

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N.
066 601 250) and WESTPAC BANKING CORPORATION (A.C.N. 007 457 141)**

Plaintiff

and

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522) & ORS (according to the attached Schedule)**

Defendants


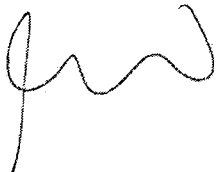
AFFIDAVIT OF ROSS WHYTE McCLYMONT

Date sworn: 15 December 2009
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
MELBOURNE VIC 3000

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Mr R McClymont
Email: ross.mcclymont@blakedawson.com

I, **Ross Whyte McClymont** of 181 William Street, Melbourne, Lawyer, make oath and say that:

1. I am a Partner of Blake Dawson. I have the care and conduct of this proceeding on behalf of the Plaintiff.
2. I make this affidavit from my own knowledge save where otherwise stated. Where I depose to matters of information and belief, I believe those matters to be true.
3. I make this affidavit in support of the Plaintiff's summons dated 15 December 2009, seeking *inter alia*, orders that:



- (a) Graham Goldenberg be appointed as the representative of the Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935);
- (b) Christopher Mark Littley be appointed as the representative of the Growers in the 2005 Timbercorp Almond Project (ARSN 112 935 092);
- (c) Constantine Moshopoulos be appointed as the representative of the Growers in the 2006 Timbercorp Almond Project (ARSN 118 387 974);
- (d) David Butterfield be appointed as the representative of the Growers in the 2007 Timbercorp Almond Project (ARSN 122 511 040);
- (e) David Butterfield be appointed as the representative of the Growers in the unregistered managed investment scheme known as the 2002 Timbercorp Almond Project (Private Offer No 1);
- (f) the persons appointed as representatives of the Growers, be joined as the fifth, sixth, seventh and eighth defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic);
- (g) the Plaintiff is granted leave to file and serve an amended originating motion on the defendants on or before 4pm 23 December 2009:
 - (i) incorporating a declaration as to what, if any, right the Growers represented by the fifth, sixth, seventh and eighth defendants have to the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the Orders; and
 - (ii) amending paragraph 5 of the Originating Motion to read "A declaration as to how the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the Orders ought to be distributed between the plaintiff and the first, fifth, sixth, seventh and eighth defendants."
- (h) the Plaintiff be granted leave to proceed against Almond Land Pty Ltd A.C.N. 091 460 992 (in liquidation) pursuant to s.471B of the Corporations Act 2001 (Cth); and

- (i) directions for the conduct of the proceeding.

Background to the proceeding

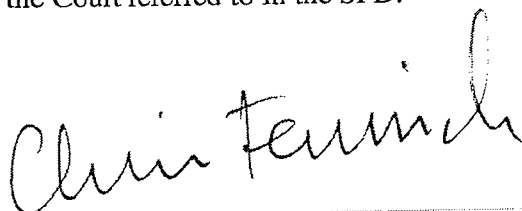
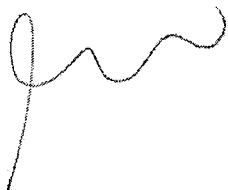
4. Timbercorp Securities Limited (in liquidation) (**TSL**) is the responsible entity of four almond schemes the subject of this proceeding. Those almond schemes are registered managed investment schemes under Part 5C of the *Corporations Act 2001* (Cth) ("the Act") and are more properly described as:
 - (a) 2002 Timbercorp Almond Project (ARSN 099 611 935);
 - (b) 2005 Timbercorp Almond Project (ARSN 112 935 092);
 - (c) 2006 Timbercorp Almond Project (ARSN 118 387 974); and
 - (d) 2007 Timbercorp Almond Project (ARSN 122 511 040).
5. In addition, there is one almond scheme, also the subject of this proceeding, which is managed by Almond Management Pty Ltd (in liquidation) (**AMPL**). That scheme is not registered because it was only offered to sophisticated or professional investors, and accordingly was not required to be registered under Part 5C of the Act. It is more properly described as the 2002 Timbercorp Almond Project (Private Offer No 1).
6. I refer to the registered and unregistered schemes together as the "**Almond Schemes**". In this affidavit I refer to each of the Almond Schemes individually by their year, for example, "2005 Almond Scheme". The only exception is the 2002 unregistered Almond Scheme which I refer to as the "**2002 Private Offer Scheme**".
7. The members of the Almond Schemes are referred to under the constituent documents of the Almond Schemes as "**Growers**", and I adopt that terminology here. The purpose of the Almond Schemes was the cultivation of almonds for commercial sale.
8. Each of the Almond Schemes was governed by a suite of documents including a constitution and licence and joint venture agreements or sub-leases. The land on which the Almond Schemes were operated was owned either by external landlords or a related entity of TSL (**Land**). The Land the subject of this proceeding was owned by Almond Land Pty Ltd (in liquidation) (**Almond Land**), which is a related entity of TSL

9. Timbercorp Limited (in liquidation) (TL), TSL, AMPL and Almond Land are all in liquidation. On 18 September 2009, those companies together with their liquidators (Mark Korda and Leanne Chesser), entered into a conditional sale and purchase deed (SPD) with Olam Orchards Australia Pty Limited (ACN 139 442 535) (**Olam Orchards**) guaranteed by Olam International Limited (**Olam**) to sell the "Almond Assets" as they are defined in the SPD. The SPD is a confidential exhibit pursuant to paragraph 10 of the orders made by the Honourable Justice Robson on 9 October 2009 in proceeding No.9408 of 2009 (exhibit RWM-3). Accordingly, the SPD is not exhibited to this affidavit. Instead, a confidential summary of the SPD insofar as it relates to this proceeding has been prepared. Now produced and shown to me marked "**Confidential Exhibit RWM-1**" is a true copy of the confidential summary.
10. Certain of the Almond Assets sold pursuant to the SPD were, until completion, subject to securities in favour of the Plaintiff and the first defendant, Australia and New Zealand Banking Group Limited (**ANZ**). The Plaintiff is security trustee for a syndicate of banks comprised of ANZ, Westpac Banking Corporation and BOS International Australia Limited. The amount of the debt that was secured and is now owed to the Plaintiff is approximately \$202 million. I am informed by Clint Hinchin of Allens Arthur Robinson, solicitors for ANZ, that the amount of the debt that was secured and is now owed to ANZ in respect of its bilateral facilities is approximately \$47 million.
11. Some of the land owned by Almond Land and sold pursuant to the SPD was the subject of registered land mortgage No: AG360673L dated 30 December 2008 in favour of the Plaintiff (**the Syndicate Land Mortgage**). Certain of the "Water Rights" sold pursuant to the SPD (**Water Rights**) were the subject of registered water mortgage No MOR001572 dated 30 December 2008 in favour of the Plaintiff (**the Syndicate Water Mortgage**).
12. I am informed by Clint Hinchin of Allens Arthur Robinson, solicitors for ANZ, that some of the land owned by Almond Land and sold pursuant to the SPD was the subject of the following securities in favour of ANZ:
 - (a) registered land mortgage No: AE683873S dated 26 September 2006;
 - (b) registered land mortgage No: AG 290139V dated 24 December 2008;

- (c) limited fixed and floating charge (ASIC No 1364261) registered 6 October 2006; and
 - (d) limited fixed and floating charge (ASIC No 1364257) registered 6 October 2006. (together, **ANZ Land Securities**)
13. I am informed by Clint Hinchin of Allens Arthur Robinson, solicitors for ANZ, that certain of the Water Rights sold pursuant to the SPD were also the subject of registered water mortgage No MOR 001491 dated 24 December 2008 in favour of the ANZ (**ANZ Water Mortgage**).
14. I have caused a table to be prepared, which summarises the Land sold by Almond Land pursuant to the SPD which was secured by the Syndicate Mortgage and/or the ANZ Land Securities, the associated lot name and the Almond Scheme which was operated upon that land. As that table discloses material contained within the SPD, I ask that the Court treat the table as being confidential. Now produced and shown to me marked "**Confidential Exhibit RWM-2**" is a true copy of that table.
15. The Plaintiff had security over land used for each of the 2002 Private Offer Scheme and the 2002, 2005, 2006 and 2007 Almond Schemes. I am informed by Clint Hinchin of Allens Arthur Robinson, solicitors for ANZ, that ANZ's bilateral securities related to land upon which the 2005 and 2006 Almond Schemes operated. Certain of the securities held over the assets of Almond Land are subject to a deed of priority between Almond Land, TSL, ANZ and the Plaintiff dated 30 August 2008 (as amended on 11 August 2009) which, in summary, provides first priority to the ANZ up to \$47 million plus interest and costs with respect to certain properties sold pursuant to the SPD.

The dispute the subject of this proceeding

16. The sale the subject of the SPD was conditional upon *inter alia*:
- (a) the release of the Plaintiff's and ANZ's securities in accordance with the SPD; and
 - (b) obtaining the directions from the Court referred to in the SPD.



17. In order to satisfy the condition precedent identified in paragraph 16(b) above, the liquidators of TL, TSL, AMPL and Almond Land issued an application on 5 October 2009 (proceeding no. 9408 of 2009). After a hearing on 6 October 2009, the Honourable Justice Robson made orders on 9 October 2009 which satisfied the condition precedent identified in paragraph 16(b) above. Now produced and shown to me marked "RWM-3" is a true copy of those orders.
18. Pursuant to paragraph 8 of the orders exhibited at RWM-3, the Plaintiff and ANZ released their securities in accordance with the SPD immediately prior to completion of the SPD on 2 December 2009.
19. On 2 December 2009, completion of the SPD occurred. I am informed by Silvana Larobina from Corrs Chambers Westgarth (who act for the vendors under the SPD) and believe that part of the net sale proceeds in the sum of \$99,747,174.60 have been transferred to the following account by Almond Land pursuant to paragraph 7 of the orders made by His Honour Justice Robson on 9 October 2009:

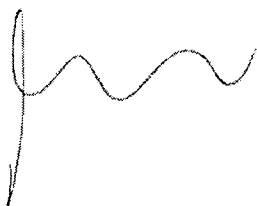
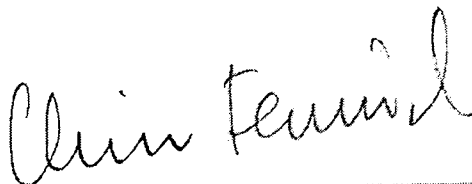
Account name: Mark Korda & Leanne Chesser as liquidators of Almond Land Pty Ltd (In Liquidation) – Almond Land Settlement.

BSB: 013128

Account number: 835632161

(Almond Land Account)

20. I am also informed by Ms Larobina and believe that a retention amount of \$25,600,000.00 is being held in the Michael Trumble Law Practice Account in accordance with the terms of the SPD. I refer to the retention amount and the money in the Almond Land account as the **Sale Proceeds**.
21. Accordingly, some of the Sale Proceeds are now being held on trust by Almond Land. As Almond Land is presently the legal owner of the Sale Proceeds, in its capacity as trustee, it may be necessary to obtain an order for leave to proceed against Almond Land pursuant to section 471B of the Act.

22. There is a marked difference of opinion between the Plaintiff and ANZ on the one hand, and the Growers on the other hand, as to:

- (a) the extent to which the Growers have an interest in the Almond Assets the subject of the SPD;
- (b) the extent to which the Growers have any interest in, or right to, the Sale Proceeds;
- (c) the value of any such rights or interests; and
- (d) therefore, the respective entitlements of the Plaintiff, ANZ and the Growers to the Sale Proceeds.

23. In his reasons for decision in relation to the liquidators' application in proceeding 9408 of 2009, delivered on 8 October 2009, the Honourable Justice Robson stated at paragraph [77] that:

"there is uncertainty at this stage as to precisely what property rights of the growers are to be transferred or surrendered as part of the consideration for the payment of the purchase price of approximately \$128 million. Until those rights are identified it is not possible according to law to fairly assess the value of the rights being surrendered on behalf of the growers."

24. Accordingly His Honour made paragraphs 7 to 9 of the orders made on 9 October 2009 and exhibited at RWM-3.

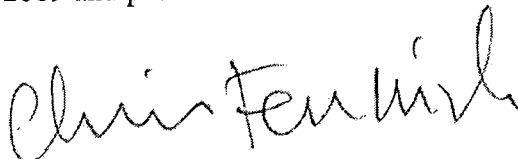
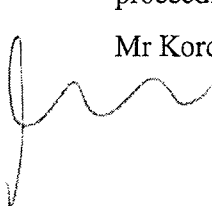
25. This proceeding has therefore been commenced to determine:

- (a) what, if any rights the Plaintiff, ANZ and the Growers have to share in the Sale Proceeds; and
- (b) how the Sale Proceeds ought to be distributed.

Representation of the Growers

26. In a series of affidavits sworn by Mark Korda in the Supreme Court of Victoria proceeding 7114 of 2009 on 25 June 2009 and published on the Korda Mentha website,

Mr Korda deposes to the fact that:

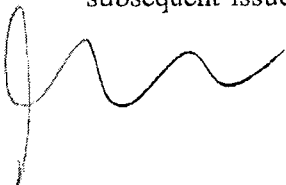


- (a) 602 Growers invested in the 2002 Almond Scheme;
 - (b) 668 Growers invested in the 2005 Almond Scheme;
 - (c) 1,715 Growers invested in the 2006 Almond Scheme; and
 - (d) 2,188 Growers invested in the 2007 Almond Scheme.
27. I am not aware of the number of investors in the 2002 Private Offer Scheme. Whilst it is to be expected that certain Growers invested in more than one Almond Scheme, it is apparent that there are potentially several thousand Growers who may have an interest in this proceeding.
28. The process of locating and serving each of the affected growers will therefore be expensive and time-consuming. For this reason, the Plaintiff seeks an order that representatives of the Growers be appointed, pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic).
29. By interlocutory process dated 12 October 2009, Mr David Butterfield has sought declarations in relation to, *inter alia*, the Growers' rights and the distribution of the Sale Proceeds. By interlocutory process dated 27 November 2009, the TGG Almond Committee Inc and Keree Ann Bezencon applied, *inter alia*, for:
- (a) a declaration as to the amount of the Sale Proceeds to which the Growers are entitled; and,
 - (b) an order that TGG Almond Committee Inc be appointed as representative of the Growers.
30. On 27 November 2009, both interlocutory processes were adjourned to 18 December 2009 by the Honourable Justice Davies. Mr Butterfield is represented by Clarendon Lawyers. Ms Bezencon and the TGG Almond Committee Inc are represented by Maurice Blackburn. On 8 December 2009, I wrote to Clarendon Lawyers and Maurice Blackburn in relation to the appointment of representative Growers and the conduct of the proceeding generally. Now produced and shown to me marked "RWM-4" is a true copy of my letter to Clarendon Lawyers and Maurice Blackburn dated 7 December 2009.

31. On 9 December 2009, I received a reply to my letter from Maurice Blackburn. Now produced and shown to me marked "RWM-5" is the letter from Maurice Blackburn dated 9 December 2009.
32. On 10 December 2009, I received a reply to my letter from Clarendon Lawyers. Now produced and shown to me marked "RWM-6" is the letter from Clarendon Lawyers dated 10 December 2009. I am informed by Chris Fenwick, a senior associate employed by Blake Dawson and believe that on 10 December 2009 he received an email from Katie Desmond of Clarendon Lawyers. Now produced and shown to me marked "RWM-7" is the email from Katie Desmond of Clarendon Lawyers to Chris Fenwick of Blake Dawson dated 10 December 2009.
33. On 11 December 2009, I wrote to Clarendon Lawyers and advised that in the absence of any alternative representative Growers' proposal being provided by Maurice Blackburn, the Plaintiff proposed to apply to the Court for orders that the Growers nominated by Clarendon Lawyers be appointed as the representative defendants. Now produced and shown to me marked "RWM-8" is a true copy of my letter to Clarendon Lawyers dated 11 December 2009.

The conduct of the proceeding

34. In addition to seeking an order for the appointment of representatives pursuant to rule 16.01(2), the Plaintiff seeks directions in relation to the future conduct of the proceeding. The issues raised in the proceeding require an analysis of:
- (a) What rights, if any, do each of the Plaintiff, ANZ and the Growers respectively have to the Sale Proceeds?
 - (b) In respect of any such rights, what valuation methodology should be adopted?
 - (c) How much, if any, of the Sale Proceeds is each of the Plaintiff, ANZ and the Growers entitled to received?
35. Given the nature of the proceeding and the issues raised, the Plaintiff considers that the parties ought to file contentions of fact and law in relation to each issue, possibly on a staged basis. Staging of the contentions would allow each party to address the subsequent issues, such as the appropriate valuation methodology, with the benefit of

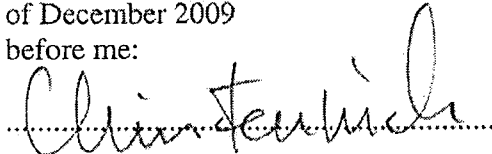


Chris Fenwick

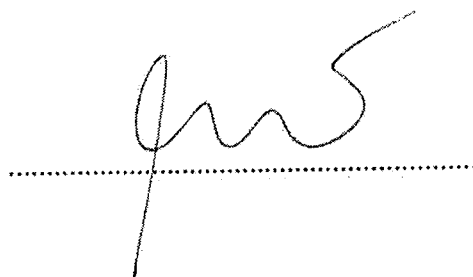
knowing how the other parties' contend their rights were created and what valuation methodology ought to be applied.

36. While it is not necessary at this stage to decide how the proceeding is best managed, I believe it is useful for the Court and the parties to consider methods by which the proceeding could progress to an early determination. One such method may be for the Court to determine the issue as to rights (34(a)) and valuation methodology (34(b)) before determining the quantum of distribution from the fund as between the Plaintiff, ANZ and the Growers. Such approach would narrow the scope for factual controversy in the first instance at least, and may, depending upon the determination of the first and or second issue, render it unnecessary to decide the quantification issues.
37. For the above reasons the Plaintiff seeks the orders referred in the summons dated 15 December 2009.

Sworn at Melbourne
in the State of Victoria this day
of December 2009
before me:



Name: **CHRIS MARSDEN FENWICK**
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

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SCHEDULE

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(A.C.N. 066 601 250) and WESTPAC BANKING CORPORATION (A.C.N.007 457 141)**
Plaintiff

and

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522)**
First Defendant

and

ALMOND LAND PTY LTD (IN LIQUIDATION) (A.C.N 091 460 392)
Second Defendant

and

**MARK ANTHONY KORDA
(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))**
Third Defendant

and

**LEANNE KYLIE CHESSER
(in her capacity as liquidator of Almond Land Pty Ltd (in liquidation))**
Fourth Defendant

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) AS TRUSTEE FOR AUSTRALIA
AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) AND BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) AND WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) & ORS
(ACCORDING TO THE SCHEDULE)**

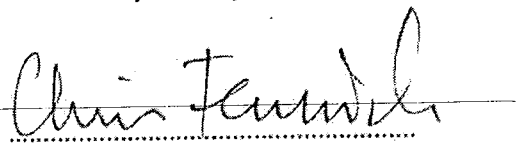
Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 15 December 2009
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-3" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 15 December 2009.



CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-3

Orders of Robson J made 9 October 2009

RWM-3

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

LIST E

No 9408 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)

ACN 092 311 469

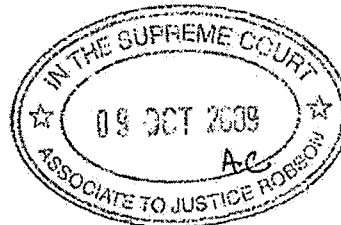
TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND ORS ACCORDING TO THE SCHEDULE

Plaintiffs

ORDERS

Date of document: 9 October 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000



Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1499489

(Leon Zwier lzwier@abl.com.au)
Bridgette Toy-Cronin btoycronin@abl.com.au)

JUDGE: Justice Robson

DATE MADE: 9 October 2009

ORIGINATING PROCESS: Originating Process of the Plaintiffs filed 5 October 2009 as amended by the Amended Originating Process filed on 6 October 2009

HOW OBTAINED: On hearing of the originating process on 6 October 2009.

ATTENDANCE: L Zwier and B Toy-Cronin for the Plaintiffs

Mr G Bigmore of Her Majesty's Counsel and Mr S Hopper of
Counsel for the Timbercorp Growers Group



Mr M Shand of Her Majesty's Counsel for Kerree Anne Bezencon

Mr I Waller of Senior Counsel and Mr S Hibble of Counsel for the Australian Securities and Investments Commission

Mr P Cawthorn of Senior Counsel and Mr R Craig of Counsel for Westpac Banking Corporation, BOS International Australia Limited and Australia and New Zealand Banking Group Limited

OTHER MATTERS:

Each of the Plaintiffs and Olam Orchards Australia Pty Limited and Olam International Limited have entered into a sale and purchase deed on 18 September 2009 (**SPD**) which forms Confidential Exhibit MAK-14 to the affidavit of Mark Anthony Korda sworn 5 October 2009 (**Affidavit**).

THE COURT DIRECTS THAT:

- ~~1~~ The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 of this order (**Registered Schemes**) to enter into and perform the SPD and extinguishing all of the rights of Growers (investors in the schemes set out in schedules 1 and 2 of this order) in respect of the assets the subject of the SPD (**Grower Rights**).
- 2 The Third and Fourth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in procuring the Second Plaintiff as manager of the unregistered managed investment scheme listed in Schedule 2 of this order to enter into and perform the SPD and extinguishing all of the Grower Rights.
- 3 The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPD.
- 4 The Third and Fourth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPD.



- 5 The Third and Fourth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in disclaiming the Project Management Agreements and the Licence and Joint Venture Agreements (as those respective terms are defined in the Affidavit) and to the extent necessary have leave to do so pursuant to section 568(1A) of the Corporations Act 2001 (Cth).

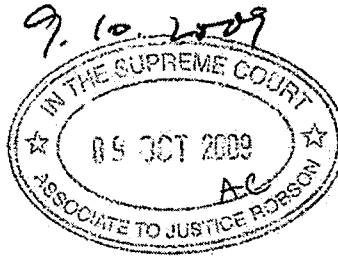
THE COURT ORDERS, DECLARES AND DIRECTS THAT:

- 6 The Third and Fourth Plaintiffs in their capacity as liquidators of the First, Second, Fifth and Sixth Plaintiffs may enter into and perform:
- (a) the SPD; and
 - (b) any document referred to, in connection with, or necessary to give effect to the SPD.
- 7 Upon completion of any sale under the SPD the net proceeds of sale (after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second, Fifth and Sixth Plaintiffs referable to the preservation and realisation of the assets the subject of the SPD, as approved by the committee of inspection of the Sixth Plaintiff and the Secured Creditors (as that term is defined in paragraph 13 of the Affidavit), or order of the Court) (**Net Proceeds**) be held by the Sixth Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act) pending the hearing and determination by the Court of a proceeding (**Rights Proceeding**) to determine which person or persons have any rights to all or any part of the Net Proceeds (**Claimants**), and to be held on trust for the Claimants until further order of the Court.
- 8 Insofar as each of the Secured Creditors have any rights to the assets the subject of the SPD, whether under their securities over those assets or otherwise, nothing in the release of those securities upon completion of the SPD will prejudice those rights for the purposes of their claim to all or any part of the Net Proceeds.
- 9 Insofar as the Growers have any rights to the assets the subject of the SPD nothing in orders 1 to 5 above, or any action taken thereunder by the Third and Fourth Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Proceeds.



- 10 Exhibits MAK-9, MAK-10, MAK-13, MAK-14, MAK-23 and MAK-25 to the Affidavit be kept confidential.
- 11 Costs be reserved.

DATE AUTHENTICATED:



SCHEDULE OF PARTIES

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

ALMOND MANAGEMENT PTY LTD (IN LIQUIDATION) (ACN 094 468 845)
IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 2
Second Plaintiff

MARK ANTHONY KORDA
Third Plaintiff

LEANNE KYLIE CHESSER
Fourth Plaintiff

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
Fifth Plaintiff

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 992)
Sixth Plaintiff



SCHEDULE 1

1. 2002 Timbercorp Almond Project (ARSN 099 611 935)
2. 2005 Timbercorp Almond Project (ARSN 112 935 092)
3. 2006 Timbercorp Almond Project (ARSN 118 387 974)
4. 2007 Timbercorp Almond Project (ARSN 122 511 040)



SCHEDULE 2

1. 2002 Timbercorp Almond Project (Private Offer) (Unregistered)



Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) AS TRUSTEE FOR AUSTRALIA
AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) AND BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) AND WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) & ORS
(ACCORDING TO THE SCHEDULE)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 15 December 2009
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-4" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 15 December 2009.

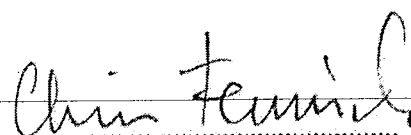

CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-4

**Letter Blake Dawson to Clarendon Lawyers and
Maurice Blackburn dated 7 December 2009**

RWM-4

BY EMAIL

Level 26
181 William Street
Melbourne VIC 3000
Australia

Blake Dawson

Mr B Murphy
Maurice Blackburn
Level 10, 456 Lonsdale Street
MELBOURNE VIC 3000

Mr M Fernon
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

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Australia

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7 December 2009

Our reference
RWM CHFE

Partner
Ross McClymont
T 61 3 9679 3025
ross.mcclymont@blakedawson.com

Contact
Chris Fenwick
T 61 3 9679 3148
chris.fenwick@blakedawson.com

Dear Mr Murphy and Mr Fernon

**Timbercorp Securities Limited (in liquidation)
Supreme Court of Victoria Proceeding No 9408 of 2009 (Proceeding)**

As you know, on 27 November 2009 Her Honour Justice Davies adjourned both of your clients' interlocutory processes to 18 December 2009.

The adjournment was on the basis of submissions made by Mr Moshinsky SC on behalf of Australia & New Zealand Banking Group Limited (ANZ) to the effect that:

1. the trust fund which is the subject of both interlocutory processes is yet to come into existence (settlement took place on 2 December 2009 and the trust will come into existence shortly);
2. it was proposed that our client and/ or ANZ would commence proceedings under order 16 of the *Supreme Court Rules* soon after the trust fund came into existence;
3. it would be necessary for the growers to identify appropriate representatives; and
4. ~~orders could then be made appointing those representatives and for directions in relation to the conduct of the proceeding.~~

Consistent with this approach, our client and ANZ have agreed that our client will issue an originating motion shortly with our client to be the plaintiff, ANZ the first defendant and Almond Land Pty Ltd (in liquidation) the second defendant. Certain growers in the relevant Almond Projects will also be joined as additional defendants upon the making of representative orders under order 16 (as discussed further below).

At present, it is contemplated that the originating motion will pose a series of questions (or declarations framed as questions) for determination by the Court. While the precise formulation of those questions is still to be finalised, they will address the following fundamental issues:

- (a) What rights, if any, do each of our client, ANZ and the growers have to

the trust fund?

- (b) In respect of any such rights, what valuation methodology should be adopted?
- (c) How much, if any, of the trust fund is each of our client, ANZ and the growers entitled to receive?

Given that each of our client, ANZ and the growers claims an interest in the same trust fund, it is also contemplated that each party could file points of contention addressing the above issues to which each other party could respond by way of points of response (rather than the usual sequence of a statement of claim, followed by defences and replies).

At the same time as issuing the originating motion, or shortly thereafter, our client will also issue an application by summons returnable on 18 December 2009 (**Application**). The Application will seek directions and orders for the appointment of a representative grower or growers in relation to the relevant Almond Projects.

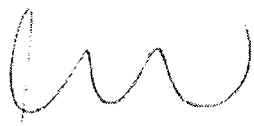
We note that both Mr. Butterfield (represented by Clarendon Lawyers), and TGG Almond Committee Inc and Ms. Bezencon (represented by Maurice Blackburn) appeared at the directions hearing on 27 November 2009 and have expressed an interest in acting as the grower representative. It appears to us that having growers represented by two sets of lawyers would cause unnecessary duplication, delay and expense.

Therefore, we suggest that you confer and seek to resolve your position on grower representation in the relevant Almond Projects as soon as possible. We ask that you identify by close of business on Wednesday, 9 December 2009 those persons or entities your clients propose to be the representative grower or growers in relation to the proceeding to be commenced under order 16.

In the absence of agreement being reached, our client reserves the right to issue the Application seeking the appointment of a representative grower or growers for the purposes of the proceeding.

If you have any questions then please do not hesitate to contact us.

Yours faithfully



Ross McClymont
Partner
T/ 61 3 9679 3025
ross.mcclymont@blakedawson.com



Chris Fenwick
Senior Associate
T 61 3 9679 3148
chris.fenwick@blakedawson.com

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) AS TRUSTEE FOR AUSTRALIA
AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) AND BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) AND WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) & ORS
(ACCORDING TO THE SCHEDULE)** Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 15 December 2009
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-5" now produced and shown to Ross Whyte McClymont at the time of swearing his affidavit on 15 December 2009.


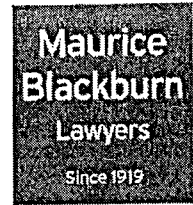

.....CHRIS MARSDEN FENWICK.....
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-5

**Letter Maurice Blackburn to Blake Dawson dated
9 December 2009**

RWM.5



Our Ref: SMF/3008429
T: (03) 9605 2765
F: (03) 9258 9610
E: SFoale@mauriceblackburn.com.au

Maurice Blackburn Pty Limited
ABN 21 105 657 949

Level 10
456 Lonsdale Street
Melbourne VIC 3000
PO Box 523
Melbourne VIC 3001
DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

8 December 2009

Mr Ross McClymont
Blake Dawson
Level 26
181 William Street
MELBOURNE VIC 3000

BY EMAIL: ross.mcclymont@blakedawson.com

Dear Mr McClymont

**Timbercorp Securities Limited (in liquidation)
Supreme Court of Victoria Proceeding No. 9408 of 2009**

We refer to your letter dated 7 December 2009 and note its contents.

Since 27 November 2009 we have been considering the question of appropriate representation of the growers, and do propose to discuss these matters with Clarendons in greater detail.

However, with respect:

- a) It is not for your clients to arbitrarily impose a deadline of 9 December 2009 for growers to nominate representatives to you.
- b) Your concern for the expense to growers and assumptions as to the likelihood of unnecessary delays and duplication are not well founded.
- c) Our clients are conscious of these matters and will take their own advice.

We will outline our client's position to you in respect of these matters in due course. Until that time, your client's foreshadowed application to force an appointment would seem to be premature.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Neale Paterson', written over a horizontal line.

**Neale Paterson
MAURICE BLACKBURN**

Rule 43.06(3)

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

No.

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CORPORATION (A.C.N. 007 457 141)**
Plaintiff

- and -

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) & ORS
(ACCORDING TO THE SCHEDULE)**
Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 15 December 2009
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-6" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 15 December 2009.



CHRIS MARSDEN FENWICK
Blake Dawson

181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-6

Letter Clarendon Lawyers to Blake Dawson

dated 10 December 2009

RWM-6



10 December 2009

Level 17 Rialto North Tower
525 Collins Street Melbourne
Victoria 3000 Australia

T 03 8681 4400 F 03 8681 4499
www.clarendonlawyers.com.au
ABN 43 704 593 249

Our Ref: MJF:MJF:0900665

Chris Fenwick and Ross McClymont
Blake Dawson
Level 26
181 William Street
MELBOURNE VIC 3000

Dear Messrs Fenwick & McClymont

Timbercorp Securities Limited (In liquidation)
Supreme Court of Victoria: Proceeding No. 9408 of 2009

Thank you for your letter of 7 December 2009.

Our counsel, Garry Bigmore QC, has confirmed that the procedure set out in your letter accords with the discussions between counsel.

The grower defendants who agree to be nominated as representatives of growers in the affected schemes are:

2002 Almonds	Graham Goldenberg Level 2 649 Bridge Road RICHMOND VIC 3121
2005 Almonds	Christopher Mark Littley Level 18 499 St Kilda Road MELBOURNE VIC 3004
2006 Almonds	Constantine Moshopoulos Level 2 649 Bridge Road RICHMOND VIC 3121
2007 Almonds	David Butterfield Level 2 428 Little Bourke Street MELBOURNE VIC 3000

They are prepared to be representative defendants on the basis that their costs will be paid out of the fund on an indemnity basis.

Please confirm whether you are agreeable to the new proceedings being expanded to include the apportionment of the proceeds from the sale of the olive assets and the TPIF almond assets when the sales of those assets are concluded.

We will be discussing with Maurice Blackburn next Monday how our roles may best be accommodated. We note that the two banking groups are represented by separate firms of solicitors and that your firm has engaged queens counsel, senior counsel and junior counsel.



We will let you know the outcome of our discussions with Maurice Blackburn as soon as they have occurred.

Yours faithfully

Michael Fernon
Director

Direct Tel: 03 8681 4419
Email: michael.fernon@clarendonlawyers.com.au

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) AS TRUSTEE FOR AUSTRALIA
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CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) & ORS
(ACCORDING TO THE SCHEDULE)** Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 15 December 2009
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Prepared by:
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181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
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Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-7" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 15 December 2009.



CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-7

Email Katie Desmond to Chris Fenwick dated 10
December 2009

Fenwick Chris 3148

From: Katie Desmond [Katie.Desmond@clarendonlawyers.com.au]
Sent: Thursday, 10 December 2009 5:25 PM
To: Fenwick Chris 3148
Cc: Michael Fernon
Subject: Grower representative - Timbercorp

Dear Chris,


Please see the details below of the grower representative for the 2002 Timbercorp Private Offer Scheme:

David Butterfield
Level 2
428 Little Bourke Street
MELBOURNE VIC 3000

Kind regards

Katie Desmond | Lawyer

Clarendon Lawyers | Level 17, Rialto North Tower, 525 Collins Street, Melbourne 3000
T + 61 3 8681 4429 | F + 61 3 8681 4499 | M + 61 402 240 800
www.clarendonlawyers.com.au

 Please note that our offices will be closed from 12.00pm Thursday, 24 December 2009 and will re-open on Monday, 4 January 2010. We wish you a happy and safe festive season.

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Rule 43.06(3)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
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No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) AS TRUSTEE FOR AUSTRALIA
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CORPORATION (A.C.N. 007 457 141)**
Plaintiff

- and -

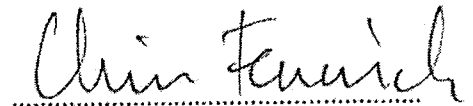
**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) & ORS
(ACCORDING TO THE SCHEDULE)**
Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 15 December 2009
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Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
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Tel: (03) 9679 3000
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Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

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CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic, 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-8

Letter Blake Dawson to Clarendon Lawyers

dated 11 December 2009

RWM-8

BY EMAIL

Level 26
181 William Street
Melbourne VIC 3000
Australia

Blake Dawson

Mr M Fernon
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

T 61 3 9679 3000
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DX 187 Melbourne
GPO Box 4958
Melbourne VIC 3001
Australia
www.blakedawson.com

11 December 2009

Dear Mr Fernon

Proposed Proceeding
BOSI Security Services Limited (as trustee for Australia and New Zealand Banking Group Limited (ANZ) and BOS International (Australia) Limited and Westpac Banking Corporation) -v- ANZ & Ors

We refer to your letter and the email from Katie Desmond of your office, both dated 10 December 2009.

We note that you have nominated proposed representative grower defendants for each scheme on the basis that their costs of the Proposed Proceeding will be paid out of the fund on an indemnity basis. To date Maurice Blackburn have not advised us of any alternative proposed representative growers.

In these circumstances, our client proposes to apply to the Court for orders that the growers nominated by you be appointed as the representative defendants for the relevant schemes pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005*.

In relation to costs, this ultimately will be a matter for determination by the Court. No doubt your clients will wish to make submissions to the Court on this question. In the meantime, our client reserves its position.

In relation to the TPIF almond assets, our client has no interest in these assets. ANZ directly has security over the TPIF almond assets. In this regard, ANZ is represented by Allens Arthur Robinson (**Allens**). We will forward your letter to Allens for a response.

Finally, we note that a sale of the Timbercorp olive assets is scheduled to complete shortly. This sale will create a separate fund and involve different growers. Therefore we expect it will be necessary to issue a separate proceeding in relation to that fund. However, we anticipate that the olive proceeding and the Proposed Proceeding will raise similar issues of fact and law. In these circumstances, a similar framework should be adopted for the olive proceeding and, if appropriate, the olive proceeding could be heard together with the Proposed Proceeding in relation to common issues.

Subject to our client's final instructions, we anticipate filing and serving our client's application on Monday.

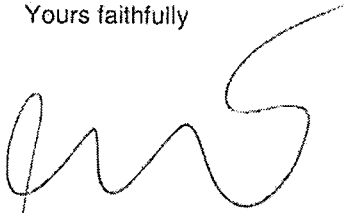
Our reference
RWM CHFE

Partner
Ross McClymont
T 61 3 9679 3025
ross.mcclymont
@blakedawson.com

Contact
Chris Fenwick
T 61 3 9679 3148
chris.fenwick
@blakedawson.com

If you have any questions in the meantime then please do not hesitate to contact us.

Yours faithfully



Ross McClymont
Partner
T 61 3 9679 3025
ross.mcclymont@blakedawson.com



Chris Fenwick
Senior Associate
T 61 3 9679 3148
chris.fenwick@blakedawson.com