

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

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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 2004 TIMBERCORP CITRUS PROJECT
(ARSN 108 887 538) AND THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)
AND ORS ACCORDING TO THE SCHEDULE

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 23 February 2011

Filed on behalf of: The Plaintiffs

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This is the exhibit marked '**PWK21**' now produced and shown to PAUL WILLIAM KIRK at the time
of swearing his affidavit on 23 February 2011.

Before me


DANIELLE RUTH NAHUM
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

Exhibit '**PWK21**'

Copy of the takeover bid
announcement dated 18 December
2009

Fax Transmission

Pritchard
Partners

Date:18/12/2009

To: Market Announcements	From: Melanie Holmes
Fax Number: 1300 135 638	Of: Hamilton Securities Limited
For Attention:	No. of Pages: 8 (including front cover)
Please advise our office if any of the pages are not received.	

Please find attached an announcement for the Timbercorp Orchard Trust (TODHA).
If there are any problems with this please do not hesitate to contact me.

Thank you

Kind Regards,

Melanie

Pritchard & Partners Pty Limited

ABN: 84 073 393 049

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Hamilton Securities Limited

Level 5, 10 Spring Street
Sydney, NSW, 2000

NSX/Media Announcement

Hamilton Securities announces takeover bid for the Debentures of Timbercorp Orchard Trust

Debenture Holders offered lifeline for suspended trust in receivership

18 December 2009: NSX-listed Hamilton Securities Limited (**Hamilton Securities**) today announced that it intends to make an off-market takeover bid (the **Offer**) for all the debentures of the failed Timbercorp Orchard Trust (ASX code – TODHA (suspended)).

Hamilton Securities was founded in October this year by directors Steven Pritchard, Giles Craig, Fred Woollard and Gordon Elkington.

The Offer is subject to a number of conditions, including a 90% minimum acceptance condition. The full conditions of the Offer are set out in the Appendix to this announcement.

Hamilton Securities proposes to lodge its Bidder's Statement containing the full terms of its Offer shortly.

Executive Chairman Steven Pritchard stated that Debenture Holders had the choice of accepting the Offer or waiting until the receivership runs its course. "As a Debenture Holder, your asset is effectively in the hands of the receivers, and your Debentures are virtually unsaleable" he said.

Mr Pritchard said that the takeover, if successful, would provide the following benefits to holders of the Debentures who accept the Offer:

- **Liquidity.** "At present, investors cannot trade their Debentures because they are suspended from trading on the ASX, and there is no indication when they might resume trading, if ever. The Offer will provide Debenture Holders with listed securities and an exit route from their investment at a price determined by the market."
- **Representation.** "There is no strong single party with a commercial incentive to represent the interests of all Debenture Holders. There are 2,200 Debenture Holders, none of whom owns more than 2% of the Debentures".
- **Alignment.** "Hamilton Securities has been structured to ensure that its management team can only make money from Hamilton Securities if they add value to the Debentures."

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- **Loss realisation.** "For most Debenture Holders, accepting Hamilton Securities' offer will create a capital loss that can be used to offset capital gains on other securities."

If successful with its bid Hamilton Securities intends to work closely with the receivers and other stakeholders (such as the liquidator of Timbercorp, which leases the Trust's land, and the Growers, who sub-lease most of the Trust's land from Timbercorp) to robustly represent the interests of the Debenture Holders. Mr Pritchard said at this stage it is not possible to forecast the result of these negotiations.

The directors of Hamilton Securities have considerable experience in managing complex and difficult corporate structures. Giles Craig has had extensive involvement in restructuring trusts, particularly in the infrastructure space.

Fred Woollard is a director of a small timber MIS company called RuralAus Investments. Steven Pritchard and Gordon Elkington have both had considerable experience managing a diverse mix of companies.

Mr Pritchard said that Hamilton Securities' directors will not be charging fees for their role as directors. "Unlike the receiver, Hamilton Securities' has been structured so that its directors will only make money from managing the Debentures if the value of the Debentures improves," he said. "Unlike the receiver, each of Hamilton Securities' directors will have capital indirectly invested in the Debentures via their shareholding in Hamilton Securities, so that they will share in both the gains and losses with other Debenture Holders who accept the Offer. Furthermore, Hamilton Securities has the ability and incentive to fight for a better position for Debenture Holders who accept the Offer." Hamilton Securities has raised over \$500,000 cash, which it aims to use as a 'fighting fund' for maximising the returns from the Debentures.

The Timbercorp Orchard Trust Debentures were suspended from trading on 23 April 2009 and went into receivership on 22 October. According to its 30 June 2009 accounts, the Trust had total assets of \$36.6m, of which \$17.3m was intangible.

The Trust's Tangible Assets were \$19.3m or \$34.03 per Debenture. The Trust's main assets are "Kangara", a citrus orchard near Renmark, South Australia, and Bella Vista, a table grape property near Euston, NSW. The Trust also owns 11,971 megalitres of permanent water entitlements which form an integral part of the properties. Both properties were leased to Timbercorp Ltd, which appointed Administrators on 23 April 2009. Timbercorp sub-leased most of the land to growers.

There are 567,737 Debentures on issue, each with a face value of \$100. This means that the total principal owing on the Debentures is \$ 56.77m.

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The Debentures are secured by fixed and floating charges and mortgages registered over all the Trust's assets including its land and water rights.

The Debentures are due for repayment at \$100 each on 15 December 2010, and are supposed to pay quarterly interest of 7.36% p.a. No interest has been paid since 31 March 2009, and receivers were appointed to the Trust on 22 October 2009.

Hamilton Securities is offering 30 A Class Shares in Hamilton Securities for each Debenture. This ratio is based on the last ASX sale price of \$30 for Debentures and the \$1 at which Hamilton Securities' shares were recently issued. A Class Shares in Hamilton Securities have not yet traded on NSX. The A Class Shares are non-voting ordinary shares.

Debenture Holders can expect to receive a copy of the Bidder's Statement shortly. The offer is scheduled to close on 26 February 2010 (unless extended). Further details can be found at www.hamsec.com.au or by calling 1300 912 083.

About Hamilton Securities

Hamilton Securities was established in 2009 to provide investors with exposure to distressed debt and equity securities, and other illiquid securities whose value might be expected to improve over time.

Steven Pritchard is the Chairman of Hamilton Securities. He was a director of NSX from 1996 to 2003 and its Chairman from 2000 to 2003 and in 2009. He is the Senior Partner of accountants Rees Pritchard and is the Chairman of Cameron Capital.

Executive Director **Giles Craig** is Managing Director of Cameron Stockbrokers Limited. Prior to his appointment in 2009, Mr Craig was Head of Private Clients at AMP Capital Limited (2003-2008) where he was responsible for the distribution of funds to the retail market.

Fred Woollard is an Executive Director and also manages a trust which owns 1.3% of the Debentures. In early 2000 he launched a campaign to demutualise Standard Life, which was then the UK's largest mutually owned insurance company. From 2000 to 2003 Mr Woollard was with Hunter Hall International Limited, managing Hunter Hall's European and American portfolio of equities and distressed debt.

Executive Director **Gordon Elkington** is a Director of several public companies and has for many years been actively involved in promoting and protecting the rights of small shareholders. Mr Elkington was admitted as a Barrister of the Supreme Court of New South Wales in 1979. He is a member of the New South Wales Legal Qualifications Committee, and the Revising

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Examiner in Contract Law for the New South Wales Legal Profession
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Appendix Offer Conditions

The Offer and any contract that results from the acceptance of the Offer is subject to the following conditions being fulfilled or waived by Hamilton Securities.

(a) Minimum acceptance

That during or at the end of the Offer Period Hamilton Securities has acquired a relevant interest in at least 90% (by number) of Debentures on issue at the end of the Offer Period.

(b) No material adverse change

That between the Announcement Date and the end of the Offer Period (both dates inclusive), no event, occurrence, change, condition or matter which individually or when aggregated with other events, occurrences, changes, conditions or matters has had, or could be reasonably expected to have, a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Timbercorp Orchard Trust and any controlled entities taken as a whole.

(c) Conduct of business

That between the Announcement Date and the end of the Offer Period (both dates inclusive) none of the following events have occurred:

- (i) Timbercorp Orchard Trust acquiring, offering to acquire, agreeing to acquire, leasing, or entering into a binding commitment, or granting a person an irrevocable option to require it to acquire or lease any asset for a consideration greater than \$1 million, or making an announcement in relation to any such an acquisition, offer or agreement;
- (ii) the cash and cash equivalents held by Timbercorp Orchard Trust falling below the level of cash and cash equivalents stated in Timbercorp Orchard Trust's preliminary final report for the year ended 30 June 2009 as announced to ASX on 1 September 2009, or Timbercorp Orchard Trust announcing such an event;
- (iii) Timbercorp Orchard Trust leasing, sub-leasing or disposing of, offering to lease or sub-lease or dispose of, agreeing to lease or sub-lease or dispose of or granting a person an option to require it to lease or sub-lease or dispose of any asset or any interest in one or more assets for a consideration greater than \$1 million, or disposing or agreeing to dispose of any asset or any interest in one or more assets at a price or for a consideration which is below the carrying value of that asset as at 30 June 2009, or making an announcement in relation to such a lease, sub-lease, disposition, agreement or option;

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- (iv) Timbercorp Orchard Trust increasing its level of financial indebtedness (including financial liabilities under finance leases), other than in the ordinary and usual course of business, by an amount in excess of \$1 million;
- (v) Timbercorp Orchard Trust entering in a joint venture, partnership or other similar arrangement;
- (vi) Timbercorp Orchard Trust paying or making any distribution, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (or declaring, announcing or recommending any of the foregoing);
- (vii) Timbercorp Orchard Trust creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property; or
- (viii) Timbercorp Orchard Trust being or becoming a party to any material prosecution, litigation or arbitration in respect of Timbercorp Orchard Trust or their respective business or assets that exposes Timbercorp Orchard Trust to a potential liability exceeding \$1 million (including legal costs) or may have a material effect on the assets or business of Timbercorp Orchard Trust.

In paragraphs (b) and (c), "Timbercorp Orchard Trust" means Align in its capacity as responsible entity of the Trust, and includes a reference to any controlled entity of the Trust.

(d) No regulatory restraint

That no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition which prevents the completion of the Offer or the transactions contemplated by the Offer is in effect at the close of the Offer Period.

(e) No specified occurrences

That between the Announcement Date and the end of the Offer Period (each date inclusive) none of the following has occurred without the prior written approval of Hamilton Securities:

- (i) a liquidator, provisional liquidator or administrator is appointed to Align under any of sections 436A, 436B and 436C of the *Corporations Act*;
- (ii) Align or the Unitholders resolve to wind up or terminate the Trust, or a court makes an order for the winding up or termination of the Trust;
- (iii) Align executes a deed of company arrangement; or

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- (iv) a receiver, or a receiver and manager, is appointed in relation to any part of the property of Align or the Trust (excluding any such appointment prior to the Announcement Date).

Definitions

Align or Responsible Entity means Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Trust.

Announcement Date means 18 December 2009.

Offer Period means the period the Offer is open for acceptance.

Trust means Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed).

Unitholder means a person registered as the holder of a unit in the Trust (including persons jointly registered).

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