii) remains operative (even if, for example, the licensee ceases to hold an AFS licence) until ASIC consents in writing to the cancellation of the undertaking; or
- (b) approved in writing by ASIC as an eligible undertaking.

excluded assets means:

- (a) intangible assets (i.e. non-monetary assets without physical substance); and
- (b) except when allowed under paragraphs (e) or (f) of this definition, assets owing or receivables ("receivables") from or assets invested in, any person who:
 - (i) is an associate of the licensee; or
 - (ii) was an associate of the licensee at the time the liability was incurred or the investment was made; or
 - (iii) became liable to the licensee because of, or in connection with, the acquisition of interests in a managed investment scheme the licensee operates; and
- (c) except when allowed under paragraph (g) of this definition, assets:
 - (i) held as a beneficial interest or an interest in a managed investment scheme; or
 - (ii) invested in any superannuation product, in respect of which the licensee or its associate may exercise any form of power or control; and

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- (d) except when allowed under paragraphs (e) or (f) of this definition, receivables from the trustee of any trust in respect of which the licensee or its associate may exercise any form of power or control; and
- (e) despite paragraphs (b) and (d) of this definition, a receivable is not excluded to the extent that:
 - (i) it is adequately secured; or
 - (ii) the following apply:
 - (A) it is receivable as a result of a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis; and
 - (B) no part of the consideration in relation to the transaction is, in substance, directly or indirectly invested in the licensee; and
 - (C) the total value of such assets (before any discount is applied) is not more than 20% of the assets less liabilities of the licensee; and
 - (D) for the purposes of calculating ASLF, the amount is further discounted by 10% of the value after any adjustment required by paragraph (a) or (b) of the definition of "adjusted surplus liquid funds" in this licence; or
 - (iii) the following apply:
 - (A) it is receivable from an insurance company that is a body regulated by APRA and results from a transaction entered into by the licensee in the ordinary course of its business on its standard commercial terms applicable to persons that are not associated with the licensee on an arm's length basis; and
 - (B) there is no reason to believe that any amount invested in the licensee would not have been invested if the transactions that caused the receivable had not taken place or were not at the time of the investment expected to take place; and
 - (C) there is no reason to believe that the recoverability of the receivable will materially depend on the value of an investment by any person in the licensee; and
 - (D) the total value of the receivables under this subparagraph (iii) before any adjustment required by paragraph (a) or (b) of the definition of "adjusted surplus liquid funds" in this licence is applied is not more than 60% of the adjusted liabilities of the licensee disregarding this subparagraph (iii); or
 - (iv) ASIC consents in writing to the licensee treating the amount owing as not being an excluded asset; and
- (f) despite paragraphs (b) and (d) of this definition, the licensee can include a receivable amount to the extent that it is owing by way of fees from, or under rights of reimbursement for expenditure by the licensee out of property of, a superannuation entity as defined in the Superannuation Industry (Supervision) Act 1993, an IDPS or a registered scheme ("scheme") to the extent that the receivable:
 - (i) exceeds amounts invested by the scheme in, or lent (other than by way of a deposit with an Australian ADI in the ordinary course of its banking business) directly or indirectly by the scheme to, the licensee, a body corporate the licensee controls, a body corporate that controls the licensee or a body corporate that the licensee's controller controls; and
 - (ii) if receivable by way of fees, represents no more fees than are owing for the last 3 months; and

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- (iii) if receivable under rights of reimbursement for expenditure by the licensee, has not been receivable for more than 3 months; and
- (g) despite paragraph (c) of this definition, the licensee does not have to exclude a managed investment product unless any part of the amount invested is, in substance, directly or indirectly, invested in the licensee.

IDPS means an investor directed portfolio service in relation to which the licensee has relief under Class Order 02/294 as at the date of this licence and as amended by any disallowable legislative instrument, or relief under any disallowable legislative instrument that replaces Class Order 02/294.

IDPS property means property acquired or held through an IDPS other than property held by a client.

incidental property means:

- (a) assets of any kind which are necessary for, or incidental to the effective operation of the scheme, the total value of which, and the total liability that may arise from the holding of which, does not exceed 10% of the value of the assets net of liabilities other than liabilities to members as members of the scheme; and
- (b) cash, deposits or current accounts with an Australian ADI or units in a cash management trust that are held for no more than 3 months pending investment in assets to which the scheme relates, or expenditure or distribution to members; and
- (c) derivatives, where:
 - (i) the value or amount of the derivative will ultimately be determined, derived or varied by reference to something else for the purposes of section 761D(1)(c) of the Act which is related to or may significantly and directly affect the receipts or costs of the fund; and
 - (ii) the derivative is acquired or disposed of by the licensee as a hedge which has the primary purpose of avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs of the fund.

market participant means:

- (a) a participant as defined in the operating rules of ASX Limited ("ASX"), as at the date of this licence (other than a Principal Trader, unless the Principal Trader is registered as a Market Maker), who complies with the ASX's operating rules that relate to financial requirements, taking into account any waiver by ASX; or
- (b) a participant in the licensed market operated by Sydney Futures Exchange Limited ("SFE") that:
 - (i) restricts its financial services business to participating in the licensed market and incidental business supervised by SFE; and
 - (ii) complies with the SFE's operating rules, as at the date of this licence, that relate to financial requirements, taking into account any waiver by SFE.

MDA service means a service with the following features:

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- (a) a person ("the client") makes client contributions; and
- (b) the client agrees with another person that the client's portfolio assets will:
 - (i) be managed by that other person at their discretion, subject to any limitation that may be agreed, for purposes that include investment; and
 - (ii) not be pooled with property that is not the client's portfolio assets to enable an investment to be made or made on more favourable terms; and
 - (iii) be held by the client unless a beneficial interest but not a legal interest in them will be held by the client; and
- (c) the client and the person intend that the person will use client contributions of the client to generate a financial return or other benefit from the person's investment expertise.

net tangible assets or NTA means adjusted assets minus adjusted liabilities.

old law securities options contracts means "options contracts" as defined under section 9 of the Act immediately prior to 11 March 2002 which were "securities" as defined under section 92(1) of the Act immediately prior to 11 March 2002.

Option 1 means the reasonable estimate projection plus cash buffer basis where the licensee is required to:

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's reasonable estimate of what is likely to happen over this term; and
- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and
- (d) demonstrate, based on the projection of the licensee's cash flows, that the licensee will have access when needed to enough financial resources to meet its liabilities over the projected term of at least 3 months, including any additional liabilities the licensee projects will be incurred during that term; and
- (e) hold (other than as trustee) or be the trustee of a relevant trust that holds, in cash an amount equal to 20% of the greater of:
 - (i) the cash outflow for the projected period of at least 3 months (if the projection covers a period longer than 3 months, the cash outflow may be adjusted to produce a 3-month average); or
 - (ii) the licensee's actual cash outflow for the most recent financial year for which the licensee has prepared a profit and loss statement, adjusted to produce a 3-month average.

For the purposes of this definition references to the licensee's cash flow include the licensee's own cash flow and any cash flow of a relevant trust but do not include cash flows of any other trust.

For the purposes of paragraph (e) of this definition, "cash" means:

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- (A) current assets valued at the amount of cash for which they can be expected to be exchanged within 5 business days; or
- (B) a commitment to provide cash from an eligible provider that can be drawn down within 5 business days and has a maturity of at least a month;

but does not include any cash in a relevant trust if the licensee has reason to believe that the cash will not be available to meet all of the projected cash flows of the licensee.

Option 2 means the cash needs requirement on the contingency-based projection basis where the licensee is required to:

- (a) prepare a projection of the licensee's cash flows over at least the next 3 months based on the licensee's estimate of what would happen if the licensee's ability to meet its liabilities over the projected term (including any liabilities the licensee might incur during the term of the projection) was adversely affected by commercial contingencies taking into account all contingencies that are sufficiently likely for a reasonable licensee to plan how they might manage them; and
- (b) document the licensee's calculations and assumptions, and describe in writing why the assumptions relied upon are the appropriate assumptions; and
- (c) update the projection of the licensee's cash flows when those cash flows cease to cover the next 3 months or if the licensee has reason to suspect that an updated projection would show that the licensee was not meeting paragraph (d) of this definition; and
- (d) demonstrate, based on the projection of the licensee's cash flow, that the licensee will have access when needed to enough financial resources to meet its liabilities over the projected term of at least 3 months, including any additional liabilities the licensee might incur during that term.

For the purposes of this definition references to the licensee's cash flow include any cash flow of a relevant trust.

regulated trust account means:

- (a) a trust account maintained by an authorised trustee corporation under the law of a State or Territory; or
- (b) a solicitor's trust account; or
- (c) a real estate agent's trust account; or
- (d) a trust account maintained by an entity other than the licensee and that provides protections similar to the accounts described in paragraphs (a) to (c) of this definition, and is approved by ASIC for the purpose in writing.

relevant trust means, for the purposes of the definitions of "Option 1" and "Option 2" of this licence, a trust:

- (a) where substantially all of the financial services business carried on by the licensee is carried on as trustee of a trust; and

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- (b) that it is not a registered scheme or a superannuation entity as defined in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993.

special custody assets means:

- (a) for serviced strata schemes, cash held in a regulated trust account for the purposes of:
- (i) refurbishment or improvement of real property associated with the scheme; or
 - (ii) alleviating seasonal fluctuations in payments of income from the scheme in accordance with provisions in the constitution;
- provided that no more is held than the licensee reasonably considers necessary for the relevant purpose; and
- (b) currency and chattels (other than documents) that it would not be reasonably practicable for a person other than the responsible entity to hold; and
- (c) funds received from members of the scheme within the previous 6 months held in a regulated trust account; and
- (d) cash held for up to 3 months in an account with an Australian ADI styled as a trust account that is audited at least once every 6 months by a registered company auditor where the auditor's report states that in the auditor's opinion the account has been operated in accordance with the trust:
- (i) pending payment to members; or
 - (ii) to meet expected expenses (not including investments) over a 3 month period; or
 - (iii) pending application in acquiring a mortgage and paying any fees and costs incidental to the acquisition; and
- (e) contractual, lease or licence rights that are not assignable except with the consent of the member or that it would not be reasonably practicable to assign (other than to a new responsible entity) and any documents evidencing those contractual, lease or licence rights; and
- (f) assets of trivial value; and
- (g) levies of a time sharing scheme which are held in an account with an Australian ADI styled as a trust account that is audited at least twice annually by a registered company auditor where the report from the auditor is provided to the responsible entity's board or compliance committee and states that in the auditor's opinion the account has been operated in accordance with the trust; and
- (h) mortgages or documents of title held under a mortgage where:
- (i) particular members have a specific beneficial or legal interest in the mortgage; and
 - (ii) the mortgage was acquired after disclosure in writing to the relevant members (at the time of the acquisition) of all information that would have been required to be in a Product Disclosure Statement (or in relation to mortgages acquired before Division 2 of Part 7.9 applies to interests in the registered scheme a disclosure document under Chapter 6D of the Act) if an offer of interests in the registered scheme conferring rights in connection with that mortgage had been made immediately prior to the mortgage; and
 - (iii) either of the following applies:
 - (A) the mortgage was acquired on the specific direction of the relevant members (at the time of acquisition of the interest); or

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- (B) members are able to withdraw from that mortgage for a period of 14 days commencing on the date of disclosure under sub-paragraph (h)(ii) of this definition; and
- (iv) the scheme does not involve the mortgage being sold prior to its discharge.

standard adjustments means:

- (a) discounts as follows:
 - (i) 8% for the values that reflect obligations to pay the licensee a certain sum maturing beyond 12 months unless the interest rate applicable is reset to reflect market interest rates at least annually; and
 - (ii) 16% for the values that reflect any assets other than:
 - (A) an obligation to pay the licensee a certain sum; or
 - (B) a derivative; or
 - (C) an interest in property held in trust by another licensee under Division 3 of Part 7.8 of the Act or the rights to money held by another licensee in an account under section 981B of the Act; and
 - (b) 8% of the values that reflect others' obligations to pay the licensee a certain sum except to the extent that the asset is adequately secured or is a right against another licensee in respect of money or property held by that other licensee in an account under section 981B or held in trust under Division 3 of Part 7.8 of the Act; and
 - (c) the following amounts for contingent liabilities and contingent liabilities of any trust (other than a registered scheme) of which the licensee is trustee:
 - (i) 5% of any contingent liabilities that can be quantified under an underwriting or sub-underwriting of financial products except:
 - (A) during the 5 business days after the commitment is assumed; and
 - (B) during any period it is unlawful to accept applications for the financial products to which the underwriting relates (such as under subsection 727(3) or section 1016B) and the period ending 5 business days after the first day on which it becomes lawful to accept applications; and
 - (C) to the extent that the underwriter holds funds from persons seeking to acquire the financial products subject to the underwriting; and
 - (ii) 5% of the potential liability of any contingent liabilities that can be quantified under a derivative other than to the extent there is an offsetting position in any of the following or a combination of the following:
 - (A) the "something else" for the purposes of paragraph 761D(1)(c) of the Act; and
 - (B) another derivative relating to that something else; and
 - (C) a thing that is so similar to the something else as to make the probability of net loss from the liability under the derivative exceeding any increase in the value of the thing less than 5% in the reasonable and documented opinion of the licensee,
- except to the extent that the licensee is of the reasonable opinion that the risk that they will become liabilities (or become liabilities to a greater extent than taken into account for the purposes of applying the adjustment) because of a change in the price or value of the something else is trivial; and

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- (iii) 20% of the potential liability of any contingent liabilities that can be quantified under a guarantee or indemnity;
- (d) the relevant percentage as set out in subparagraphs (c)(ii) and (c)(iii) of the amounts that in the licensee's reasonable opinion is the maximum amount that the licensee may be liable for in relation to a contingent liability referred to in paragraph (c) where the maximum liability cannot be quantified; and
- (e) where the licensee has agreed to sell an asset that it does not hold, the amount of the adjustment that would apply if it held that asset is to be applied against adjusted assets.

For the purposes of this definition, the risk that a contingent liability will become a liability may be treated as trivial if the probability that this will occur is reasonably estimated by the licensee as less than 5%.

For the purposes of paragraphs (a) and (b) of this definition, discounts apply against the value of current assets:

- (f) used in calculating "adjusted assets" in this licence; and
- (g) of any trust (other than a registered scheme) of which the licensee is a trustee (see subparagraph (f)(ii) of the definition of "adjusted assets" in this licence); and
- (h) that are deducted under paragraph (c) of the definition of "adjusted assets" in this licence as assets to which recourse may be had for a liability of the licensee where the licensee's liability is limited to those assets but the total discounts applied to those assets shall not exceed any excess of the value of the licensee's assets to which recourse may be taken over the amount of the liability; and
- (i) that is the applicable percentage of the current assets that would be acquired in return for paying a contingent liability referred to in subparagraph (c)(i) or (iii) of this definition including rights against a sub-underwriter (see paragraph (g) of the definition of "adjusted assets" in this licence).

The licensee does not have to apply the discounts to the value of amounts payable from a client in the ordinary course of its financial services business for financial products that the client has agreed to buy, if the money is required to be—and in the reasonable estimation of the licensee probably will be—paid no more than 5 business days after the client became liable.

surplus liquid funds or SLF means adjusted assets minus adjusted liabilities:

- (a) plus any non-current liabilities that were used in calculating adjusted liabilities and the value of any assets that are encumbered (where the licensee is not liable and the assets do not secure another person's current liability) that were deducted when calculating the licensee's adjusted liabilities; and
- (b) minus any non-current assets that were used in calculating adjusted assets; and
- (c) if the licensee is an eligible provider under paragraph (b) of the definition of "eligible provider" under this licence—plus one quarter of the value of the licensee's non-current assets minus any intangible assets and the amount of its non-current liabilities.

Tier \$500,000 class assets means:

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- (a) real property (including mortgages or leases over or licences in relation to real property) that is intended to be kept for the whole duration of the scheme or, the relevant mortgage; and
- (b) physical assets including currency which as a matter of reasonable practice can be held by a custodian (such as valuables or precious metals); and
- (c) funds received from members within the previous:
 - (i) 6 months if held for the purposes of the initial investment by the responsible entity as part of the scheme; or
 - (ii) 13 months if held pending payment of expenses of the scheme;held in a regulated trust account; and
- (d) special custody assets.

trigger point means either of the trigger points described in condition 16 of this licence.

value of assets means, for the purpose of condition 11 of this licence, the value of assets and other scheme property and/or IDPS property determined as follows:

- (a) in the case of assets that would be recognised in preparing a balance sheet for members under Chapter 2M of the Act - their value as if at that time such a balance sheet was being prepared; and
- (b) in the case of any other scheme property and/or IDPS property - its market value. For the purpose of this calculation mortgages held by members of a registered scheme and managed as part of the scheme must be treated as assets of the scheme.

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

r8.05

LIST E
No of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1

First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS2" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

Before me:.....

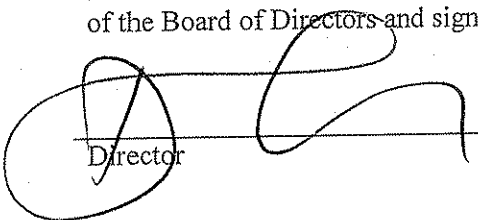

Exhibit "RGS-2"
Consent to being appointed as Temporary Responsible Entity

CONSENT

PRIMARY SECURITIES LTD (ABN 96 089 812 635) HEREBY CONSENTS to being appointed as temporary responsible entity of:

- 2001 TIMBERCORP OLIVE PROJECT ARSN 094 382 082
- 2002 TIMBERCORP OLIVE PROJECT ARSN 098 233 455
- 2003 TIMBERCORP OLIVE PROJECT ARSN 104 648 473
- 2004 TIMBERCORP OLIVE PROJECT ARSN 108 744 378
- 2006 TIMBERCORP OLIVE PROJECT ARSN 119 182 179
- 2007 TIMBERCORP OLIVE PROJECT ARSN 123 155 715 and
- 2008 TIMBERCORP OLIVE PROJECT ARSN 129 307 722.

Executed by **PRIMARY SECURITIES LTD ABN 96 089 812 635** under authority of the Board of Directors and signed by:



Director



Director / Secretary

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

r8.05

LIST E
No of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

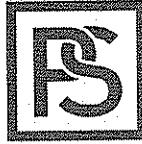
Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS3" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

Before me:.....


Exhibit "RGS-3"
Letter from Primary Securities Ltd to Clarendon Lawyers dated 2 July
2009

RGS3



PRIMARY SECURITIES LTD

Our Ref: Admin/AFSL/Licence Variation

2 July 2009

Mark Bland
Clarendon Lawyers
Level 17 Rialto North Tower,
525 Collins Street, Melbourne 3000
MELBOURNE VIC 3001

Dear Mark

Timbercorp Olive Schemes: Consent to be responsible entity

Our consent to being responsible entity is made on the assumption that costs in the proceedings currently on foot in the Supreme Court of Victoria are not ordered to be paid by the First Plaintiff, namely the responsible entity, as if we were to become temporary responsible entity we could then find we are personally liable for those costs by virtue of section 601FS of the Corporations Act.

We make that assumption on the basis that it is not the responsible entity which is seeking the orders for the winding up of the schemes but the administrators, and therefore if the application were unsuccessful, it would be the administrators who are most likely to be ordered to pay the costs.

If our assumption was incorrect and the Court was mindful to make an order for payment of costs other than by the administrators, and the First Plaintiff was simply ordered to pay the costs, then we could not consent to becoming responsible entity and taking on that burden.

However, if the Court was mindful to order that the responsible entity pay the costs from scheme property (which in a practical sense would mean from proceeds from the sale of produce), then our consent could continue to stay in place.

Yours faithfully
PRIMARY SECURITIES LTD



Robert Garton Smith
Managing Director

ABN 96 089 812 635
AFSL No. 224107

13 Nairn Street [PO Box 732] Fremantle WA 6959

Tel: 08 9430 5262 Fax: 08 9430 5552 Email: admin@primarysecurities.com.au

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

r8.05

LIST E

No of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS4" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

Before me:.....


Exhibit "RGS-4"
Primary Securities Ltd Action Plan for First Three Months

PRIMARY SECURITIES LTD
TIMBERCORP OLIVE SCHEMES
ACTION PLAN FOR FIRST THREE MONTHS

RGS 4

#	Start Date	Task	Comments	Timing	Estimated Out of pocket Cost	Who to do	Who pays
1	6-Jul-09	Lodge court application for appointment of temporary RE		1 day	NA	Clarendons, Grower Group, Primary affidavit	Grower Group
2	7-Jul-09	Write to administrators in relation to data transfer issues	Require data in a form suitable to be taken by Primary's accounting and register program for agricultural schemes. Letter already drafted.	1 day	internal	Primary (Nienaber, Anderson, Boyd)	Primary from fees when collected
3	7-Jul-09	Write to administrators in relation to title issues	Last four schemes specify that the head lease is held by the RE in its "personal capacity"	1 day	internal	Primary (GS)	Primary from fees when collected
4	7-Jul-09	Write to Bendigo Stock Exchange to initiate listing proposal for schemes	May be required if voter numbers insufficient at meeting, and in any event to give Growers a market	1 day	internal	Primary (Boyd)	Primary from fees when collected
5	8-Jul-09	Commence analysis scheme by scheme of legal issues relating to agreements		5 days	internal	Primary (Catelli and Barclay)	Primary from fees when collected
6	8-Jul-09	Prepare templates for changes to be made to documents		5 days	internal	Primary (Catelli and Barclay)	Primary from fees when collected
7	9-Jul-09	Formation of two Grower committees, one for each scheme	To consult in relation to all major issues, meetings to be held in Melbourne	5 days		Primary (Boyd), Grower Group	Primary from fees when collected
8	9-Jul-09	Follow up with administrators for responses to letters		1 day	internal	Primary (RGS)	Primary from fees when collected
9	9-Jul-09	Preliminary discussions with ATO in relation to any product ruling issues	To ensure product rulings will be preserved having regard to all that is being done	1 day	internal	Primary (RGS) and tax consultants	Primary from fees when collected

#	Start Date	Task	Comments	Timing	Estimated Out of pocket Cost	Who to do	Who pays
10	13-Jul-09	Depending on response from administrators, amend application to include orders in relation to transfer of data, right to head-leases and (if thought appropriate) any other matters	Best dispose of all these issues at the one hearing, or at least have the matter adjourned to a separate hearing in a few days	1 day	\$5,000	Clarendons and Primary (with Grower Group involvement)	Grower Group
11	15-Jul-09	Court hearing and appointment as responsible entity		1 day		Clarendon	Grower Group
12	15-Jul-09	Lodge required forms in relation to appointment and obtain licence variation			\$1,500 (check)	Primary	Primary from fees when collected
13	16-Jul-09	Detailed discussions between Primary and Grower group in relation to plans		2 days		Primary (Garton Smith, Treadgold, Sammon)	
14	16-Jul-09	Prepare detailed amendments to Constitutions and other documents (1) to cover role of RE during temporary period (2) to enable quarterly invoicing (3) to enable credit card fees and a pooled account for credit card payment (4) to facilitate amendments to leases or licences and management agreements	No amendments can be made which may adversely affect the interest of Growers, otherwise responsible entity may make such amendments as are required	10 days	internal	Primary (Catelli, Barclay)	Primary from fees when collected
15	17-Jul-09	Discussions with Boundary Bend	To discuss	1 day	internal	Primary (Treadgold, Sammon)	Primary from fees when collected
16	18-Jul-09	If necessary, identification of other local contractors who are able to carry out pruning and other obligations required up to end of October	Need appropriate personnel to oversee	3 days	internal	Primary (Treadgold, Sammon)	Primary from fees when collected
17	20-Jul-09	Draft letters to Growers for each scheme		5 days	internal	Primary (Boyd) with Grower reps	Primary from fees when collected
18	20-Jul-09	Formal request for variation to product rulings			internal	Primary (Catelli, Barclay), Sceales & Co	Primary from fees when collected

#	Start Date	Task	Comments	Timing	Estimated Out of pocket Cost	Who to do	Who pays
19	20-Jul-09	Open Fees accounts, arrange for credit card account and B-Pay	One account for each scheme, plus a credit card account	2 days		Primary (Olsen, Anderson)	Primary from fees when collected
20	20-Jul-09	Obtain and review data from administrators		3 days	internal	Primary (Nienaber, Olsen, Anderson)	Primary from fees when collected
21	26-Jul-09	Contract with Boundary Bend or other subcontractors for work on the ground until end of October, conditional upon fees being received		5 days		Primary (Catelli, Barclay)	Primary from fees when collected
22	1-Aug-09	ATO to amend product rulings or to approve changes					ATO
23	1-Aug-09	Lodge Changes to Constitution and change other agreements as required, serve notices as required			\$1,500 (check)	Primary (Catelli)	Primary from fees when collected
24	1-Aug-09	If legal issues not resolved, preparation of fresh proceedings		14 days	\$10,000	Primary (RGS) and Clarendon	Primary from fees, payable when collected
25	1-Aug-09	Render invoices for work to be done to end of October plus viability work plus admin costs	Query as to whether these can be rendered by email. Invoices will be payable on receipt.	5 days	internal	Primary (Nienaber, Olsen, Boyd, McCarroll, Anderson)	Primary from fees, payable when collected
26	15-Aug-09	Fees start to come in and are banked, daily reconciliations	Grower group to urge Growers to pay their fees	6 weeks		Primary (Nienaber, Olsen, Boyd, McCarroll, Anderson)	Primary from admin fees
27	15-Aug-09	Prepare notice to TSL of claims by Growers to ensure insurance policies are invoked	To preserve any right to claim from insurers on behalf of Growers	21 days	\$5,000	Primary (RGS) and Clarendon	Primary from admin fees
28	15-Aug-09	Commence assessment of viability, site visit, prepare long term plan	Everything is to be considered including structure, fees, number of schemes (if MIS kept) etc	4 weeks	\$100,000	Primary (Sammon, Treadgold Fatiello) with consultants	Primary from fees
29	15-Aug-09	Commence negotiations with the banks or administrators in relation to legal issues and purchase of land		4 weeks		Primary (RGS, Treadgold, Sammon) with Grower reps	Primary from fees / admin fees

#	Start Date	Task	Comments	Timing	Estimated Out of pocket Cost	Who to do	Who pays
30	15-Aug-09	Commence negotiations with potential providers of capital		4 weeks			Primary from fees
31	15-Sep-09	Prepare notices of meeting	Meetings required under section 601FQ(1). Possible resolutions on fee changes, constitutional changes and litigation re Grower claims.	2 weeks	internal	Primary (Boyd and Catelli)	Primary from admin fees
32	15-Sep-09	Complete negotiations for long term arrangements				Primary (RGS, Sammon and Treadgold) with grower reps	Primary from fees
33	15-Sep-09	Complete long term plan					Primary from fees
34	15-Sep-09	Prepare PDS for purchase of land by Growers (if required)	Depending on response from bank and administrators.	2 weeks		Primary (RGS, Catelli, Barclay)	Primary from admin fees
35	15-Sep-09	Prepare contract with long term contractors	Conditional upon Growers voting to continue schemes			Primary (RGS, Catelli, Barclay)	Primary from fees
36	15-Sep-09	Convene meetings of Growers coupled with PDS	Meetings to be called for Wednesday 30 September, in Melbourne.	2 days	\$5,000	Primary (Boyd)	Primary from admin fees
37	15-Oct-09	Prepare invoices for second quarter		10 days	internal	Primary (Nienaber, Olsen, Boyd, McCarroll, Anderson)	Primary from admin fees
38	15-Oct-09	Meetings of Growers	Meeting adjourned if insufficient numbers to a date after listing			Primary (directors, Faiello, Sammon)	Primary from fees
39	16-Oct-09	If insufficient numbers, apply to list scheme on Bendigo Stock Exchange		1 month		Primary (Boyd)	Primary from admin fees
40	16-Oct-09	Render invoices for second quarter	Only to be rendered if Growers vote to approve RE and continuation of schemes. If vote is not sufficient, application to ASIC for relief may be required to soften the extraordinary resolution requirement.	2 days		Primary (Nienaber, Olsen, Boyd, McCarroll, Anderson)	Primary from admin fees

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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LIST E

No of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS5" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

Before me: 

Exhibit "RGS-5"
Letter from Primary Securities Ltd to
the Administrators of Timbercorp Securities Ltd dated 28 June 2009

2655



PRIMARY SECURITIES LTD

Our Ref: PrimGrp/Timbercorp

28 June 2009

FAXED
28.6.09
5.50 p.m.

The Administrators
Timbercorp Limited
Korda Mentha Pty Ltd

ATTENTION ANDREW MALARKEY

BY FAX: (03) 8623 3399

Dear Sirs

Timbercorp Schemes

The current proceedings in the Supreme Court of Victoria to terminate schemes are a most unfortunate and undesirable bi-product of the administration. Relying on voluntary contributions, the Grower group must now spend significant sums of money preparing a case in opposition if they wish to see their schemes survive.

You must be aware that in the agricultural managed investment industry, termination of schemes at the stage prior to them becoming profitable is always questionable because the land owner picks up an almost fully developed orchard, plantation or grove sometimes without having spent anything. The land without the encumbrance of the scheme becomes a more saleable asset and is therefore more valuable. Banks are more willing to lend for land that is not encumbered by a managed investment scheme. It is difficult for any responsible entity to terminate an agricultural scheme without suggestions of conflict, particularly where the responsible entity is in some way linked with the land owner.

The proposal to terminate the olive schemes appears to be based on three assumptions:

- the Growers will not pay their fees;
- there is no appropriate replacement responsible entity;
- the schemes are not viable

These assumptions are incorrect:

- In as much as the Growers are clearly determined to put in place a new responsible entity, we can only assume that the Growers will back up that determination with payment of their fees when required to do so by a proper functioning and solvent replacement responsible entity.

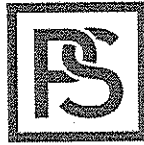
ABN 96 089 812 635

AFSL No. 224107

13 Nairn Street [PO Box 732] Fremantle WA 6959

Tel: 08 9430 5262 Fax: 08 9430 5552 Email: admin@primarysecurities.com.au

Website: www.primarysecurities.com.au



PRIMARY SECURITIES LTD

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- There is at least one replacement responsible entity ready to be appointed as responsible entity of the olive schemes. After extensive due diligence, the board of Primary Securities Ltd has formally and unconditionally consented to be temporary responsible entity of the Timbercorp olive schemes. A copy of our consent is attached. ASIC has also offered to vary our Australian Financial Services Licence (AFSL) to add the Timbercorp olive schemes.
- Preliminary work by our own analyst indicates that most if not all of the schemes could well be viable, particularly if there are changes to some of the fees. This is only preliminary work and the conclusions may or may not be correct. The matter needs to be examined more thoroughly, proper independent reports prepared and time allowed for negotiations with relevant third parties if fees are to change.

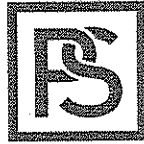
Assessment of viability is a complex matter and should be left as a task for a fully operational responsible entity free of conflict and armed with all of its expertise, resources and consultants as well as fees from the Growers, and time to accomplish the task.

As officers of the current responsible entity, the administrators should consider whether or not the current responsible entity is fit to continue acting as responsible entity.

The administrators might take into account the following:

- The responsible entity is and will remain insolvent.
- The responsible entity no longer complies with its AFSL conditions because it does not meet the financial requirements.
- The responsible entity is under administration which ordinarily would be a ground for removal of its AFSL under section 915B(3).
- The responsible entity no longer operates under the management of approved key persons but under the management of the administrators.
- The administrators have recommended that the Timbercorp companies (which include the responsible entity) be wound up.
- The responsible entity is not in a position to invoice or collect fees from Growers (because the Growers will never pay fees to the administrators or a liquidator).
- The responsible entity is no longer functioning and will never again be able to carry out its role of operating the schemes or looking after the Groves.
- The Groves of the Growers are currently not being managed or cared for.
- This situation will not change.
- In the circumstances, if the schemes are viable, the Growers interests are at risk.

The highest duty of the administrators is to look after the interests of Growers in the schemes (section 601FD(2)). You do not need us to remind you that, as officers of the responsible



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entity, you need to take some care in carrying out your statutory obligations such as those under section 601FC(1)(b).

Given the inability of the current responsible entity to function, and the likelihood of this continuing, what would a reasonable person do if they were in the position the administrators are currently in?

We suggest that a reasonable person would have no hesitation in recognising that the current responsible entity must be replaced, and do whatever is necessary to enable a new responsible entity to be appointed, particularly if one is available. The most immediate way of doing this is to facilitate the appointment of a temporary responsible entity.

This does need to occur as quickly as possible as the current proceedings in the Supreme Court of Victoria need to be discontinued, and arrangements need to be put in place so that management fees can be rendered and collected and the Groves looked after, all of which will take some time.

One of the first tasks of a temporary responsible entity will be to consider the issue of viability properly and fully.

We call on the administrators to now invite ASIC to apply to the Court for the appointment of a temporary responsible entity and to indicate that they would consent to such an application.

Yours faithfully

PRIMARY SECURITIES LTD



Rob Garton Smith
Managing Director

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL & EQUITY DIVISION
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LIST E

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MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

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Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

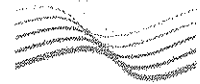
Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS6" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

Before me:.....


Exhibit "RGS-6"
Letter from Korda Mentha to Primary Securities Ltd dated 2 July 2009

2656



KordaMentha

1 July 2009

Mr Rob-Garton Smith
Managing Director
Primary Securities Limited
13 Nairn Street
FREMANTLE WA 6959

Dear Rob

Timbercorp Schemes (the "Schemes")

I refer to your letter to us dated 28 June 2009 in relation to the Schemes.

As you may be aware:

- a. on 29 June 2009 the creditors of all of the companies in the Timbercorp Group ("**Timbercorp Companies**") voted to place those companies (including Timbercorp Securities Limited (In Liquidation) ("**TSL**"));
- b. on 25 June 2009 the members of the following schemes (of which TSL was previously responsible entity) voted to remove TSL and appoint Huntley Management Limited ("**Huntley**") as the responsible entity:
 - i 2007 Timbercorp Avocado & Fruit Project ARSN 123 932 510;
 - ii 2006 Timbercorp Mango Project ARSN 119 526 377; and
 - iii 2005 Timbercorp Mango Project ARSN 113 969 216

("Mango and Avocado & Fruit Schemes").

We acknowledge that inherent conflicts existed in respect of our administration of the Timbercorp Companies, and continue today in the liquidation of these companies. Administrators and liquidators often face conflicts of interest during the course of administration/winding-up, and we have processes in place to assist us in dealing with these. It is partly for this reason that we have sought the guidance of the Court in relation to the proposed winding up of the Olive and Almond schemes.

The fundamental reason for our application to have the Olive and Almond schemes wound up on the 'just and equitable ground' under section 601ND(1) of the *Corporations Act* is that TSL is hopelessly insolvent and incapable of performing its obligations to growers under the Schemes and its other creditors. The short-term or long-term viability of the Schemes themselves is a secondary matter – the more pressing issue is that TSL does not currently have the funds to perform its obligations under Scheme documents and to meet the significant operational shortfalls necessary ensure the proper operation of the projects.

Corporate Recovery Services
Turnaround & Restructuring Services
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info@kordamentha.com
www.kordamentha.com

Liability limited by a scheme
approved under Professional
Standards Legislation

Melbourne
KordaMentha Pty Ltd
ACN 100 169 391
Level 24, 333 Collins Street
Melbourne VIC 3000
GPO Box 2985
Melbourne VIC 3001
Office: 03 8623 3333
Fax: 03 8623 3399

KordaMentha Offices
Adelaide Perth
Brisbane Singapore
Gold Coast Sydney
Melbourne Townsville
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Chicago Munich
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London Shanghai
Los Angeles Tokyo
Milan

We are well aware that in our previous role as administrators and our current role as liquidators of TSL, we have a duty to act in the best interests of members of the Schemes (the "Growers"). In discharging this duty, we have been engaged in a process of assessing the ongoing economic viability of the Schemes in the absence of the support of the Timbercorp Companies (which are insolvent). We have also been assessing potential alternative strategies for the Schemes, including commercial transactions to continue the horticultural operations in relation to the Schemes, their recapitalisation by Growers or a new responsible entity, a change of responsible entity of the Schemes, or the winding up of the Schemes. As you are aware, in the absence of a viable alternative, we have applied to the Court to have the Olive and Almond Schemes wound up.

As we have made clear publicly (and privately to other potential replacement responsible entities), we would be happy to support the replacement of TSL as responsible entity of the Schemes with an alternative entity provided that we are satisfied that it is in the best interests of members of those Schemes to do so.

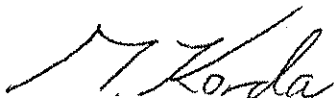
We would appreciate the opportunity to discuss your proposal that Primary Securities Limited be appointed as responsible entity of the Schemes, and will contact you to discuss a meeting or conference call in this regard. If your proposal is that TSL retire under section 601FL(1) of the *Corporations Act* and convene meetings of Growers under the Olive Schemes to consider the appointment of Primary Securities Limited as responsible entity of these schemes, we will obviously need to be satisfied that it is in the best interests of Growers to do so (rather than have the Schemes wound up).

As an alternative to the proposal above, it is open for you (with the support of at least 5% of the Growers of a particular Scheme) to convene a meeting of members to consider the removal of TSL as responsible entity of the Scheme and the appointment of Primary Securities Limited. This is the process Huntley undertook when it replaced TSL as responsible entity of the Mango and Avocado & Fruit Schemes. If you wish, we can make the registers of members of each of the Schemes available to you for the purpose of canvassing Grower support for such action and/or put you in contact with Grower representatives on the Committee of Inspection for TSL.

There are a number of other documents relevant to each of the Schemes (such as head and sub-leases and management agreements) which TSL has entered into in its personal capacity and which would need to be dealt with to give commercial effect to any replacement of TSL as responsible entity of the Schemes. In our opinion section 601FT of the *Corporations Act* does not affect a statutory novation of these agreements (as they are expressly not Scheme property). We are working through these issues with Huntley's lawyers in relation to the Mango and Avocado/Fruit Schemes, and would be happy to discuss our thoughts when we speak.

We look forward to working with you in relation to your proposal for the Olive Schemes.

Yours sincerely



MARK KORDA
Administrator

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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8 July 2009
Growers

Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS7" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

Before me:.....


Exhibit "RGS-7"
CV of Cosimo Faiello

RESUME**COSIMO FAIELLO****PERSONAL PARTICULARS**

Date of Birth	23 September 1963
Marital Status	Single
Nationality	Australian and Italian
Address	Unit 44/143 Onslow Rd Shenton Park, WA 6008
Telephone/Facsimile	(08) 9382 2119
Mobile	0417 984 470
Languages	English, Italian and Spanish

EDUCATIONAL QUALIFICATIONS

2007	Master of Marketing - UWA Business School - The University of Western Australia (WA)
2005	Master of Business Administration (MBA advanced) -The Graduate School of Management - The University of Western Australia (WA)
1999	Scanning Electronic Microscopy (Environmental) The University of Western Australia (WA)
1998	Scanning Electronic Microscopy (General), The University of Western Australia (WA)
1997	Advanced Certificate of Vocational English (Academic), Edith Cowan University (WA)
1997	Advanced Certificate of Vocational English (General), Edith Cowan University (WA)
1994	Postgraduate Diploma of Agronomy, University of Catania, Italy
1993	Doctorate in Horticultural Science (coursework) – Specializing in Mediterranean Crops, University of Catania, Italy
1992	Bachelor of Agriculture & Horticulture, University of Catania, Italy
1982	Diploma in Land Surveying, Technical Institute for Surveyors, Siderno, Italy

EMPLOYMENT HISTORY

- Current *Assistant Professor: UWA, School of Electrical, Electronic and Computer Engineering*
- 2nd Semester 2008 *UWA, School of Electrical, Electronic and Computer Engineering: Engineering Management and Industrial Practice, Unit Coordinator and Lecturer;*
- 2nd Semester 2008 *UWA Business School – Sustainable and Ethical Marketing, Associate Lecturer;*
- 1st Semester 2008 *UWA Business School: Marketing Management, Associate Lecturer;*
- 2nd Semester 2007 *UWA Business School – Sustainable and Ethical Marketing, Associate Lecturer;*
- 2nd Semester 2007 *Curtin University (Bentley and Northam – WA): International Marketing Management, Unit Coordinator and Lecturer;*
- 1st Semester 2007 *UWA Business School: Tutors' Coordinator for the Marketing Management Unit*
- 1st Semester 2007 *UWA Business School: Marketing Management, Associate Lecturer*

1996 – Current *Agribusiness and Management Consultant*

Services include providing agronomic, horticultural and economic advice relating to conventional, sustainable and organic farming. Areas of advice and implementation include: Agronomic, horticultural, economic, and environmental feasibility analysis, site selection, soil preparation, varietal selection, planting, irrigation, fertilization and pest, disease and weed control, pruning, propagation, agronomic and horticultural risk assessment and risk mitigation. Although general knowledge and experience relates to a wide variety of species, expert and specialized skills involve Mediterranean crops such as olives, citrus and grapes grown both conventionally and organically.

Consulting experiences include:

- *Great Southern Plantations LTD, Perth (WA);*
- *Curtin University of Technology (Muresk Institute of Agriculture), (WA);*
- *Benedictine Community of New Norcia Inc., New Norcia, (WA)*
- *Cowaramup Creek Farm, (Organic Certified – BFA) Cowaramup, (WA);*
- *Olea Australis Limited, Dandaragan (WA);*
- *Koorian Olive Project, Gingin (WA);*
- *Frankland Olive Project, Frankland (WA);*
- *The Naked Turtle Olive Farm, Gingin (WA);*
- *Western Power Limited, Perth (WA);*
- *Desert Gold Farm, Meekatharra (WA);*
- *Wandering Hills Olive Nursery Pty Ltd, Wandering (WA);*

Additional consultancy services have also been performed on properties located in various Western Australian regions: Albany, Beverley, Brookton, Frankland River, Geraldton, Gingin, Green Hills, Harvey, Jarradale, Lancelin, Margaret River, Mount Barker, North Dandalup, Paynes Find and York in Western Australia, as well as in South Australia and Victoria.

- 2000 – 2003 *Mediterranean Olive Farm (Gingin WA), Proprietor*
- Responsible for the agronomic, horticultural, and economic management of an olive nursery, and an organic olive project on a 200 acre farm located in Gingin, Western Australia. Olive varietal germoplasm was also selected for propagation, cultivation and research purposes.
- 1998 - 1999 *University of Western Australia (Plant Sciences), Research Assistant*
- Conducted research studies with Dr Stan Kailis on various agronomic and horticultural practices relating to olives: Soil fertility, irrigation, plant growth and development, variety adaptability, fertilization, treatment of pests and diseases, variety grafting, pruning and harvesting. Numerous olive oil tasting seminars were also conducted.
- 1994 – 1996 *Parliamentary Consultant (Rome – Italy)*
- Provided advice to the Italian Chamber of Deputies and the Italian Senate on matters relating to agriculture, horticulture, the environment and European Union Policy. Drafted legislation, evaluated the potential repercussions of proposed legislation, and liaised with stakeholders during the amendment process. A selected list of legislation and draft legislation included:
- New legislation on national and international commercialization of olive oil;
 - New legislation drafted governing wine, extra-virgin olive oil and agro-industrial production;
 - European Economic Community Regulation n. 2092/91 – the key regulation regarding biological production in Europe;
 - European Economic Community Regulation n. 2078/92 - relating to the methods of agricultural production compatible with environmental protection needs and the protection of open space;
 - Conversion of Ministerial Order n. 663 into law introducing urgent measures to support the fishing industry affected by environmental problems;
 - Conversion of Ministerial Order n. 727 into a law introducing planned intervention in agricultural and adjustment of milk production to European Community quotas;
 - Conversion of Ministerial Order n. 548 into a law establishing an agency to intervene in the agricultural market (EIMA);
 - Implementation of European Economic Community (EEC) Directive n. 91/414 on the marketing of plant health products;
 - Amendment of Law n. 394 regarding the protection of the environment and management of protected areas;
 - New legislation on the production, marketing, sale and use of phyto-pharmaceuticals and related products used in agriculture;
 - New legislation drafted for the protection of trees and bushes, disposal of liquids in agriculture, governing water quality, restructuring National Forestry Service, facilitating the development and application of biological agriculture.
- 1993 – 1996 *Independent Agricultural and Horticultural Consultant (Italy)*
- Services include providing agronomic and horticultural advice relating to olives, citrus, fruit and vegetable production, grown both conventionally and organically.
- 1993 – 1994 *Research Assistant to Dr Leonardi (University of Catania – Italy)*
- Assisted with research into “Improvement of Land for Fruit Farming” and involved in projects aimed at developing olive groves, citrus, grape, and peach

orchards both conventional and organic. Duties included conducting market research and feasibility study to determine sustainable agricultural and horticultural practices, in both the theoretical and implementation levels of projects. Also, carried out computerized data analysis on experimental mass plantings for cover cropping, with the trials carried out at the University of Catania and involving plant species such as Clover spp, Lupine, Sorghum and Miscanthus.

1982 – Current *Family Farm Proprietor (Italy)*

Responsible for the economic, agronomic, and horticultural planning of a family olive, citrus, and grape farm based on world class sustainable practices.

APPOINTMENTS

- 1998 – Current *Olive-Tech International Pty Ltd (Consulting Company) - Director*
- 2007 - 2008 *Graduate Management Association (GMA, UWA Business School) – Graduate Representative*
- 2006, 2007, 2008 *Mediterranean Olives Estate Limited (Victoria) – Appointed as the Independent Olive Expert in relation to a PDS;*
- 2001 - 2002 *Co-supervisor degree thesis Mr Amerigo Della Pina – University of Florence (Italy);*
- 1999 - 2001 *Olea Australis Limited - Technical Director;*
- 1995 *Professional Consultant in the Courts of Locri, Italy - Appointed as an “Expert Agronomist” for Civil and Criminal matters;*
- 1994 *State Commercial and Technical Institute, ITG “Kennedy” Institute, Rome Italy - Appointed as External Evaluating Member in the XXXII Commission for Surveyors;*
- 1994 *Ministry of Education, Technical Institute for Surveyors, Rome, Italy*
Appointed as Acting Member in the XXXII Commission for the Final Technical Examination for Surveyors;
- 1994 *Consultant in the Provincial Register of Qualified Agronomists and Forestry Engineers for the Region of Calabria, Italy - This endorsement allowed the Province to call on my services in relation to Government projects;*
- 1991 – 1992 *Military Service - Italy.*

SUMMARY OF SEMINARS, WORKSHOPS, PAPERS AND MANUALS

- 2007 *Organic Olive and Fruit Production Manual – work in progress*
Written with Professor Andrea Pardini
University of Florence, Italy
- 2006, 2005 *Great Southern Plantations LTD – Olive pruning workshops*
- 2003 *“Cover Cropping Guidelines for Organic Olive Production”*
Paper written with Professor Andrea Pardini
University of Florence, Italy
- 2002 *“Wine-Oil”*
Paper written with Professor Andrea Pardini
University of Florence, Italy
- 2002 *Cover crop species and their management in vineyards and olive groves*
Paper written with Professor Andrea Pardini
University of Florence, Italy
- 2002, 2001, 2000, 1999 *Swan Avon Olive Association, Workshops*
“Long-term Soil Fertility Management and Weed Control for Sustainable Olive Production”; “Fertilising and Olive Production”; “Olive Pest and Disease Prevention and Control”; “Olive Harvesting”, “Olive Pruning and Plant Training”.
- 2001 *Acotanc – 2001, 9th Australasian Conference on Tree and Nut Crops*
“Olive Oil – The Global Marketing Industry”
“Sustainable Olive Trees Propagation”
- 2001, 2000, 1999 *Italian Chamber of Commerce and Industry in Australia - Seminars*
“Organic Olive Production – The Way of the Future”
“Olive Growing and Differences within Varieties”
“Olive Growing and Sustainable Pest and Disease Control”
- 2001, 2000, 1999, 1998 *Curtin University of Technology, Muresk Institute of Agriculture - Workshops*
“Growing Olives Organically”
“Pruning and Training Systems”
“Olive Cultivation”
“Olives, Citrus and Pistachio – Effective Horticultural and Agronomic Practices”
- 2000 *Olive Propagation Manual*
Written with Professor Giorgio Bartolini
(National Centre of Research, Florence, Italy)
- 1999 *Olive Planting Manual*
- 1999, 1998 *University of Western Australia*
“Pruning Old Olive Trees” Workshop at New Norcia, WA
- 1999 *Australian Olive Association Ltd, 1999 National Conference*
“Principles and Trends in the Mechanization of Olive Production”

PROFESSIONAL MEMBERSHIPS

Australian Association of Agricultural Consultants (AAAC) – Independent member
Protection of the Earth & Wildlife
The Order of Agronomists (Italy)

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

r8.05

LIST E

No of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1

First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS8" now produced and shown to ROBERT GARTON SMITH at the time of affirming his affidavit on 8 July 2009.

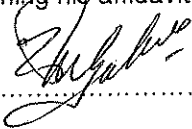
Before me:.....


Exhibit "RGS-8"
Letter from Primary Securities Ltd to Korda Mentha re data transfer
dated 7 July 2009

2658



PRIMARY SECURITIES LTD

Our Ref: PrimGrp/Timbercorp/09010

7 July 2009

FAXED
2.2.09
11.15 am

The Administrators
Timbercorp Limited
Korda Mentha Pty Ltd

ATTENTION ANDREW MALARKEY

BY FAX: (03) 8623 3399

Dear Sirs

2001 Timbercorp Olive Project ARSN 094 382 082
2002 Timbercorp Olive Project ARSN 098 233 455
2003 Timbercorp Olive Project ARSN 104 648 473
2004 Timbercorp Olive Project ARSN 108 744 378
2006 Timbercorp Olive Project ARSN 119 182 179
2007 Timbercorp Olive Project ARSN 123 155 715
2008 Timbercorp Olive Project ARSN 129 307 722

We refer to our last telephone conversation in which you informed us that you would give us every co-operation in the event that PSL was appointed temporary responsible entity of the above schemes, a gesture which we appreciate.

The most immediate task will be to render invoices. In order to prepare for this, if we were to be appointed, we wish to know in what electronic form or forms are you able to provide the registers of members and the accounts of the seven schemes if PSL becomes the new responsible entity.

What software do you use for the register and accounting? We do have our own software for agricultural schemes, but if you have special software with all the data, one option might be to simply use your existing programs. Do you see any difficulties with this possibility?

Is it possible for our IT and financial personnel to speak to an officer or former officer of the company in relation to this so that we may work out the most appropriate method of data transfer.

Yours faithfully
PRIMARY SECURITIES LTD


Rob Garton Smith
Managing Director

ABN 96 089 812 635

AFSL No. 224107

PO Box 732 FREMANTLE WA 6959

Tel: 08 9430 5262 Fax: 08 9430 5552 Email: admin@primarysecurities.com.au

Website: www.primarysecurities.com.au

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

r8.05

LIST E

No of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1

First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

8 July 2009
Growers

Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MAB:0900205

This is the exhibit marked "RGS9" now produced and shown to ROBERT GARTON SMITH at
the time of affirming his affidavit on 8 July 2009.

Before me:.....


Exhibit "RGS-9"
Letter from Primary Securities Ltd to Korda Mentha re legal questions
dated 7 July 2009

2659



PRIMARY SECURITIES LTD

Our Ref: PrimGrp/Timbercorp/09010

7 July 2009

FAXED
2.2.09
11.13am.

**The Administrators
Timbercorp Limited
Korda Mentha Pty Ltd**

ATTENTION ANDREW MALARKEY

BY FAX: (03) 8623 3399

Dear Sirs

**2001 Timbercorp Olive Project ARSN 094 382 082
2002 Timbercorp Olive Project ARSN 098 233 455
2003 Timbercorp Olive Project ARSN 104 648 473
2004 Timbercorp Olive Project ARSN 108 744 378
2006 Timbercorp Olive Project ARSN 119 182 179
2007 Timbercorp Olive Project ARSN 123 155 715
2008 Timbercorp Olive Project ARSN 129 307 722**

An application is expected to be made by growers for the appointment of a temporary responsible entity of the above schemes.

I note that in the letter you sent to us on 1 July 2009, you suggest that section 601FT does not effect a statutory novation of some of the agreements and that they are expressly not scheme property. You have also indicated that you wish to discuss these issues with me in a phone conversation.

We assume that you are referring to the fact that the head-leases for some of the schemes are to Timbercorp Securities Ltd "in its personal capacity". Similar words are used in the management agreements entered into with Growers.

We do not believe that the words "in its personal capacity" have any meaning in the context of a managed investment scheme when the responsible entity is obliged to operate the scheme (section 601FB(1)) and does so personally, otherwise the whole scheme would be operated contrary to that provision, which could not be intended. In other words, Timbercorp Securities Ltd does indeed hold the head-leases in its personal capacity and also as responsible entity and does indeed contract with Growers in its personal capacity and also as responsible entity.

This is the only possible interpretation if one has regard to the Australian Financial Services Licence condition in relation to the Protection of Underlying Land in Primary Production Schemes. That condition requires that the responsible entity holds an interest in the land "as trustee for the members" or "beneficially in the course of and in accordance with its duties as responsible entity". This condition alone is sufficient acknowledgement that Timbercorp

ABN 96 089 812 635

AFSL No. 224107

PO Box 732 FREMANTLE WA 6959

Tel: 08 9430 5262 Fax: 08 9430 5552 Email: admin@primarysecurities.com.au

Website: www.primarysecurities.com.au



PRIMARY SECURITIES LTD

2

Securities Ltd holds the head-leases in one of these manners and that we will take the benefit of the head-leases on becoming responsible entity, and for consistency has also entered into the management agreements with the same intention.

Alternatively, Timbercorp Securities Ltd holds the head-leases as a constructive trustee for the responsible entity, otherwise there would be a fraud on the Growers as upon the new responsible entity taking over from Timbercorp Securities Ltd, the new responsible entity and the Growers would have no rights.

We assume from your letter that your position is the same as ours. Please confirm that the administrators will acknowledge that a new responsible entity is indeed entitled to take over these agreements and that the administrators will give reasonable assistance to facilitate the change of responsible entity in relation to these agreements.

There is a drafting question, namely, whether or not section 601FT comes into operation. For the purposes of clarity, we would want some document which confirms the statutory operation of section 601FT.

Yours faithfully

PRIMARY SECURITIES LTD



Rob Garton Smith
Managing Director