

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

LIST E

S CI 2010

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

Prepared by:

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This is the exhibit marked '**PWK9**' 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 '**PWK9**'

Notice to the Debenture Holders of  
appointment as Receivers to TOT  
RE dated 26 October 2009

PricewaterhouseCoopers  
ABN 52 780 433 757

Freshwater Place  
2 Southbank Boulevard  
Southbank Vic 3006  
GPO Box 1331L  
Melbourne VIC 3001  
DX 77 Melbourne  
Australia  
Telephone 61 3 8603 6000  
Facsimile 61 3 8603 1999  
[www.pwcrecovery.com](http://www.pwcrecovery.com)

To the debenture holder as addressed

26 October 2009

Dear Sir or Madam

**Align Funds Management Limited (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed)**  
**ACN: 105 684 231 ABN: 34 105 684 231**

I advise that I, Stephen Graham Longley and Paul William Kirk of this office were appointed Joint and Several Receivers and Managers of Align Funds Management Limited in its capacity as the Responsible Entity of the Timbercorp Orchard Trust, on 22 October 2009. This appointment relates to the assets of the Timbercorp Orchard Trust, but it does not affect any other assets owned by Align Funds Management Limited in any other capacity.

The focus of the Receivers and Managers will be to maximise the return to debenture holders from the realisation of all Timbercorp Orchard Trust assets secured by the debenture charge. The secured assets are principally the properties known as Kangara (Renmark, South Australia) and Bella Vista (Euston, New South Wales) which are owned by the Timbercorp Orchard Trust. Such a realisation typically involves a sale of the assets. However, the Receivers and Managers are open to other options that could maximise the outcome for the debenture holders.

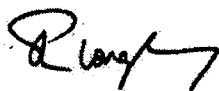
Regular updates will be posted on our website, [www.pwcrecovery.com](http://www.pwcrecovery.com) where debenture holders can access information relating to the receivership. Please follow the link to Timbercorp Orchard Trust under "Businesses under Management". The Receivers and Managers will also contact debenture holders more formally as and when appropriate. In the meantime, we will continue to liaise with Permanent Nominees (Aust.) Ltd in its capacity as Trustee.

Debenture holders should contact the Receivers and Managers via email on [alignenquiries@au.pwc.com](mailto:alignenquiries@au.pwc.com), or telephone 03 8603 6000 to leave a detailed message. Representatives of PricewaterhouseCoopers will endeavour to reply to all email or telephone queries within 48 hours of receipt.

Attached is a list of Frequently Asked Questions ("FAQs") which may assist you.

Also attached to this letter is a statement from Permanent Nominees (Aust.) Ltd in relation to the receivership.

Yours faithfully



Stephen Longley  
Receiver and Manager

Encl.





**Align Funds Management Limited (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed)**  
**ACN: 105 684 231 ABN: 34 105 684 231**

## **Frequently asked questions for debenture holders**

### **Q. What has happened?**

A. On 22 October 2009, Paul William Kirk and Stephen Graham Longley of PricewaterhouseCoopers were appointed joint and several Receivers and Managers of Align Funds Management Limited in its capacity as Responsible Entity of the Timbercorp Orchard Trust ("TOT").

### **Q. What is the role of the Receivers and Managers?**

A. The role of the Receivers and Managers is to act as an independent party that effectively takes control of the property of a company in order to ensure that the property is protected in the interests of the debenture holders. The Receivers and Managers are empowered to administer the property and manage the company. The powers are set out in the debenture trust deed, charge documents and the *Corporations Act 2001*.

The Receivers are appointed pursuant to a company charge which is a form of security that the Trustee maintains on behalf of debenture holders. The security entitles the debenture holders to be paid in priority to other pre-receivership creditor claims, except for employees' claims which are unlikely to exist.

### **Q. Who appointed the Receivers and Managers?**

A. The Receivers and Managers were appointed by Permanent Nominees (Aust.) Ltd in its capacity as Trustee for the Debenture Holders of the TOT.

### **Q. What led to this appointment?**

A. Please refer to the letter from the Trustee dated 26 October 2009 for an explanation of what led to the appointment.

### **Q. Which assets are the Receivers and Managers appointed over?**

A. The Receivers and Managers are only appointed over assets related to the TOT. These assets are principally the land known as Kangara (Renmark, South Australia) and Bella Vista (Euston, New South Wales).

**Q. Are the other operations of Align Funds Management Limited affected by this appointment?**

A. No. This appointment is only relevant to Align Funds Management Limited in its capacity as Responsible Entity of the Timbercorp Orchard Trust. It does not impact Align Funds Management Limited's other activities.

**Q. How does this relate to other Timbercorp assets/businesses?**

A. Entities related to Timbercorp are the lessees of the Kangara and Bella Vista properties and operate Managed Investment Schemes related to the citrus orchards (Kangara) and table grape orchards (Bella Vista) on TOT's properties.

**Q. Are the debentures still tradeable on the Australian Securities Exchange?**

A. The debentures remain suspended from trading on the Australian Securities Exchange.

**Q. What are the Receivers and Managers currently doing?**

A. The Receivers and Managers have taken control of the assets (namely the properties) and are engaging with key stakeholders in order to realise the assets in the shortest possible timeframe, with regard to responsibilities under the Corporations Act and commercial considerations. The Receivers and Managers are also considering options other than a sale of the properties to the extent that they may benefit debenture holders.

**Q. What funds will be available to debenture holders?**

A. It is not possible at this stage to estimate the quantum and/or timing of any return to debenture holders. The Receivers and Managers will liaise with the Trustee in due course once/if the possibility of a dividend becomes apparent.

PERMANENT NOMINEES  
(AUST.) LIMITED  
ACN 000 154 441

Level 3  
530 Collins Street  
Melbourne VIC 3000  
PO Box 361  
Collins Street West VIC 8007  
T. +613 9665 0200  
F. +613 9620 4683  
[www.trust.com.au](http://www.trust.com.au)

26 October 2009

Dear Debenture Holder

**ALIGN FUNDS MANAGEMENT LIMITED AS RESPONSIBLE ENTITY OF  
TIMBERCORP ORCHARD TRUST- APPOINTMENT OF RECEIVERS AND  
MANAGERS**

**Appointment of Receivers and Managers**

This letter serves to advise the holders of debentures issued by Align Funds Management Limited (formerly Orchard Investments Management Limited) ("Align") ("Debentures") in its capacity as Responsible Entity ("RE") of Timbercorp Orchard Trust ("TOT") that Permanent Nominees (Aust.) Limited, in its capacity as the Trustee for the Debenture holders, appointed Stephen Longley and Paul Kirk of PricewaterhouseCoopers as Receivers and Managers of Align in its capacity as the Responsible Entity ("RE") of TOT with effect from 22 October 2009.

**Background to the Appointment**

Align as RE of TOT owns land parcels which have been leased to Timbercorp Limited (In Liquidation) ("Timbercorp") entities for horticultural projects (table grape, almonds and citrus) conducted on behalf of individual growers.

The Debentures, with a face value of \$50m, were listed on the ASX but have been suspended since April 2009. The most recent valuations of the TOT land indicate an aggregate value of \$35.7m, however, this may reduce if the plantings and crops are not maintained. Accordingly, at this time, it is not possible to estimate what eventual return may accrue to the debenture holders.

The collapse of Timbercorp has deprived Align as RE of TOT of income from the land assets. TOT Debenture holders approved a moratorium on 29 June 2009 principally to the effect that Align as RE of TOT need not pay interest on the debentures and observe certain Trust Deed financial covenants until 31 December 2009. Align intended to secure new funding and/or restructure the TOT financial position during the moratorium period, however, it has not been successful.

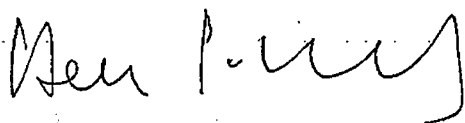
The appointment of Receivers and Managers means that Align will not be convening a meeting of Debenture holders, to consider any TOT restructure, which it was to convene prior to the expiry of the moratorium on 31 December 2009.

Following enquiries by the Trustee, being part of its monitoring of Align as to the progress of its restructuring efforts, possible re-listing of the Debentures and TOT solvency, Align directors have determined they would not be able to restructure and recapitalise TOT so as to be able to pay its debts as they fell due, advised the Trustee accordingly and subsequently formally requested that the Trustee appoint a receiver to Align as RE of TOT.

For the avoidance of doubt, it is expressly stated that the appointment of Receivers and Managers has been made to Align solely in its capacity as RE of TOT and does not extend to Align in its own right or to other capacities in which it may be acting.

The directors of Align have expressed the wish to work cooperatively with the Receivers and Managers as well as the Trustee so as to ensure the best outcome for the Debenture holders.

Yours faithfully  
for and on behalf of  
Permanent Nominees (Aust.) Limited A.C.N. 000 154 441



**STEN SILAVECKY**  
**HEAD OF STRUCTURED FINANCE SERVICES**

Contact details for investor questions – please direct any questions relating to the receivership to the Receivers and Managers (PricewaterhouseCoopers):

PricewaterhouseCoopers  
Freshwater Place,  
2 Southbank Boulevard  
SOUTHBANK Vic 3006

**Tel. (03) 8603 6000**  
e-mail: [alignenquiries@au.pwc.com](mailto:alignenquiries@au.pwc.com)

In the event your question is of a type that only the Trustee may answer, your query will be referred to the Trustee by the Receivers and Managers.