



ASX ANNOUNCEMENT

22 December 2020

EXECUTION OF SCHEME IMPLEMENTATION DEED FOR A PROPOSED RESTRUCTURE

Australian Leaders Fund Limited (**ALF**) is pleased to announce that it has executed a scheme implementation deed (**Deed**) with Equity Trustees Limited as responsible entity of Watermark Absolute Return Fund (**WARF**) and Watermark Funds Management Pty Limited (**Manager**).

Execution of the Deed is the next step in the proposed restructure of ALF, by way of scheme of arrangement (**Scheme**), to convert your investment in ALF from shares in a listed investment company to a new class of units in WARF (**New Units**).

If the Scheme is implemented ALF shareholders will be pay a fully franked cash dividend (of not less than 3 cents per ALF share) and will have an entitlement to 1 New Unit for every ALF share held.

On implementation of the Scheme:

- the ALF portfolio, which was liquidated predominately into cash as announced on ASX on 14 December 2020, will be transferred to WARF and the RE will issue to ALF as consideration, such number of New Units equal to 1 New Unit for every ALF share on issue on the scheme record date; and
- ALF will reduce its capital by an in specie distribution of all New Units as Scheme consideration in accordance with the terms of the Scheme and all ALF shares will be cancelled.

After implementation of the Scheme, ALF will be a wholly owned subsidiary of the Manager, ALF's only assets will be the cash required to fund wind up costs and outstanding transaction costs associated with the Scheme and ALF will apply to be removed from the official list of ASX.

On implementation of the Scheme, the investment management agreement between ALF and the Manager will be terminated. In consideration for agreeing to terminate this agreement, ALF will pay the Manager an early termination fee of \$2.5 million. Payment of this fee will be subject to ALF shareholders approval at the FY20 annual general meeting.

Watermark Absolute Return Fund and management fee holiday

WARF is an unlisted managed investment scheme that is also managed by the Manager and which pursues the same long/short investment strategy as ALF.

The New Units will be issued on the same terms as current units in WARF with the following exceptions:

- There will be no management fee payable with respect to the New Units for 12 months.
- A redemption fee equal to the lower of 2 cents and 2% of the NAV on the New Units will be charged on each New Unit redeemed in the 12 months after implementation of the Scheme. This redemption fee will be rebated to Watermark Funds Management (in its capacity as investment manager of WARF).

KYC Information – post implementation

ALF shareholders do not need to provide KYC information in order to participate in the Scheme. As WARF is an unlisted managed investment scheme, the Responsible Entity will be required to verify ALF Shareholders identity once they become unitholders but not before ALF distributes the New Units.

ALF shareholders will be encouraged to provide KYC information required for the purpose of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) prior to implementation of the Scheme. To facilitate this process the Responsible Entity will establish an online verification platform, details of which will be provided in the explanatory booklet to be provided to ALF shareholders (**Booklet**).

Rationale

The Scheme is designed to deliver you, as an ALF Shareholder, the following advantages:

- The elimination of any premium or discount to NTA backing. ALF Shares have traded persistently at a discount to ALF's NTA in recent years. The price of New Units in the Watermark Fund are expected to reflect more closely the underlying value of the New Units.
- Allowing investors to withdraw their investment proximate to the prevailing NAV per New Unit on a monthly basis.
- Providing investors the option to retain an investment in an entity that employs Watermark Funds Management's long/short investment strategy, being the same strategy employed by ALF with the same risk and return characteristics as ALF.
- Providing investors with an attractive management fee structure compared to other similar hedge fund strategies in the Australian market (noting that no management fees will be charged during the 12 months after implementation of the Scheme).

In the absence of a superior proposal and subject to the independent expert appointed by ALF's independent board committee (**IBC**) concluding that the Scheme is in the best interests of ALF shareholders, each member of the IBC who holds or controls ALF shares intends to vote (or procure the voting) of all their ALF shares in favour of the Scheme and recommends all ALF shareholders do the same.

Scheme Implementation Agreement

The key conditions to the Scheme are contained in the Deed (a copy of which is released with this announcement).

The Deed contains customary terms and conditions on which the ALF, the Manager and the Responsible Entity will now seek to implement the Scheme and is subject to conditions precedent including ALF obtaining all necessary regulatory approvals, Court orders and ALF shareholder approvals.

Your IBC has commissioned an independent expert's report (**IER**) with respect to whether the Scheme is in the best interests of ALF shareholders.

Indicative Timetable

ALF shareholders do not need to take any action at the present time.

ALF intends to send the Booklet to ALF shareholders in January 2021. The Booklet will contain information relating to the Scheme, reasons for the recommendation of the IBC, an IER, the WARF product disclosure statement and details of the shareholder meetings.

ALF shareholders will be given the opportunity to vote on the Scheme at meetings expected to be held in February 2021 and, if approved, the proposed restructure would be implemented shortly thereafter.

An indicative timetable for the Scheme is set out below:

Event	Date
First Court Date	By 19 January 2021
Printing and despatch of Scheme Booklet	By 22 January 2021
Scheme Meeting and Annual General Meeting These meetings will be held on the same date, one after the other. ALF shareholders will vote on the Scheme at the Scheme meeting and at the AGM ALF shareholders will be asked to approve the capital reduction and payment of the Early Termination Fee to the Manager	17 February 2021
Second Court Date	26 February 2021
Effective Date Lodgement with ASIC of the Court orders approving the Scheme	1 March 2021
Record Date Time and date for determining entitlements to the Scheme consideration	3 March 2021
Implementation Date Date on which the dividend is paid and Scheme is implemented	8 March 2021

Note: This is an indicative timetable only and is subject to change, including following any regulatory consultation and as may be required by the Court. Further information on any development relating to the proposed Scheme will be lodged with the ASX.

If you have questions about this announcement please contact ALF's co-company secretary, Mark Licciardo on +61 3 8689 9997.

For general information about the Scheme please call the Shareholder Information Line on 1300 737 760 (in Australia) +61 2 9290 9600 (International), Monday to Friday between 9.00am and 5.00pm (Sydney time).

This announcement has been authorised by the IBC and the board of directors of ALF respectively for release.

SCHEME IMPLEMENTATION DEED

Australian Leaders Fund Limited

(ACN 106 845 970)

Equity Trustees Limited

(ACN 004 031 298)

as trustee for the Watermark Absolute Return Fund (ARSN 631 094 534)

Watermark Funds Management Pty Limited

(ACN 106 302 505)



Table of Contents

1. DEFINITIONS AND INTERPRETATION	1
2. AGREEMENT TO PROCEED WITH THE TRANSACTION	8
3. CONDITIONS PRECEDENT	8
4. IMPLEMENTATION	11
5. REPRESENTATIONS AND UNDERTAKINGS	20
6. PUBLIC ANNOUNCEMENTS	22
7. CONFIDENTIALITY	22
8. LIABILITY OF THE RESPONSIBLE ENTITY	23
9. TERMINATION	24
10. GST	24
11. GENERAL	25

THIS SCHEME IMPLEMENTATION DEED is made on

21 December 2020

BETWEEN **Australian Leaders Fund Limited** (ACN 106 845 970) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000 (**ALF**);

AND **Equity Trustees Limited** (ACN 004 031 298) as trustee of the Watermark Absolute Return Fund (ARSN 631 094 534) of Level 1, 575 Bourke Street, Melbourne, VIC, 3000 (**Responsible Entity**);

AND **Watermark Funds Management Pty Limited** (ACN 106 302 505) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000 (**Manager**).

RECITALS

- A ALF and the Responsible Entity have agreed that Watermark Absolute Return Fund will acquire the assets of ALF by means of a scheme of arrangement under Part 5.1 of the Corporations Act between ALF and the ALF Shareholders.
- B The Scheme will involve the issue of a new class of Watermark Absolute Return Fund Units to ALF which ALF will distribute in specie as Scheme Consideration and in satisfaction of a capital reduction by ALF.
- C ALF and the Responsible Entity have agreed to implement the scheme of arrangement on the terms of this Deed.
- D The Manager has agreed to assist ALF and the Responsible Entity with the preparation of the Scheme Booklet and otherwise assist with the implementation of the Scheme.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

ALF Assets mean Assets of ALF with an aggregate value equal to the Completion Net Assets.

ALF Board means the board of directors of ALF from time to time.

ALF Constitution means the constitution of ALF.

ALF Information means information regarding ALF provided by ALF for inclusion in the Scheme Booklet.

ALF Management Agreement means the investment management agreement dated 11 November 2003 between Australian Leaders Fund Limited (formerly known as Wilson Leaders Limited) and the Manager (formerly known KWB Capital Pty Limited).

ALF Parties means ALF and its directors, officers and advisers in connection with the Transaction, but for avoidance of doubt does not include the Responsible Entity Parties or the Manager Parties.

ALF Share means a fully paid ordinary share in the capital of ALF.

ALF Shareholder means a person who is registered in the ALF share register as the holder of an ALF Share.

ALF Warranties means the representations provided by ALF under clause 5.2.

AML/CTF Act means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

Applicable Customer Identification Procedure has the meaning given in the AML/CTF Act.

ASIC means the Australian Securities & Investments Commission.

Assets means any legal or equitable right, estate or interest (whether present or future and whether vested or contingent) in real or personal property and any description, wherever located and whether tangible or intangible, including:

- (a) any part of the business or undertaking of a body corporate;
- (b) a chose or other thing in action, including any rights under any contract, negotiable instrument or other arrangement;
- (c) any share in a company and any unit or other interest in a trust;
- (d) any 'property' (within the meaning in subsection 413(4) of the Corporations Act); and
- (e) any other thing capable of being transferred or otherwise dealt with by order of the Court in accordance with paragraph 413(1)(a) of the Corporations Act.

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

Australian Accounting Standards means the accounting standards promulgated by the Australian Accounting Standards Board.

Business Day means a weekday on which trading banks are open for business in Sydney, Australia, excluding any Saturday, Sunday or public holiday.

Capital Reduction means the reduction in the capital of ALF by the Capital Reduction Amount under section 256B of the Corporations Act to be applied equally against each Scheme Share on issue as at the Record Date in accordance with the terms of the Capital Reduction Resolution.

Capital Reduction Amount means an amount equal to the Completion Net Assets.

Capital Reduction Entitlement means in relation to a Scheme Participant, the Capital Reduction Pro-Rata Amount multiplied by the number of Scheme Shares held by the Scheme Participant on the Record Date.

Capital Reduction Pro-Rata Amount means the Capital Reduction Amount divided by the number of Scheme Shares on issue on the Record Date.

Capital Reduction Resolution means the ordinary resolution concerning the Capital Reduction to be considered by ALF Shareholders at the General Meeting as set out in Annexure A of the Scheme.

Competing Transaction means any proposal by a Third Party in relation to a transaction or arrangement under which if the transaction or arrangement is completed:

- (a) a person would acquire (whether directly or indirectly) or become the holder of, or otherwise have a right to acquire or have an economic interest in, all or substantially all of the business conducted by ALF, or the assets of ALF;
- (b) a person would acquire (whether directly or indirectly) Control of ALF;

- (c) a person would acquire a relevant interest in, or voting power of, 50% or more of the ALF Shares;
- (d) a person would otherwise acquire, or merge or amalgamate with, ALF; or
- (e) ALF would be required to abandon or otherwise fail to proceed with the Transaction.

Completion means completion of the Transaction.

Completion Net Assets means an amount equal to the post-tax net assets of ALF as at the Implementation Date after payment of the Dividend Amount in accordance with clause 4.9(a) but immediately prior to the transactions referred to in clauses 4.9(b) to 4.9(h) (inclusive), calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations), and the Corporations Regulations less the Retention Amount and franking deficit tax attributable to the Dividend Amount (if any).

Condition Precedent means a condition precedent set out in Clause 3.1.

Control has the meaning given in section 50AA of the Corporations Act.

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

Corporation Regulations means the *Corporations Regulations 2001* (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as ALF and the Responsible Entity agree on in writing.

Dividend means a dividend determined in accordance with section 254T of the Corporations Act by the Directors and paid to each Scheme Participant, subject to the Scheme becoming Effective, in cash on the Implementation Date.

Dividend Amount means the amount of the Dividend which is determined by the Directors such that ALF is not in a franking deficient position as at 30 June 2021 or such earlier on which ALF is wound up.

Dividend Entitlement means in relation to a Scheme Participant, the Dividend Pro Rata Amount multiplied by the number of Scheme Shares held by the Scheme Participant on the Record Date.

Dividend Pro Rata Amount means an amount of not less than 3 cents per Scheme Share calculated by dividing the Dividend Amount by the number of Scheme Shares on issue on the Record Date.

Director means a director of ALF from time to time.

Deed Poll means the deed poll to be granted by the Responsible Entity in substantially the form set out in Schedule 3.

Early Termination Fee means an amount of \$2,500,000 payable by ALF to the Manager for the early termination of the ALF Management Agreement.

Effective means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) and section 413 in relation to the Scheme.

Exclusivity Period means the period starting on the date of this Deed and ending on the earlier of the Effective Date, the date this Deed is terminated and the End Date.

Effective Date means the date on which the Scheme becomes Effective.

End Date means 30 June 2021.

Explanatory Statement means the statement pursuant to section 412 of the Corporations Act which has been, or will be, registered by ASIC in relation to the Scheme together with the explanatory memorandum relating to the Capital Return Resolution and the Termination Resolution, which forms part of the Scheme Booklet.

First Court Date means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Fund PDS means the current product disclosure statement issued by the Responsible Entity with respect to the Watermark Absolute Return Fund and the Units.

General Meeting means the general meeting for ALF Shareholders convened to consider the Capital Reduction Resolution and the Termination Fee Resolution.

Government Agency means any Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state.

Implementation Date means the day 5 Business Days after the Record Date or such other date as ALF and the Responsible Entity agree in writing.

Independent Board Committee means a committee of the ALF Board comprising all Directors other than Directors nominated by or associated with the Manager being as at the date of this Deed, Julian Gosse and John Abernethy.

Independent Director means a member of the Independent Board Committee.

Independent Director Share means an ALF Share in which an Independent Director has a Relevant Interest.

Independent Expert means the independent expert in respect of the Scheme appointed by ALF.

Independent Expert's Report means the report prepared by the Independent Expert to be provided to ALF and ALF Shareholders providing an opinion, among other things, as to whether the Scheme is in the best interests of ALF Shareholders.

Ineligible Units means the Units to which Ineligible Foreign Shareholders would have been entitled under the Scheme but for the operation of clause 4 of the Scheme.

Ineligible Foreign Shareholder means a Scheme Participant whose address as shown in the Share Register is a place outside Australia and its external territories or New Zealand unless ALF, the Responsible Entity and the Manager agree in writing that it is lawful and not unduly onerous or impracticable to issue that Scheme Participant with the Units when the Scheme becomes Effective.

Investment Entity has the meaning given in the Listing Rules.

KYC Information in relation to a Scheme Participant that is not an Ineligible Foreign Participant means all information that the Responsible Entity reasonably considers it will require in respect of each Scheme Participant after Implementation Date for the purpose of the AML/CTF Act.

Listing Rules means the official listing rules of the ASX.

Manager Information means information regarding Watermark Absolute Return Fund (but excluding the Responsible Entity Information), the Manager and other entities managed by the Manager and its Related Bodies Corporate, provided by the Manager for inclusion in the Scheme Booklet.

Manager Parties means the Manager and its directors, officers and advisers in connection with the Transaction, but for avoidance of doubt does not include the ALF Parties or the Responsible Entity Parties.

Nominee means the agent appointed by ALF to be receive, and to withdraw, the Units in the Watermark Absolute Return Fund that would have otherwise been transferred to Ineligible Foreign Shareholders in relation to the Scheme.

Party means a party to this Deed.

PDS means the product disclosure statement to be issued by the Responsible Entity relating to the Units to be issued to, and distributed by, ALF as the Scheme Consideration, a copy of which will be included in the Scheme Booklet.

Proceeding means any suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, examination or investigation commenced, brought, conducted or heard by or before or otherwise involving any court or other Government Agency or any arbitrator or arbitration panel.

RG 60 means Regulatory Guide 60 issued by ASIC on September 2020.

Record Date means the record date for the Scheme and the Dividend, being the third Business Day after the Effective Date or such other date as ALF, the Responsible Entity and the Manager agree.

Records means:

- (a) records required to be maintained by ALF under applicable law;
- (b) accounting records; and
- (c) records of contracts,

relating to the Completion Net Assets.

Registered Address means, in relation to an ALF Shareholder, the address of that ALF Shareholder as recorded in the Share Register.

Registry means Boardroom Pty Limited of Level 12, 225 George Street, Sydney NSW 2000.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to all Parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Related Body Corporate has the meaning set out in the Corporations Act.

Relevant Interest has the meaning given in Sections 608 and 609 of the Corporations Act.

Representative in respect of a Party, means each director, officer, employee, advisor, agent or representative of that Party or Subsidiary.

Responsible Entity Information means information regarding the Responsible Entity provided by the Responsible Entity for inclusion in the Scheme Booklet including the PDS.

Responsible Entity Parties means the Responsible Entity and its directors, officers and advisers in connection with the Transaction, but for avoidance of doubt does not include the ALF Parties or the Manager Parties.

Responsible Entity Warranties means the representations provided by the Responsible Entity under Clause 5.1.

Retention Amount means \$250,000 or such lesser amount agreed by ALF and the Manager to be retained by ALF to cover expenses following Completion which are not liabilities of ALF as at the Implementation Date or otherwise accounted for in AFL's Completion Net Assets.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between ALF and the Scheme Participants, the form of which is set out in Schedule 2 (or in such other form as may be agreed to in writing by ALF and the Responsible Entity).

Scheme Booklet means the information relating to the Transaction to be approved by the Court and despatched to all ALF Shareholders, including the Scheme, the Explanatory Statement, the Independent Expert's Report, the Deed Poll, the notices convening the Scheme Meeting and the General Meeting and the proxy forms for the Scheme Meeting and the General Meeting.

Scheme Consideration means the Units with an aggregate value equal to the Completion Net Assets received by ALF in consideration for the transfer of the ALF Assets and distributed in specie as set out in the Scheme.

Scheme Meeting means the meeting of ALF Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Participant means each ALF Shareholder as at the Record Date.

Scheme Share means an ALF Share held by a Scheme Participant as at the Record Date.

Second Court Date means the first day on which the application made to the Court for an order for the purposes of section 411(4)(b) and section 413 of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Share Register means the register of members of ALF.

Superior Competing Transaction means a bona fide unsolicited Competing Transaction received by ALF after the date of this Deed which the Independent Board Committee has determined, acting in good faith and in accordance with their fiduciary duties, and after consultation with and the receipt of written advice from the Independent Board Committee's external legal advisor and financial adviser is:

- (a) reasonably capable of being completed, taking into account all aspects of the Competing Transaction and the person making it; and
- (b) more favourable to ALF Shareholders (as a whole) than the Transaction, taking into account all the terms and conditions of the Competing Transaction.

Termination Deed means the deed terminating the ALF Management Agreement on the Effective Date.

Termination Fee Resolution means the ordinary resolution concerning payment of the Early Termination Fee under chapter 2E of the Corporations Act as set out in Annexure A of the Scheme to be considered by ALF Shareholders at the General Meeting.

Transaction means termination of the Management Agreement, implementation of the Capital Reduction, payment of the Dividend Amount and implementation of the Scheme.

Timetable means the indicative timetable for the Transaction set out in Schedule 1.

Third Party means a person other than the Parties and their Representatives.

Units means a new class of fully paid units in the Watermark Absolute Return Fund subject to the fee arrangements detailed in the Watermark Absolute Return Fund Management Agreement.

Watermark Absolute Return Fund means the Watermark Absolute Return Fund (ARSN 631 094 534).

Watermark Absolute Return Fund Constitution means the constitution of the Watermark Absolute Return Fund.

Watermark Absolute Return Fund Management Agreement means the investment management agreement with respect to the Watermark Absolute Return Fund between the Manager and the Responsible Entity dated 7 March 2019 as amended by the parties from time to time, including via side letter signed on or around 17 December 2020.

Withdrawal has the meaning given to it in clause 4.10(b)(i).

Withdrawal Period means the period on and from the Implementation Date to and including the fifth Business Day after the Implementation Date.

1.2 Interpretation

In this Deed, headings and bold type are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a Clause, Party, Attachment or Schedule is a reference to a clause of, and a party, attachment and schedule to this Deed, and a reference to this Deed includes any Attachment and Schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word **includes** in any form is not a word of limitation;
- (i) a reference to **\$** or **dollar** is to Australian currency;

- (j) a reference to any time, unless otherwise indicated, is a reference to the time in Sydney, Australia;
- (k) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (l) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed; and
- (m) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a Party.

2. AGREEMENT TO PROCEED WITH THE TRANSACTION

2.1 Proposal of Transaction

ALF agrees to propose the Transaction on and subject to the terms of this Deed.

2.2 Assistance

The Responsible Entity and the Manager agree with ALF to provide reasonable assistance to ALF to propose the Transaction on and subject to the terms of this Deed.

2.3 Consent

ALF and the Responsible Entity must obtain the Manager's written consent (not to be unreasonably withheld) prior to agreeing to vary the terms of this Deed, the Scheme or any associated documents.

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent to the Scheme

The Scheme will not become Effective, and the obligations of the Responsible Entity under the Deed Poll and Clauses 4.3(i) and 4.9 are not binding, until each of the following conditions precedent is satisfied or waived in the manner set out in Clause 3.3:

- (a) **Scheme Meeting Approval:** ALF Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act;
- (b) **General Meeting Approvals:** ALF Shareholders approve both the Capital Reduction Resolution and the Termination Fee Resolution at the General Meeting;
- (c) **Court Approval:** the Court approves the Scheme in accordance with sections 411(4)(b) and 413 of the Corporations Act;
- (d) **Restraints:** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or Government Agency or other material legal restraint or prohibition preventing the Transaction from being implemented is in effect at 8.00 am on the Second Court Date;
- (e) **No breach of ALF Warranty:** none of the ALF Warranties is or has become false, misleading or incorrect in a material respect by 8.00am on or before the Second Court Date;
- (f) **No breach of Responsible Entity Warranty:** none of the Responsible Entity Warranties is or has become false, misleading or incorrect in a material respect by 8.00am on or before the Second Court Date; and

- (g) **Independent Expert:** the Independent Expert issues a report which concludes that the Scheme is in the best interests of ALF Shareholders before the time when the Scheme Booklet is registered with ASIC and the Independent Expert has not publicly withdrawn or qualified this conclusion before 8am on the Second Court Date.

3.2 Reasonable endeavours

- (a) ALF must use its reasonable endeavours to procure that there is no occurrence within the control of ALF that would prevent the Conditions Precedent in Clause 3.1(e) to be satisfied.
- (b) The Responsible Entity must use its reasonable endeavours to procure that there is no occurrence within the control of the Responsible Entity that would prevent the Conditions Precedent in Clause 3.1(f) to be satisfied.
- (c) ALF and the Responsible Entity must each use its reasonable endeavours to procure that:
- (i) each of the Conditions Precedent in Clauses 3.1(a) to 3.1(d) and Clause 3.1(g) is satisfied as soon as practicable after the date of this Deed; and
 - (ii) there is no occurrence within the control of ALF or the Responsible Entity (as the context requires) that would prevent the Conditions Precedent in Clauses 3.1(a) to 3.1(d) and Clause 3.1(g) being satisfied.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in Clauses 3.1(a) and 3.1(b) cannot be waived.
- (b) The Conditions Precedent in Clauses 3.1(c) and 3.1(d) are for the benefit of ALF and the Responsible Entity and any breach or non-fulfilment of these Conditions Precedent may only be waived with the written consent of both ALF and the Responsible Entity (each in its absolute discretion).
- (c) The Condition Precedent in Clause 3.1(e) is for the sole benefit of the Responsible Entity and any breach or non-fulfilment of any of that Conditions Precedent may only be waived with the written consent of the Responsible Entity (in its absolute discretion).
- (d) The Conditions Precedent in Clauses 3.1(f) and 3.1(g) are for the sole benefit of ALF and any breach or non-fulfilment of any of those Conditions Precedent may only be waived with the written consent of ALF (in its absolute discretion).
- (e) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
- (i) a waiver of a breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Condition Precedent

- (a) If:
- (i) a Condition Precedent is not satisfied or waived by the date specified for its satisfaction;

- (ii) a Condition Precedent becomes incapable of being satisfied by the date specified for its satisfaction and is not waived; or
- (iii) the Scheme has not become Effective by the End Date,

and the relevant occurrence or the failure of the Condition Precedent does not arise out of a breach of Clause 3.2 or 3.5, then ALF and the Responsible Entity must consult in good faith with a view to:

- (iv) determining whether the Transaction may proceed by way of alternative means or methods and, if so, agree on the terms of such alternative means or methods;
- (v) changing the date of the application to be made to the Court for an order under sections 411(4)(b) and 413 of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by ALF and the Responsible Entity (being a date not later than 5 Business Days before the End Date);
- (vi) adjourning, or changing the date of the Scheme Meeting or the General Meeting; or
- (vii) extending the End Date.

(b) If:

- (i) ALF and the Responsible Entity are unable to reach agreement under Clause 3.4(a) within 5 Business Days of the date on which they both become aware that the Condition Precedent is not satisfied or has become incapable of being satisfied (or, if earlier, by 8.00 am on the Second Court Date); or
- (ii) the Scheme has not become Effective by the End Date,

then unless the Condition Precedent is waived (and subject to Clause 3.4(c)), either may terminate this Deed at any time prior to 8.00 am on the Second Court Date with immediate effect by written notice to the other Parties.

(c) A Party may not terminate this Deed under Clause 3.4(b), if the relevant Condition Precedent has not been satisfied, or is incapable of being satisfied, or there is an occurrence that will prevent the Condition Precedent being satisfied by the date specified in this Deed for its satisfaction, as a result of:

- (i) a deliberate act or omission by that Party, or any of its Representatives; or:
- (ii) a breach of this Deed by that Party.

(d) Subject to any rights or obligations arising under or pursuant to Clauses that are expressed to survive termination, on termination of this Deed, no Party has any rights against or obligations to any other Party under this Deed except for those rights and obligations which accrued prior to termination.

3.5 Certain notices

- (a) If, before the time specified for satisfaction of a Condition Precedent, an event that will prevent that Condition Precedent being satisfied occurs, the Party with knowledge of that event must promptly give the other Party written notice of that event.
- (b) ALF must promptly advise the Responsible Entity orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:

- (i) a representation or warranty provided in this Deed by ALF (**ALF Warranty**) to be false in a material respect;
 - (ii) a breach or non-fulfilment of any of the Conditions Precedent; or
 - (iii) a material breach of this Deed by a member of ALF or its Representatives.
- (c) The Responsible Entity must promptly advise ALF orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
- (i) a representation or warranty provided in this Deed by the Responsible Entity (**Responsible Entity Warranty**) to be false in a material respect;
 - (ii) a breach or non-fulfilment of any of the Conditions Precedent; or
 - (iii) a material breach of this Deed by the Responsible Entity or its Representatives.

3.6 Certification

The Manager and the Responsible Entity will provide to the Court on the Second Court Date a certificate executed as a deed, or such other evidence as the Court requests, as required by clause 3.2 of the Scheme.

4. IMPLEMENTATION

4.1 Collection of KYC Information

The Responsible Entity will use reasonable endeavours to obtain KYC Information and carry out Applicable Customer Identification Procedures in relation to Scheme Participants (other than Ineligible Foreign Shareholders) prior to the Implementation Date.

4.2 ALF's obligations

ALF must take all necessary steps to implement the Transaction as soon as is reasonably practicable, including doing any acts it is authorised and able to do, on behalf of ALF Shareholders and including each of the following:

- (a) **preparation of Scheme Booklet:** subject to Clauses 4.2(h) and 4.4(a), prepare and despatch the Scheme Booklet in accordance with all applicable laws and in particular with the Corporations Act, RG 60, Regulation 5.1.01 and Schedule 8 of the *Corporations Regulations 2001* (Cth).
- (b) **section 411(17)(b) statement:** apply to ASIC for the production of:
 - (i) an indication of intent letter stating that it does not intend to appear at Court on the First Court Date; and
 - (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objections to the Scheme;
- (c) **Court direction:** apply to the Court for orders directing ALF to convene the Scheme Meeting;
- (d) **Scheme Meeting:** convene the Scheme Meeting to approve the Scheme in accordance with the orders made by the Court pursuant to sections 411(1) and 413 of the Corporations Act;

- (e) **General Meeting:** convene the General Meeting to approve the Capital Reduction Resolution and the Termination Fee Resolution;
- (f) **Court approval:** subject to all Conditions Precedent in Clause 3.1 (other than Clause 3.1(c)) being satisfied or waived in accordance with this Deed, apply to the Court for orders approving the Scheme as agreed to by the ALF Shareholders at the Scheme Meeting;
- (g) **lodge copy of Court order:** lodge with ASIC an office copy of the Court orders approving the Scheme as agreed to by the ALF Shareholders at the Scheme Meeting no later than one Business Day after the day such office copy is received (or such later date as agreed in writing by ALF, the Responsible Entity and the Manager);
- (h) **consultation with the Responsible Entity and the Manager:** consult with the Responsible Entity and the Manager as to the content and presentation of the application to the Court and the Scheme Booklet including:
 - (i) providing to the Responsible Entity and the Manager drafts of the Scheme Booklet for the purpose of enabling the Responsible Entity and the Manager to review and comment on those draft documents;
 - (ii) taking all comments made by the Responsible Entity and the Manager into account in good faith when producing a revised draft of the Scheme Booklet;
 - (iii) providing to the Responsible Entity and the Manager a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable the Responsible Entity and the Manager to review the Regulator's Draft before its submission; and
 - (iv) obtaining written approval from the Responsible Entity and the Manager for the form and content in which the Responsible Entity Information and the Manager Information (respectively) appears in the Scheme Booklet which must not be unreasonably withheld or delayed;
- (i) **information:** provide all necessary information, or procure that the Registry provides all necessary information, in each case in a form reasonably requested by the Responsible Entity and the Manager, about the Transaction and ALF Shareholders to the Responsible Entity and the Manager and their authorised Representatives which the Responsible Entity and the Manager reasonably require in order to facilitate the in specie distribution by ALF of the Scheme Consideration;
- (j) **ASIC review:** keep the Responsible Entity and the Manager informed of any matters raised by ASIC in relation to the Scheme Booklet or the Scheme, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by the Responsible Entity;
- (k) **Independent Expert:** promptly appoint the Independent Expert and provide assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for the Scheme Booklet as soon as practicable;
- (l) **Approvals:** subject to the Scheme becoming Effective, on or before the Implementation Date itself take, or procure that the Directors take, the following actions:
 - (i) the Directors convene and hold a meeting to:
 - (A) approve and otherwise give effect to the transfer of all of the ALF Assets to the Responsible Entity in consideration for Units with an

- aggregate value equal to the Completion Net Assets and equal in number to the number of Scheme Shares;
- (B) approve the Capital Reduction and in specie distribution of Scheme Consideration in accordance with the Scheme on the Implementation Date;
 - (C) determine the Dividend Amount and approve the cash payment to each Scheme Participant of their respective Dividend Entitlements on the Implementation Date; and
- (ii) subject to distribution of the Scheme Consideration in accordance with the Scheme, direct the making of the requisite entry in the Share Register to effect the cancellation of the Scheme Shares and the existing share certificates issued in respect of the Scheme Shares (if any);
- (m) **asset transfer:** if the Scheme becomes Effective do all things necessary to effect the transfer of the ALF Assets as contemplated by the Scheme;
 - (n) **Dividend:** subject to the Directors making a determination to pay the Dividend and subject to the Scheme becoming Effective, pay the Dividend Entitlement of each Scheme Participant in cash on the Implementation Date;
 - (o) **Capital Reduction:** if the Scheme becomes Effective and subject to all approvals in accordance with this clause 4.1 effect Capital Reduction by applying Capital Reduction Entitlement of each Scheme Participant via the in specie distribution of the Scheme Consideration on the Implementation Date cancelling all Scheme Shares;
 - (p) **transfer of net proceeds of Withdrawals:** subject to clause 4.2(n) occurring, procure the payment of the net proceeds of the Withdrawals to Ineligible Foreign Shareholders (as detailed in clause 4.10);
 - (q) **ASX:**
 - (i) apply to the ASX to ensure that Scheme Shares are suspended from official quotation on the Effective Date; and
 - (ii) once the Scheme becomes Effective, apply to the ASX to ensure that it is removed from the official list of ASX on the Implementation Date;
 - (r) **issue of a share to the Manager:** if the Scheme becomes Effective, on the Implementation Date, immediately following completion of the Capital Reduction, issue one fully paid ordinary share at an issue price of \$1 to the Manager;
 - (s) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(4)(b) and 413 of the Corporations Act, at which through its counsel, ALF will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this Deed and the Scheme;
 - (t) **Termination Deed and management and performance fees:** if the Scheme becomes Effective, execute the Termination Deed and after the Effective Date but before the Implementation Date, pay to the Manager the Early Termination Fee and all accrued and outstanding management and performance fees payable under the ALF Management Agreement up to the Effective Date; and
 - (u) **Completion Steps:** comply with all of its obligations under Clauses 4.9 and 4.10.

4.3 The Responsible Entity's obligations

The Responsible Entity must take all necessary steps to implement the Transaction as soon as is reasonably practicable, including doing each of the following:

- (a) **the Responsible Entity Information:** prepare and promptly provide to ALF the Responsible Entity Information for inclusion in the Scheme Booklet to comply with all applicable laws and ASIC regulatory guides, and consult with ALF as to the content and presentation of the Responsible Entity Information in the Scheme Booklet, such consultation to include allowing ALF a reasonable opportunity to review and make comments on successive drafts of the Responsible Entity Information before lodgement of the Regulator's Draft with ASIC;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by ALF and provide comments, if any, as soon as practicable;
- (c) **confirmation of the Responsible Entity Information:** before the Regulator's Draft is provided to ASIC pursuant to section 411(2) of the Corporations Act, either:
 - (i) confirm in writing to ALF that the Responsible Entity Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
 - (ii) provide to ALF the changes required to ensure that the Responsible Entity Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
- (d) **Independent Expert's report:** provide any assistance or information reasonably requested by ALF or by the Independent Expert in connection with the preparation of the Independent Expert's report to be sent together with the Scheme Booklet;
- (e) **update Responsible Entity Information:** if:
 - (i) at any time after the despatch of the Scheme Booklet, the Responsible Entity becomes aware of new information which, were it known at the time of despatch, should have been included in any of the Responsible Entity Information provided previously to ALF; or
 - (ii) at any time, the Responsible Entity becomes aware that any part of the Responsible Entity Information provided previously to ALF is misleading or deceptive in any material respect (whether by omission or otherwise),it must advise ALF so that ALF can determine whether supplementary disclosure to ALF Shareholders is required;
- (f) **Deed Poll:** on or prior to the First Court Date, enter into the Deed Poll;
- (g) **Court proceedings:** undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this Deed and the Scheme;
- (h) **KYC Information reports:** report or cause an agent to report to ALF and the Manager on those Scheme Participants that have provided their KYC Information prior to the Implementation Date;
- (i) **asset transfer:** if the Scheme becomes Effective, accept and otherwise do all things necessary to effect the transfer of the Completion Net Assets to the Watermark

Absolute Return Fund as contemplated by the Scheme on the Implementation Date including:

- (i) allot and issue to ALF 1 Unit for each Scheme Share on issue as at the Record Date;
 - (ii) ensure that on issue, each Unit issued to ALF is fully paid and free from any mortgage, charge, lien, encumbrance or other security interest;
 - (iii) approve ALF as holders of each Unit issued to it; and
 - (iv) update the unit register for the Watermark Absolute Return Fund accordingly;
- (j) **Fund PDS:** prepare and finalise a product disclosure statement with respect to the New Units in accordance with the requirements of the Corporations Act and all applicable laws; and
- (k) **Transfer of Units:** subject to the Scheme becoming Effective, on the Implementation Date the Responsible Entity must:
- (i) approve transfer of Units by ALF to Scheme Participants and the Nominee in accordance with Clause 4.9 and the Scheme;
 - (ii) ensure that on each Unit so transfer is fully paid and free from any mortgage, charge, lien, encumbrance or other security interest;
 - (iii) approve the Scheme Participants and the Nominee and the Independent Custodian transferred Units by ALF in accordance with the Scheme as holders of Units; and
 - (iv) update the unit register for the Watermark Absolute Return Fund accordingly.

4.4 The Manager's Obligations

- (a) **assistance with preparation of Scheme Booklet:** use all reasonable endeavours to assist ALF and the Responsible Entity with the preparation of the Scheme Booklet as a whole;
- (b) **the Manager Information:** prepare and promptly provide to ALF the Manager Information for inclusion in the Scheme Booklet to comply with all applicable laws and ASIC regulatory guides, and consult with ALF as to the content and presentation of the Manager Entity Information in the Scheme Booklet, such consultation to include allowing ALF a reasonable opportunity to review and make comments on successive drafts of the Manager Information before lodgement of the Regulator's Draft with ASIC;
- (c) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by ALF and provide comments, if any, as soon as practicable;
- (d) **confirmation of the Manager Information:** before the Regulator's Draft is provided to ASIC pursuant to section 411(2) of the Corporations Act, either:
- (i) confirm in writing to ALF that the Manager Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
 - (ii) provide to ALF the changes required to ensure that the Manager Information in the form and context in which it appears in the Scheme Booklet is not

misleading or deceptive in any material respect and does not contain any material omission;

- (e) **Independent Expert's report:** provide any assistance or information reasonably requested by ALF or by the Independent Expert in connection with the preparation of the Independent Expert's report to be sent together with the Scheme Booklet;

- (f) **update Manager Information:** if:

- (i) at any time after the despatch of the Scheme Booklet, the Manager becomes aware of new information which, were it known at the time of despatch, should have been included in any of the Manager Information provided previously to ALF; or
- (ii) at any time, the Manager becomes aware that any part of the Manager Information provided previously to ALF is misleading or deceptive in any material respect (whether by omission or otherwise),

it must advise ALF so that ALF can determine whether supplementary disclosure to ALF Shareholders is required;

- (g) **liquidation of ALF portfolio:** the Manager must use all reasonable endeavours, subject to acting in the best interests of ALF Shareholders to liquidate and convert the assets of ALF into cash as soon as practicable following the date of this Deed;

- (h) **agreement to become ALF's sole shareholder:** if the Scheme becomes Effective the Manager must, on the Record Date and subject to completion of the Capital Reduction, do all things necessary to subscribe for one fully paid ordinary share in ALF issued at \$1.00 and otherwise agree to be bound by the ALF Constitution.

- (i) **Termination Deed:** if the Scheme becomes Effective, execute the Termination Deed.

4.5 Conduct of business

- (a) From the date of this Deed up to and including the Implementation Date, ALF must, and the Manager must (subject to clause 4.4(g) and to the extent it is within its power to do so) procure that ALF does, conduct its business in the ordinary and proper course of business consistent with past practice, keep the Responsible Entity informed of the conduct of business, and make all reasonable efforts to:

- (i) keep available the services of the Directors and ALF's other officers;
- (ii) maintain and preserve satisfactory relationships with its suppliers and others having business dealings with ALF (including using reasonable endeavours to obtain consents from third parties to any change of control provisions in contracts or arrangements to which ALF is a party);
- (iii) liquidate and convert the assets of ALF into cash as soon as practicable following the date of this Deed but otherwise not enter into any lines of business or other activities in which ALF is not engaged as of the date of this Deed;
- (iv) preserve intact its asset and business organisation;
- (v) not allow any tax payment that is due and payable to remain unpaid; and
- (vi) manage its working capital in the ordinary course of ordinary business consistent with past practice.

- (b) Nothing in Clause 4.5(a) restrains ALF from taking any action permitted by this Deed or with the prior written consent of the Responsible Entity and the Manager, which consent will not be unreasonably withheld or delayed.
- (c) The Parties must consult with each other in good faith immediately after execution of this Deed and for the period up to the Implementation Date, to discuss and assist in preparing a transition plan.

4.6 Independent Board Committee recommendation

- (a) Subject to Clause 4.6(a)(ii), ALF must use its best endeavours to procure that:
 - (i) the Independent Board Committee unanimously recommend in the Scheme Booklet that, in the absence of a Superior Competing Transaction and subject to the Independent Expert concluding or continuing to conclude that the Transaction is in the best interests of ALF Shareholders, ALF Shareholders vote in favour of the Transaction; and
 - (ii) the Scheme Booklet will include a statement to the effect that each Independent Director will, in the absence of a Superior Competing Transaction and subject to the Independent Expert concluding or continuing to conclude that the Transaction is in the best interests of ALF Shareholders, vote (or procure the voting of) all Independent Director Shares in favour of the Scheme at the Scheme Meeting and in favour of the Capital Reduction Resolution and Termination Resolution at the General Meeting. ALF must use its best endeavours to procure that the Independent Board Committee collectively, and the Independent Directors of the ALF Board individually, do not change, withdraw or modify its, his or her recommendation in the Scheme Booklet that ALF Shareholders vote in favour of the Transaction or their statement that they will vote (or procure the voting) of its, his or her Independent Director Shares in favour of the Scheme at the Scheme Meeting and in favour of the Capital Reduction Resolution and Termination Resolution at the General Meeting or make a recommendation or statement that is inconsistent with such recommendation or statement, unless:
 - (A) ALF receives a Superior Competing Proposal and the Independent Board Committee or Independent Director has first obtained written legal advice from its legal advisors that a failure by the Independent Board Committee or Independent Director to change, withdraw or modify its, his or her recommendation or statement or make a recommendation or statement that is inconsistent with it in response to the Superior Competing Proposal would be reasonably likely to constitute a breach of their fiduciary or statutory obligations; or
 - (B) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of ALF Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of ALF Shareholders.
- (b) If the Independent Board Committee proposes to change, withdraw or modify its recommendation or statement in accordance with Clause 4.6(a)(ii), or make a recommendation or statement that is inconsistent with such recommendation or statement in accordance with Clause 4.6(a)(ii) ALF must immediately notify the Responsible Entity and the Manager in writing.
- (c) In the event that ALF provides notice under Clause 4.6(b) the Manager will be entitled to terminate this Deed by notice to ALF and the Responsible Entity with immediate effect.

4.7 ALF Facilitation

- (a) Where in this Clause 4 an obligation is imposed on ALF to undertake any act or to ensure that an act does not occur, ALF must, in addition to doing so itself, instruct the Manager to undertake that act or refrain from undertaking that act (as the case requires) where the terms of the ALF Management Agreement or any other agreement, arrangement or understanding or course of conduct between the Manager and ALF which imposes responsibility for that matter on the Manager to the extent that the Manager must act in accordance with that instruction from ALF.
- (b) Provided that ALF complies with Clause 4.7(a), any breach of an obligation imposed on ALF under this Clause 4 that is caused by any act that the Manager undertakes or refrains from undertaking will not be considered to be a breach of this Deed by ALF.

4.8 Responsible Entity Facilitation

- (a) Where in this Clause 4 an obligation is imposed on the Responsible Entity to undertake any act or to ensure that an act does not occur, the Responsible Entity must, in addition to doing so itself, instruct the Manager to undertake that act or refrain from undertaking that act (as the case requires) where the terms of the Watermark Absolute Return Fund Management Agreement or any other agreement, arrangement or understanding or course of conduct between the Manager and the Responsible Entity which imposes responsibility for that matter on the Manager to the extent that the Manager must act in accordance with that instruction from the Responsible Entity.
- (b) Provided that the Responsible Entity complies with Clause 4.8(a), any breach of an obligation imposed on the Responsible Entity under this Clause 4 that is caused by any act that the Manager undertakes or refrains from undertaking will not be considered to be a breach of this Deed by the Responsible Entity.

4.9 Completion Steps

Subject to the satisfaction or waiver of the Conditions and this Deed not having been terminated before Effective Date, Completion must occur on the Implementation Date and at Completion the following events must occur in the following sequence:

- (a) ALF must in satisfaction of its obligations to pay the Dividend, pay the Dividend Entitlement of each Scheme Participant by dispatching or procuring the Share Registry to dispatch, the relevant cash amount:
 - (i) to the Scheme Participant's nominated bank account as noted in the Share Register at the Record Date; or
 - (ii) if no account is nominated, by mailing a cheque to the address as show in the Share Register at the Record Date;
- (b) ALF must itself transfer or procure that the Manager under the ALF Management Agreement transfers legal and beneficial title to the ALF Assets to the Responsible Entity on behalf of the Watermark Absolute Return Fund, or as it may direct, free of any security interests and other Third Party rights;
- (c) ALF must apply for the number of Units equal to 1 Unit for every Scheme Share on issue on the Record Date;
- (d) ALF must itself deliver or procure that the Manager delivers to the Watermark Absolute Return Fund or as it may direct:
 - (i) all transfer documents and instructions to Third Parties necessary to transfer title to the ALF Assets executed by the transferor;

- (ii) all title documents relating to ALF Assets; and
 - (iii) all Records relating in any way to the ALF Assets;
- (e) the Responsible Entity must issue to ALF and allot Units with an aggregate value equal to the Completion Net Assets (and equal to 1 Unit for every Scheme Share on issue on the Record Date);
- (f) ALF must in satisfaction of its obligations to undertake the Capital Reduction and the Capital Reduction Entitlement of each Scheme Participant, distribute the Scheme Consideration in accordance Scheme as follows:
 - (i) for each Scheme Participant that is not an Ineligible Foreign Shareholder, by ALF transferring to that Scheme Participant that number of Units equal to the number of Scheme Shares held by that Scheme Participant on the Record Date;
 - (ii) for each Ineligible Foreign Shareholder, by ALF transferring to the Nominee that number of Units equal to the number of Scheme Shares held by each Ineligible Foreign Shareholder on the Record Date;
- (g) the Responsible Entity must immediately approve the transfer of Units to Scheme Participants and the Nominee on the basis detailed in Clause 4.9(d) and the Scheme;
- (h) ALF must issue one fully paid ordinary share to the Manager as detailed in Clause 4.2(r).

4.10 Completion Steps in relation to Ineligible Foreign Shareholders

Notwithstanding any other provision in the Deed:

- (a) ALF:
 - (i) will not distribute or transfer Units to an Ineligible Foreign Shareholder which that Scheme Participant would otherwise be entitled under the Scheme (**Ineligible Units**);
 - (ii) will transfer to the Nominee that number of Units equal to the number of Scheme Shares held by each Ineligible Foreign Shareholder on the Record Date, in consideration for the application of their Capital Reduction Entitlements; and
- (b) the Responsible Entity and ALF must procure the Nominee to:
 - (i) apply to withdraw the Ineligible Units as soon as reasonably practicable and in any event no later than the end of the Withdrawal Period (**Withdrawal**); and
 - (ii) within 5 Business Days after the end of the Withdrawal Period, remit the net proceeds of the Withdrawal received (after deducting any applicable brokerage, stamp duty and other costs, taxes and charges (rounded down to the nearest whole cent, and otherwise in accordance with the Scheme) to each Ineligible Foreign Shareholder.
- (c) The payment of the net proceeds to the Ineligible Foreign Shareholders under clause 4.10(b)(ii) will be paid in Australian dollars by:
 - (i) electronic funds transfer to a bank account as noted on ALF's share register on the Record Date; or

- (ii) whether or not an account is noted on ALF's share register, cheque drawn on an Australian bank and sent by pre-paid post to the Ineligible Foreign Shareholder's Registered Address at the Record Date.

4.11 No Shop and No Talk

- (a) During Exclusivity Period, ALF must ensure that neither it nor any of its Representatives directly or indirectly:
 - (i) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
 - (ii) communicates any intention to do any of these things,with a view to obtaining any offer, proposal or expression of interest from any person in relation to a competing transaction.
- (b) During the Exclusivity Period, subject to the following, ALF must ensure that neither it nor any of its Representatives:
 - (i) negotiates or enters into; or
 - (ii) participates in negotiations or discussions with any other person regarding,a competing transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a competing transaction, even if that person's competing transaction was not directly or indirectly solicited, invited, encouraged or initiated by ALF or any of its Representatives or the person has publicly announced the competing transaction.
- (c) The above restrictions do not apply to the extent that they restrict ALF or the ALF Independent Board Committee from taking or refusing to take any action with respect to a Superior Competing Transaction (which was not solicited, invited, encouraged or initiated by ALF in contravention of clause 4.11(a)) provided that the Independent Board Committee has determined, in good faith that:
 - (i) after consultation with their financial advisors, such a genuine competing transaction is, or could reasonably be considered to become, a superior proposal; and
 - (ii) after receiving written legal advice from their external legal advisers that failing to respond to such a genuine competing transaction would be reasonably likely to constitute a breach of the fiduciary or statutory obligations or members of the Independent Board Committee.

5. REPRESENTATIONS AND UNDERTAKINGS

5.1 Responsible Entity's representations

The Responsible Entity represents to ALF (in its own right and separately as trustee or nominee for each of the other ALF Parties) and the Manager (in its own right and separately as trustee or nominee for each of the other Manager Parties) that:

- (a) the Responsible Entity Information provided to ALF for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that each of the ALF Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Transaction in accordance with the Corporations Act;

- (b) the Responsible Entity Information provided under Clause 4.3(a) included in the Scheme Booklet, as at the date the Scheme Booklet is despatched to ALF Shareholders, will (to the best of the Responsible Entity's knowledge, information and belief, after due enquiry) not contain any statement which is materially misleading or deceptive including by way of material omission from that statement;
- (c) the Responsible Entity will, as a continuing obligation, provide to ALF all further or new information which it becomes aware of after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that there would be no breach of Clause 5.1(b) if it applied as at the date on which that information arose;
- (d) the Responsible Entity is a validly existing corporation registered under the laws of its place of incorporation;
- (e) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Responsible Entity;
- (f) the Responsible Entity has full corporate power and lawful authority to execute, deliver and perform this Deed, including under the Watermark Absolute Return Fund Constitution; and
- (g) this Deed does not conflict with or result in the breach of or default under the Watermark Absolute Return Fund Constitution and to the best of the Responsible Entity's knowledge any other agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound.

5.2 ALF's representations

ALF represents to the Responsible Entity and its directors and officers (in its own right and separately as trustee or nominee for each of the other the Responsible Entity Parties) and the Manager (in its own right and separately as trustee or nominee for each of the other Manager Parties) that:

- (a) no information (other than the Responsible Entity Information and the Independent Expert's Report) contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to ALF Shareholders, will contain (to the best of ALF's knowledge, information and belief, after due enquiry) any statement which is materially misleading or deceptive, including by way of material omission from that statement;
- (b) ALF is a validly existing corporation registered under the laws of its place of incorporation;
- (c) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of ALF;
- (d) ALF has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed;
- (e) this Deed does not conflict with or result in the breach of or default under any provision of the ALF Constitution or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it is bound; and
- (f) its capital structure, including all issued securities, as at the date of this Deed is as set out in clause 2(b) of the Scheme.

5.3 Manager representations

The Manager represents to ALF and its directors and officers (in its own right and separately as trustee or nominee for each of the other the ALF Parties) and the Responsible Entity (in its own right and separately as trustee or nominee for each of the other Responsible Entity Parties) that:

- (a) the Manager Information provided to ALF for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to ALF Shareholders, will contain (to the best of the Manager's knowledge, information and belief, after due enquiry) any statement which is materially misleading or deceptive, including by way of material omission from that statement;
- (b) the Manager is a validly existing corporation registered under the laws of its place of incorporation;
- (c) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Manager;
- (d) the Manager has full corporate power and lawful authority to execute and deliver this Deed and to perform or cause to be performed its obligations under this Deed; and
- (e) this Deed does not conflict with or result in the breach of or default under any provision of the Manager Constitution or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it is bound.

5.4 Survival of representations

Each representation and warranty in Clauses 5.1, 5.2 and 5.3:

- (a) is severable;
- (b) survives the termination of this Deed; and
- (c) is given with the intention that liability under it is not confined to breaches which are discovered before the date of termination of this Deed.

6. PUBLIC ANNOUNCEMENTS

6.1 Announcement of Transaction

Immediately after the execution of this Deed, ALF must issue a public announcement in a form previously agreed in writing between ALF, the Responsible Entity and the Manager.

7. CONFIDENTIALITY

7.1 Confidentiality

- (a) Each Party acknowledges and agrees that all information received by it from any other Party before or after the date of this Deed is confidential information and must remain confidential and not be disclosed to any Third Party without the consent of the other Parties.
- (b) A Party may make any disclosures in relation to this Deed as it thinks necessary:
 - (i) to its professional advisers, insurers, bankers, financial advisers and financiers, if those persons undertake to keep information disclosed confidential;

- (ii) to comply with any Law or requirement of any Government Authority or the rules of ASX; or
- (iii) to its Representatives to whom it is necessary to disclose the information if that Representative undertakes to keep the information disclosed confidential.

8. LIABILITY OF THE RESPONSIBLE ENTITY

- (a) ALF and the Manager agree that the Responsible Entity enters into this Deed in its capacity as trustee of the Watermark Absolute Return Fund and in no other capacity.
- (b) ALF and the Manager agree that the liability of the Responsible Entity to the Manager and ALF, their officers, or agents or any other person under or arising out of this Deed in relation to the Watermark Absolute Return Fund is limited to the amount that the Responsible Entity actually receives in the exercise of its right of indemnity against the Watermark Absolute Return Fund.
- (c) Each of the Manager and ALF may enforce its rights under this Deed against the Responsible Entity only to the extent of the Responsible Entity's right of indemnity out of the assets of the Watermark Absolute Return Fund.
- (d) If the Manager or ALF does not recover all money owing to it by enforcing the rights referred to in clause 8(c), it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Responsible Entity in its personal capacity; or
 - (ii) applying to have the Responsible Entity wound up or proving in the winding up of the Responsible Entity unless another creditor has initiated proceedings to wind up the Responsible Entity.
- (e) Each of the Manager and ALF waives its rights and releases the Responsible Entity from any personal liability whatsoever, in respect of any loss or damage which:
 - (i) it may suffer as a result of the Responsible Entity's non-performance of its obligations and liabilities under this Deed; and
 - (ii) cannot be paid or satisfied out of the assets of the Watermark Absolute Return Fund out of which the Responsible Entity is entitled to be indemnified in respect of any liability incurred as the trustee.
- (f) The limitation in this clause 8 does not apply to the extent that any liability arises from fraud, gross negligence or breach of trust by the Responsible Entity as the trustee of the Watermark Absolute Return Fund. For these purposes, it is agreed that the Responsible Entity cannot be regarded as having acted fraudulently, with gross negligence or in breach of trust to the extent to which the fraud, gross negligence or breach of trust has been caused or contributed to by a failure of either the Manager or ALF to fulfil its obligations under this Deed or any other act or omission of either the Manager or ALF or any other person.
- (g) Nothing in clause 8(f) shall make the Responsible Entity liable to any claim for an amount greater than the amount which the Responsible Entity would have been able to claim and recover from the assets of the Watermark Absolute Return Fund in relation to the relevant liability if the Responsible Entity's right of indemnification out of the assets of the Watermark Absolute Return Fund had not been prejudiced by the Responsible Entity's failure to properly perform its duties.

- (h) The Responsible Entity is not obliged to do or refrain from doing anything under this Deed (including incur any liability) unless the Responsible Entity's liability is limited in the same manner as set out in paragraph 8(a) to 8(g) of this clause.
- (i) Each of the Manager and ALF acknowledges and agrees that in respect of any liability or obligation incurred by the Responsible Entity under or arising out of this Deed, it shall not be permitted to set off liabilities or obligations against it nor have any recourse to, the assets of any managed investment scheme or trust for which the Responsible Entity has been appointed as responsible entity or trustee, other than the Watermark Absolute Return Fund.
- (j) This clause applies despite any other provision in this Deed and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this Deed. In the event of any inconsistency, this clause prevails and survives termination of this Deed.

9. TERMINATION

9.1 Termination by any Party

Unless otherwise agreed to by ALF, the Responsible Entity or the Manager, any Party may terminate this Deed by giving written notice to the other Party at any time prior to the Effective Date where:

- (a) one of the other Parties is in material breach of any clause, including a warranty, of this Deed which is incapable of being remedied, or if the breach is capable of being remedied, continue to exist for more than 10 Business Days;
- (b) a Court or other Governmental Agency has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme; or
- (c) any condition precedent referred to in Clause 3 has not been satisfied or waived in accordance with this Deed.

9.2 Effect of termination

In the event of termination of this Deed by any Party pursuant to this Clause 9 or Clause 4.6(c), this Deed will become void and have no effect, other than in respect of any liability for an antecedent breach of this Deed.

10. GST

10.1 GST

- (a) Any consideration or amount payable under this Deed, including any non-monetary consideration (as reduced in accordance with Clause 10.1(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this Deed, an additional amount (**Additional Amount**) is payable by the Party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the Party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under Clause 10.1(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must

provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.

- (d) If for any reason the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under Clause 10.1(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate.
- (e) Despite any other provision in this Deed:
 - (i) if an amount payable under or in connection with this Deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a Party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that Party is entitled in respect of that Amount Incurred; and
 - (ii) no Additional Amount is payable under Clause 10.1(b) in respect of a Supply to which section 84-5 of the GST Law applies.
- (f) Any reference in this clause to an Input Tax Credit to which a Party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that Party but to which the Representative Member of a GST Group of which the Party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this Deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

11. GENERAL

11.1 No representation or reliance

- (a) Each Party acknowledges that no Party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each Party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other Party, except for any representation or inducement expressly set out in this Deed.
- (c) Each Party acknowledges and confirms that Clauses 11.1(a) and 11.1(b) do not prejudice any rights a Party may have in relation to information which has been filed by the other Party with ASIC or ASX.

11.2 No merger

The rights and obligations of the Parties do not merge on implementation of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

11.3 Consents

Any consent referred to in, or required under, this Deed from any Party may not be unreasonably withheld, unless this Deed expressly provides for that consent to be given in that Party's absolute discretion.

11.4 Notices

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

ALF

Address: Level 23, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000
Attention: Mark Licciardo
Email: markl@mertons.com.au

Responsible Entity

Address: Level 2, 575 Bourke Street, Melbourne, Victoria 3000
Attention: Matt Kilbride/Justin Evans
Email: mkilbride@eqt.com.au and jevans@eqt.com.au

Manager

Address: Level 23, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000
Fax no: +61 2 9252 1220
Attention: Justin Braitling
Email: braitling@wffunds.com.au

(or as otherwise notified by that Party to the other Party from time to time);

- (c) must be signed by the Party making the communication or by a person duly authorised by that Party;
- (d) must be delivered or posted by prepaid post to the address, or by email to the email address, of the addressee, in accordance with Clause 11.4(b); and
- (e) is regarded as received by the addressee:
 - (i) if sent by prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) if delivered by hand, on delivery at the address of the addressee as provided in Clause 11.4(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day; and

- (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) subject to the email being sent within the hours of 9am and 5pm on a Business Day, 6 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,
- whichever happens first.

11.5 Stamp Duty

ALF undertakes and agrees to fully indemnify the Responsible Entity with respect to any amounts payable in connection with transfer of the ALF Assets and the issue of Units in accordance with this Deed.

11.6 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

11.7 Waivers

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by any Party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver or consent given by any Party under this Deed is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of any term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

11.8 Variation

This Deed may only be varied by a document signed by, or on behalf of, each of the Parties.

11.9 Assignment

A Party may not assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of the other Party.

11.10 Further action

Each Party will do all things and execute all further documents necessary to give full effect to this Deed.

11.11 Entire agreement

This Deed supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the Parties.

11.12 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Deed by signing any counterpart.
- (d) This Deed may be executed on the basis of an exchange of facsimile copies or electronic images (such as scanned copies or digital photos), and execution of this Deed by such means is a valid and sufficient execution.

Schedule 1 Timetable

Event	Date
ALF provides Regulator's Draft to ASIC	On or before 23 December 2020
First Court Date	By 19 January 2021
Printing and despatch of Scheme Booklet	By 22 January 2021
Scheme Meeting Court ordered meeting to consider and vote on the Scheme Resolution	17 February 2021
Annual General Meeting Shareholders will vote on the Capital Reduction Resolution and Termination Fee Resolution	17 February 2021
Second Court Date	26 February 2021
Effective Date Lodgement by ALF with ASIC of the Court orders approving the Scheme	1 March 2021
Record Date Time and date for determining entitlements to the Scheme Consideration	3 March 2021
Implementation Date Dividend is paid and Scheme is implemented	8 March 2021

Schedule 2 Scheme



SCHEME OF ARRANGEMENT

Australian Leaders Fund Limited
(ACN 106 845 970)

Scheme Participants



Suite 18, 50 Stanley Street
Darlinghurst NSW 2010
Phone +61 2 9059 8111
info@montlawyers.com
montlawyers.com

MONT LAWYERS PTY LTD
ABN 71 631 930 937
ACN 631 930 937

Liability limited by a scheme approved
under Professional Standards Legislation.

Table of Contents

1.	DEFINITIONS AND INTERPRETATION _____	3
2.	PRELIMINARY MATTERS _____	7
3.	CONDITIONS _____	8
4.	IMPLEMENTATION OF THIS SCHEME _____	9
5.	WITHDRAWAL OF INELIGIBLE UNITS _____	10
6.	GENERAL SCHEME PROVISIONS _____	12
7.	DEALING IN ALF SHARES _____	13
8.	GENERAL _____	14
	ANNEXURE A _____	16

THIS SCHEME OF ARRANGEMENT IS MADE UNDER SECTION 411 OF THE CORPORATIONS ACT 2001 (CTH)

PARTIES:

A **Australian Leaders Fund Limited** (ACN 106 845 970) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000 (**ALF**); and

B **The Scheme Participants.**

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Scheme:

ALF Assets mean Assets of ALF with an aggregate value equal to the Completion Net Assets.

ALF Management Agreement means the investment management agreement dated 11 November 2003 between Australian Leaders Fund Limited (formerly known as Wilson Leaders Limited) and the Manager (formerly known as KWB Capital Pty Limited).

ALF Registry means Boardroom Pty Limited of Level 12, 225 George Street, Sydney NSW 2000.

ALF Share means a fully paid ordinary share in the capital of ALF.

Assets means any legal or equitable right, estate or interest (whether present or future and whether vested or contingent) in real or personal property and any description, wherever located and whether tangible or intangible, including:

- (a) any part of the business or undertaking of a body corporate;
- (b) a chose or other thing in action, including any rights under any contract, negotiable instrument or other arrangement;
- (c) any share in a company and any unit or other interest in a trust;
- (d) any 'property' (within the meaning in subsection 413(4) of the Corporations Act); and
- (e) any other thing capable of being transferred or otherwise dealt with by order of the Court in accordance with paragraph 413(1)(a) of the Corporations Act.

ASIC means the Australian Securities & Investments Commission.

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

Australian Accounting Standards means the accounting standards promulgated by the Australian Accounting Standards Board.

Business Day means a weekday on which trading banks are open for business in Sydney, Australia, excluding any Saturday, Sunday or public holiday.

Capital Reduction means the reduction in the capital of ALF under section 256B of the Corporations Act to be applied equally against each Scheme Share on issue as at the Scheme Record Date in accordance with the terms of the Capital Reduction Resolution.

Capital Reduction Amount means an amount equal to the Completion Net Assets.

Capital Reduction Entitlement means in relation to a Scheme Participant, the Capital Reduction Pro-Rata Amount multiplied by the number of Scheme Shares held by the Scheme Participant on the Scheme Record Date.

Capital Reduction Pro-Rata Amount means the Capital Reduction Amount divided by the number of Scheme Shares on issue on the Scheme Record Date.

Capital Reduction Resolution means the ordinary resolution concerning the Capital Reduction to be considered by ALF Shareholders at the General Meeting as set out in Annexure A of this Scheme.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

Completion Net Assets means an amount equal to the post-tax net Assets of ALF as at the Implementation Date after completion of the transaction referred to in clause 4.2(a) immediately prior to the transactions referred to in clauses 4.2(b) to 4.2(f) (inclusive) calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations), and the Corporations Regulations and excluding the Retention Amount and franking deficit tax attributable to the Dividend Amount (if any).

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

Corporation Regulations means the *Corporations Regulations 2001* (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as ALF, the Responsible Entity and the Manager agree on in writing.

Deed Poll means the deed poll to be granted by the Responsible Entity in substantially the form set out in Schedule 3 to the Implementation Deed or such other form agreed to in writing between ALF and the Responsible Entity.

Delivery Time means at 8.00am on the Second Court Date.

Dividend means a dividend determined in accordance with section 254T of the Corporations Act by the Directors and paid to each Scheme Participant, subject to the Scheme becoming Effective, in cash on the Implementation Date.

Dividend Amount means the amount of the Dividend which is determined by the Directors such that ALF is not in a franking deficient position as at 30 June 2021 or such earlier on which ALF is wound up.

Dividend Entitlement means in relation to a Scheme Participant, the Dividend Pro Rata Amount multiplied by the number of ALF Shares held by the Scheme Participant on the Scheme Record Date.

Dividend Pro Rata Amount means the amount of less than 3 cents per ALF Share equal to the Dividend Amount divided by the number of ALF Shares on issue on the Scheme Record Date.

Early Termination Fee means an amount of \$2,500,000 payable by ALF to the Manager for the early termination of the ALF Management Agreement.

Effective means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) and section 413(1) in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

End Date means 30 June 2021.

Fund means Watermark Absolute Return Fund (ARSN 631 094 534).

Fund PDS means the current product disclosure statement issued by the Responsible Entity with respect to the Fund and the Units.

General Meeting means the general meeting for ALF Shareholders held on [*] at which ALF Shareholders considered (amongst other things) the Capital Reduction Resolution and the Termination Fee Resolution.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state.

Implementation Date means the day 5 Business Days after the Scheme Record Date or such other date as ALF and the Responsible Entity agree in writing.

Implementation Deed means the scheme implementation deed dated 21 December 2020 between ALF, the Responsible Entity and the Manager relating to the implementation of this Scheme.

Ineligible Foreign Shareholder means a Scheme Participant whose address as shown in the Share Register is a place outside Australia and its external territories or New Zealand unless ALF, the Responsible Entity and the Manager agree in writing that it is lawful and not unduly onerous or impracticable to transfer that Scheme Participant Units when this Scheme becomes Effective.

Ineligible Units means the Units to which Ineligible Foreign Shareholders would have been entitled under this Scheme but for the operation of clause 4.4.

Listing Rules means the official listing rules of the ASX.

Manager means Watermark Funds Management Pty Limited (ACN 106 302 505).

Nominee means the agent appointed by ALF to receive, and to withdraw, the Ineligible Units.

Registered Address means, in relation to an ALF Shareholder, the address of the ALF Shareholder as recorded in the Share Register.

Regulatory Authority means:

- (a) any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, tribunal, agency or entity;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
- (c) any regulatory organisation established under statute,

in any part of the world, and whether foreign, federal, state, territorial or local.

Responsible Entity means the responsible entity of the Fund from time to time being, as at the date of this Scheme, Equity Trustees Limited (ACN 004 031 298) as responsible entity of the Fund.

Retention Amount means \$[insert].

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between ALF and the Scheme Participants subject to any alterations or conditions:

- (a) agreed to in writing by ALF and the Responsible Entity and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed by ALF and the Responsible Entity.

Scheme Consideration means one Unit for each Scheme Share, distributed in specie in satisfaction of each Scheme Participant's Capital Reduction Entitlement in accordance with clauses 4.4 and 5.1.

Scheme Meeting means the meeting of ALF Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Record Date means the record date for the Scheme and the Dividend, being the third Business Day after the Effective Date or such other date as ALF, the Responsible Entity and the Manager agree.

Scheme Share means an ALF Share on issue as at the Scheme Record Date.

Scheme Participant means each person who is registered in the Share Register as the holder of ALF Shares as at the Scheme Record Date.

Second Court Date means the first day on which the application made to the Court for an order for the purposes of section 411(4)(b) and section 413(1)) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.

Share Register means the register of members of ALF maintained in accordance with the Corporations Act.

Termination Fee Resolution means the ordinary resolution concerning payment of the Early Termination Fee under chapter 2E of the Corporations Act as set out in Annexure A of this Scheme to be considered by ALF Shareholders at the General Meeting.

Unit means a fully paid B class unit in the capital of the Fund issued pursuant to the Fund PDS and subject to the fee arrangements detailed in the investment management agreement between the Manager and the Responsible Entity dated 7 March 2019 as amended by the parties from time to time, including via side letter signed on or around 17 December 2020.

Withdrawal Period means the period on and from the Implementation Date to and including the fifth Business Day after the Implementation Date.

1.2. Interpretation

In this Scheme, headings and bold type are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;

- (e) a reference to a Clause, Party, Attachment or Schedule is a reference to a clause of, and a party, attachment and schedule to this Scheme, and a reference to this Scheme includes any Attachment and Schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word **includes** in any form is not a word of limitation;
- (i) a reference to **\$** or **dollar** is to Australian currency;
- (j) a reference to any time, unless otherwise indicated, is a reference to the time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme; and
- (l) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a Party.

1.3. Business Day

Where the day on or day by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2. PRELIMINARY MATTERS

- (a) ALF is a public company limited by shares incorporated in Australia and registered in New South Wales, Australia, and has been admitted to the official list of the ASX. ALF Shares are quoted for trading on the ASX.
- (b) As at the Second Court Date, **[insert]** ALF Shares were on issue.
- (c) The Responsible Entity is a public company acting as responsible entity of the Fund, a registered managed investment scheme under the Corporations Act.
- (d) If this Scheme becomes Effective:
 - (i) prior to the Implementation Date:
 - (A) ALF will pay the Early Termination Fee and all other amounts required under the Termination Deed to the Manager;
 - (B) determine to pay the Dividend Amount on the Implementation Date to each Scheme Participant;
 - (ii) on the Implementation Date:
 - (A) in consideration of the transfer of the ALF Assets by ALF to the Fund, the Responsible Entity, will issue to ALF the number of Units equal to 1 Unit for every Scheme Share on issue on the Record Date, which have an aggregate value equal to the Completion Net Assets;

- (B) ALF will undertake the Capital Reduction and distribute in specie the Scheme Consideration in accordance with this Scheme and in satisfaction of each Scheme Participant's Capital Reduction Entitlement; and
 - (C) the ALF Shares will be cancelled by ALF in accordance with the terms of the Capital Reduction Resolution and this Scheme.
- (e) ALF, the Manager and the Responsible Entity have agreed by executing the Implementation Deed to implement the Scheme and conduct the Capital Reduction.
- (f) This Scheme attributes actions to the Responsible Entity but does not itself impose an obligation on it to perform those actions. The Responsible Entity has agreed, by executing the Deed Poll, to perform the actions attributed to it in respect of this Scheme and set out in the Scheme Implementation Deed, including issuing ALF with Units with an aggregate value equal to the Completion Net Assets and procuring the Unit register is updated to reflect the provision of the Scheme Consideration to the Scheme Participants, subject to and in accordance with this Scheme.

3. CONDITIONS

3.1. Conditions Precedent

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions precedent in clause 3.1 of the Implementation Deed (other than the condition precedent in clause 3.1(c) of the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed by the Delivery Time;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before the Delivery Time;
- (c) approval of this Scheme by the Court under sections 411(4)(b) and section 413(1) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act and agreed to by ALF and the Responsible Entity;
- (d) Scheme Participants' approval of the Capital Reduction Resolution and the Early Termination Fee Resolution by the required majority under the Corporations Act at the General Meeting;
- (e) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by ALF and the Responsible Entity; and
- (f) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) and section 413(1)) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(10) and section 413(3) of the Corporations Act, on or before the End Date (or any later date ALF and the Responsible Entity agree).

3.2. Certificate

- (a) ALF and the Responsible Entity will provide to the Court on the Second Court Date a certificate executed as a deed, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.

- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

4. IMPLEMENTATION OF THIS SCHEME

4.1. Lodgement of Court orders with ASIC

ALF will lodge with ASIC, in accordance with sections 411(10) and 413(3) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as ALF, the Manager and the Responsible Entity agree in writing.

4.2. Payment of the Dividend and Implementation of the Capital Reduction and the Scheme

On the Implementation Date, without the need for any further act by any Scheme Participant:

- (a) ALF will pay the Dividend Entitlement of each Scheme Participant by dispatching to the cash amount to each Scheme Participant's nominated bank account as noted in, or by mailing a cheque to the address as shown in, the Share Register at the Scheme Record Date;
- (b) the ALF Assets will be transferred to the Fund;
- (c) the Responsible Entity will issue to ALF (as consideration for the ALF Assets) Units with an aggregate value equal to the Completion Net Assets;
- (d) ALF will reduce its share capital by the Capital Reduction Amount, crediting each Scheme Participant with a Capital Reduction Entitlement, in accordance with the Capital Reduction Resolution;
- (e) ALF will in satisfaction of the Capital Reduction Entitlement of each Scheme Participant distribute the Scheme Consideration in accordance with clause 4.4 and clause 5.1; and
- (f) subject to the completion of the steps set out in clauses 4.2(a) to 4.2(b), ALF will then immediately issue one fully paid ordinary share to the Manager.

4.3. Implementation of steps 4.2(a) to 4.2(f) to be simultaneous

Implementation of all of the steps set out in clauses 4.2(a) to 4.2(e) shall be carried out simultaneously and no step in clauses 4.2(a) to 4.2(e) shall be deemed to have been completed until all steps have been carried out.

4.4. Capital Reduction Entitlements of Scheme Participants

Subject to clause 5.2, the Capital Reduction Entitlement of each Scheme Participant will, on the Implementation Date, be satisfied via the in specie distribution of the Scheme Consideration (without the need for any further act by a Scheme Participant) as follows:

- (a) for each Ineligible Foreign Shareholder, by ALF transferring to the Nominee that number of Units equal to the number of Scheme Shares held by each Ineligible Foreign Shareholder on the Scheme Record Date; and
- (b) for all other Scheme Participants, by ALF transferring to that Scheme Participant that number of Units equal to the number of Scheme Shares held by that Scheme Participant on the Scheme Record Date.

4.5. In specie distribution of Units

The obligations of ALF under clause 4.4 will be discharged by ALF:

- (a) transferring the Units to the Scheme Participants or the Nominee (as applicable) in the numbers determined in accordance with clause 4.4; and
- (b) procuring the entry in the Fund's unit register:
 - (i) of the name of each Scheme Participant in respect of the Units transferred to the relevant Scheme Participant by ALF in accordance with this Scheme; or
 - (ii) of the name of the Nominee in respect of those Units that would otherwise have been transferred to each Scheme Participant who is an Ineligible Foreign Shareholder.

4.6. Dispatch of holding statements

As soon as practicable after the Implementation Date, ALF will procure that the Responsible Entity (on behalf of the Fund) sends to each Scheme Participant or the Nominee, holding statements for the Units transferred in accordance with clause 4.5, by prepaid post to their registered address at the Scheme Record Date, or as otherwise directed by the relevant Scheme Participants or the Nominee (as applicable).

4.7. Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Units must be transferred to and registered in the name of the joint holders and the holding statement in respect of the requisite number of Units must be sent to the holder whose name appears first in the Share Register as at the Scheme Record Date; and
- (b) any bank cheque required to be paid by or on behalf of ALF or the Responsible Entity must be payable to the joint holders and be forwarded to the holder whose name appears first in the Share Register as at the Scheme Record Date.

4.8. Appointment as agent

Each Ineligible Foreign Shareholder appoints ALF as its agent to receive on its behalf any financial services guide or other notices which may be given by the Nominee to the Ineligible Foreign Shareholder.

5. WITHDRAWAL OF INELIGIBLE UNITS

5.1. The Withdrawal Procedure

ALF will procure, that the Nominee:

- (a) as soon as reasonably practicable (and in any event no later than the end of the Withdrawal Period), request the withdrawal for the benefit of each Ineligible Foreign Shareholder, all the Ineligible Units, transferred to the Nominee under clause 4.4 in consideration for the application of their Capital Reduction Entitlements, in accordance with the procedure specified in the Fund PDS by delivering to the Responsible Entity's unit registry (to its address as specified in the Fund PDS) a request form in respect of the Ineligible Units and the certificates (if any) in respect of the Ineligible Units;
- (b) promptly after the withdrawal of the Ineligible Units in accordance with clause 5.1(a), accounts to each Ineligible Foreign Shareholder for the net proceeds of the withdrawal

(for the avoidance of doubt, after deduction or payment of all withdrawal fees and other charges payable on withdrawal at the direction of ALF and any applicable taxes and charges incurred by the Nominee in connection with the withdrawal) and any income attributable to those Units (on an averaged basis so that all Ineligible Foreign Shareholders receive the same price per Unit (provided that for the purposes of the foregoing the total cash amount payable an Ineligible Foreign Shareholder, will be rounded down to the nearest whole cent); and

- (c) remits the net proceeds of the withdrawal due to each Ineligible Foreign Shareholder under clause 5.1(b) to the Ineligible Foreign Shareholder no later than 5 Business Days after the end of the Withdrawal Period, such amounts to be dispatched by:
 - (i) direct credit to each Ineligible Foreign Shareholder's nominated bank account as noted in the Share Register at the Scheme Record Date; or
 - (ii) where a bank account has not been nominated by an Ineligible Foreign Shareholder for the purpose of clause 5.1(c)(i), cheque to be mailed to that Ineligible Foreign Shareholder's address as show in the Share Register at the Scheme Record Date.

5.2. Satisfaction of obligations

- (a) ALF, by complying with the terms of clause 5.1 in respect of an Ineligible Foreign Shareholder will be taken to have satisfied and discharged its obligations to the relevant Ineligible Foreign Shareholder under the terms of the Capital Reduction Resolution and the Scheme.
- (b) If any amount is required under any Australian law or by any Regulatory Authority in Australia to be:
 - (i) withheld from an amount payable under clause 5.1(c) and paid to that entity or authority; or
 - (ii) retained by the Nominee, ALF or the Responsible Entity out of an amount payable under clause 5.1,

its payment or retention by the Nominee or ALF will constitute the full discharge of the payment obligations under this clause with respect to the amount so paid or retained until, in the case of clause 5.2(b)(ii), it is no longer required to be retained.

- (c) An Ineligible Foreign Shareholder will have no claim against ALF for any entitlement they would have had to the Units but for the terms of this Scheme.

5.3. Acknowledgement

Under this Scheme, each Ineligible Foreign Shareholder agrees and acknowledges that:

- (a) the withdrawal in respect of the person's Capital Reduction Entitlement under this Scheme by operation of clause 5.1 constitutes satisfaction of all the person's entitlements in and to that person's Capital Reduction Entitlement;
- (b) no assurance is given as to the withdrawal price of the Ineligible Units; and
- (c) the withdrawal of the Ineligible Units in accordance this Scheme will be at that Ineligible Foreign Shareholder's risk.

6. GENERAL SCHEME PROVISIONS

6.1. Agreement to become a member of the Fund

Under this Scheme, each Scheme Participant (including those Scheme Participants who do not attend the Scheme Meeting or General Meeting, do not vote at that meeting or vote against the Scheme) who will receive units:

- (a) agrees to become a Unitholder in the Fund, to have their name entered into the Fund's register of Unitholders, accepts the Units transferred to them and agrees to be bound by the Fund's constitution; and
- (b) agrees and acknowledges that the distribution of Units in accordance with clause 4.5 constitutes satisfaction of all that person's entitlements in and to that person's Capital Reduction Entitlement.

6.2. Appointment of agent and attorney

- (a) Each Scheme Participant, without the need for any further act, irrevocably appoints ALF as its agent and attorney for the purpose of executing any document or doing any other act necessary or desirable to give effect to the terms of this Scheme, including without limitation:
 - (i) the execution and delivery of any form or documentation required to effect the distribution of the Units to Scheme Participants, the Nominee or any other person in accordance with the terms of the Scheme, and the delivery of any such form to the Responsible Entity;
 - (ii) executing any document or doing any other act necessary to give effect to the terms of this Scheme, including, without limitation, the communication of the Scheme Participant's consent, agreement, notifications under clauses 6.1, 6.3, 6.4 or 6.5; and
 - (iii) the enforcement of the Deed Poll against the Responsible Entity,and ALF accepts such appointment.
- (b) Where any provision of this Scheme is expressed to create a right, obligation or benefit by a Scheme Participant in favour of any person or entity that is not a party (**Person**) to the Scheme, then:
 - (i) any such right, obligation or benefit may be assured, or further and better assured, in favour of any such Person by deed (between the relevant Scheme Participant and Person) or by deed poll in favour of any such Person; and
 - (ii) on and from the Effective Date, ALF is by this Scheme expressly appointed by each Scheme Participant as each Scheme Participant's true and lawful agent and attorney with full power and authority to execute as their act and as a deed and deliver on behalf of the Scheme Participant a deed assuring or, further and better assuring, any such right, obligation or benefit.

The authority given by this clause is irrevocable and as if it were made under seal and by a deed and may be exercised more than once and from time to time.

- (c) ALF, as agent of each Scheme Participant, may sub-delegate its functions under clause 6.2(a) to all or any of its directors and secretaries (jointly and severally).

6.3. Instructions to ALF

Except for a Scheme Participant's tax file number, binding instructions or notifications between a Scheme Participant and ALF relating to Scheme Shares or an ALF Shareholder's status as a Scheme Participant (including without limitation, any instructions in relation to payment of dividends or communications from ALF) will (to the extent permitted by law), from the Scheme Record Date, be deemed by reason of this Scheme to be similarly binding instructions or notifications to, and accepted by, the Responsible Entity (on behalf of the Fund) in respect of the Units distributed to Scheme Participants as Scheme Consideration by ALF, until those instructions or notifications are, in each case, revoked or amended in writing addressed to the Responsible Entity at the Fund's unit registry.

6.4. Scheme Participants' consent

Each Scheme Participant irrevocably consents to ALF doing all things necessary incidental or expedient to the implementation and performance of the Scheme and acknowledges that the Scheme binds ALF and all of the Scheme Participants from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme).

6.5. Amendments to the Scheme

ALF may, by its counsel and with the consent of the Responsible Entity, consent, on behalf of all persons concerned (including a Scheme Participant), to any alterations or conditions to this Scheme as the Court thinks just to impose.

6.6. Further Steps

ALF will execute all documents and do all acts and things necessary or desirable for the implementation and performance of its obligations under this Scheme and will, on behalf of Scheme Participants, procure the Responsible Entity on behalf of the Fund to execute all documents and do all acts and things necessary or desirable for the implementation and performance of the steps attributed to the Fund or the Responsible Entity under this Scheme or with respect to the Capital Reduction.

6.7. Scheme binding

To the extent of any inconsistency between this Scheme and the ALF constitution, this Scheme overrides the ALF constitution and binds ALF and all Scheme Participants.

6.8. Enforcement of Deed Poll

ALF undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against the Responsible Entity on behalf of the Fund on behalf of and as agent and attorney for Scheme Participants.

7. DEALING IN ALF SHARES

7.1. Determination of Scheme Participants

To establish the identity of the Scheme Participants, dealings in ALF Shares or other alterations to the Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant ALF Share on or before the Scheme Record Date; and
- (b) in all other cases, registerable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Scheme Record Date at the place where the Share Register is kept,

and ALF will not accept for registration, nor recognise for any purpose any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate, except a transfer to the Responsible Entity pursuant to this Scheme and any subsequent transfer by the Responsible Entity.

7.2. Register

- (a) ALF must register registerable transmission applications or transfers of the ALF Shares in accordance with clause 7.1(b) on or before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 7.2(a) requires ALF to register a transfer that would result in a ALF Shareholder holding a parcel of ALF Shares that is less than a 'marketable parcel' (for the purposes of this clause 7.2(a) 'marketable parcel' has the meaning given in the ASX Settlement Operating Rules).
- (b) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport to agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and ALF shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, ALF must maintain the Share Register in accordance with the provision of this clause 7.2 until the Scheme Consideration has been paid to the Scheme Participants.
- (d) The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (e) Subject to the provision of the Scheme Consideration and the transfer of the ALF Assets to the Responsible Entity contemplated in clause 4.2, all statements of holding for ALF Shares will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from the Scheme Record Date, each entry current as at the Scheme Record Date on the Share Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the ALF Share relating to that entry.
- (f) As soon as possible on or after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, ALF will ensure that a copy of the Share Register as at the Scheme Record Date, including details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant as shown in the Share Register, is available to the Responsible Entity in the form the Responsible Entity reasonably requires.

8. GENERAL

8.1. Scheme Participants' agreement

Each Scheme Participant agrees and acknowledges that this Scheme binds ALF and all Scheme Participants (including those who do not attend the Scheme Meeting or the General Meeting or those who do not vote, or vote against this Scheme at the Scheme Meeting).

8.2. Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to ALF, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at ALF's registered office or at the office of the ALF Registry.

- (b) The accidental omission to give notice of the Scheme Meeting or of the General Meeting or the non-receipt of such notice by an ALF Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the General Meeting or the proceedings of the Scheme Meeting or General Meeting.

8.3. Governing law and jurisdiction

- (a) This Scheme is governed by the laws in force in the State of New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

8.4. Further action

ALF must do all things and execute all further documents necessary or expedient to give full effect to this Scheme and the transactions contemplated by it.

8.5. No liability when acting in good faith

Neither ALF or the Responsible Entity nor any director, officer or secretary of ALF or the Responsible Entity will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

ANNEXURE A

Capital Reduction Resolution

"That, subject to and conditional on the Scheme becoming Effective and for the purposes of section 256C(1) of the Corporations Act, approval be given for:

- (a) the share capital of ALF, as at the Scheme Record Date, be reduced to zero on the Implementation Date in consideration for the rights obtained under the Scheme and that the Scheme Shares be cancelled; and*
- (b) ALF's obligations under paragraph (a) are to be satisfied by the in specie distribution of Units (as defined in the Scheme) in accordance with the provisions of the Scheme in satisfaction of the amount to be distributed to each holder of ALF Shares thereunder."*

Early Termination Fee Resolution

"Subject to, and interdependent with the approval of the Scheme by the Court under section 411(4)(b) of the Corporations Act and the Implementation Date occurring before the End Date, that for the purposes of section 208 of the Corporations Act, and for all other purposes, ALF Shareholders approve:

- (a) ALF's agreement to pay the Early Termination Fee to the Manager in recognition that the Responsible Entity will provide a one year waiver of management fees for the Units on the implementation of the Scheme; and*
- (b) ALF entering into arrangements to give effect to, and to pay the Early Termination Fee to the Manager."*

Schedule 3
Deed Poll

DEED POLL

Equity Trustees Limited

(ACN 004 031 298)

as trustee for the Watermark Absolute Return Fund (ARSN 631 094 534)



Table of Contents

2.	CONDITIONS TO OBLIGATIONS	4
3.	PERFORMANCE OF OBLIGATIONS GENERALLY.....	5
4.	SCHEME OBLIGATIONS	5
5.	WARRANTIES	5
6.	LIABILITY OF THE RESPONSIBLE ENTITY	5
7.	CONTINUING OBLIGATIONS.....	6
8.	NOTICES	6
9.	GENERAL.....	7

BY

Equity Trustees Limited (ACN 004 031 298) as trustee of the Watermark Absolute Return Fund (ARSN 631 094 534) of Level 1, 575 Bourke Street, Melbourne, VIC, 3000 (**Responsible Entity**)

In favour of each Scheme Participant and ALF

RECITALS:

- A. ALF, the Responsible Entity and the Manager have entered into the Implementation Deed.
- B. In the Implementation Deed, the Responsible Entity agreed to enter into this Deed Poll.
- C. The Responsible Entity is entering into this Deed Poll for the purpose of covenanting in favour of ALF and the Scheme Participants to perform its obligations under the Scheme and the Implementation Deed.
- D. The effect of the Scheme will be that the ALF Assets will be transferred to the Responsible Entity to be acquired by the Fund in exchange for the issue of Units to ALF, ALF will distribute those Units in specie as the Scheme Consideration and the ALF Shares will be cancelled.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Capitalised terms in in this Deed Poll have the meaning set out in this Clause 1.1 or unless the context otherwise requires the meaning given in in the Scheme:

ALF means Australian Leaders Fund Limited (ACN 106 845 970) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000.

Effective means when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) and section 413(1) in relation to the Scheme.

End Date means 30 June 2021.

Fund means the Watermark Absolute Return Fund (ARSN 631 094 534).

Fund Constitution means the constitution of the Watermark Absolute Return Fund.

Implementation Date means the day 5 Business Days after the Scheme Record Date or such other date as ALF, the Responsible Entity and the Manager agree in writing.

Implementation Deed means the scheme implementation deed dated 21 December 2020 between ALF, the Responsible Entity and the Manager relating to the implementation of this Scheme.

Ineligible Foreign Shareholder means a Scheme Participant whose address as shown in the Share Register is a place outside Australia, its external territories or New Zealand unless otherwise agreed by ALF, the Responsible Entity and the Manager in accordance with the Scheme.

Ineligible Units means the Units to which Ineligible Foreign Shareholders would have been transferred under the Scheme but for the operation of clause 4 of the Scheme.

Manager means Watermark Funds Management Pty Limited (ACN 106 302 505) of Level 23, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between ALF and the Scheme Participants in Schedule 3 of the Implementation Deed subject to any alterations or conditions:

- (a) agreed to in writing by the Responsible Entity and ALF and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed by the Responsible Entity and ALF.

Scheme Consideration means the number of Units equal to one Unit for each Scheme Share on issue on the Record Date.

Scheme Participant means each person who is registered in the Share Register as the holder of a Scheme Share and for the purpose of this Deed Poll, includes ALF.

Scheme Share means a fully paid ordinary share in ALF on issue as at the Record Date.

Unit means a fully paid unit in the capital of the Watermark Absolute Return Fund issued subject to the fee arrangements detailed in the investment management agreement with between the Manager and the Responsible Entity dated 7 March 2019 as amended by the parties from time to time, including via side letter signed on or around 18 December 2020.

1.2. Interpretation

Clauses 1.2 and 1.3 of the Scheme apply to the interpretation of this Deed Poll, except that references to 'this Scheme' in those clauses are to be read as references to 'this Deed Poll'.

1.3. Nature of Deed Poll

The Responsible Entity acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints ALF and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing this Deed Poll against the Responsible Entity.

2. CONDITIONS TO OBLIGATIONS

2.1. Conditions

This Deed Poll and the obligations of the Responsible Entity under this Deed Poll are subject to the Scheme becoming Effective.

2.2. Termination

This Deed Poll and the obligations of the Responsible Entity under this Deed Poll will automatically terminate and this Deed Poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the End Date or any later date as the Court, with the consent of ALF and the Responsible Entity, may order.

2.3. Consequences of termination

If this Deed Poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) the Responsible Entity is released from its obligations to further perform this Deed Poll except those obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against the Responsible Entity in respect of any breach of this Deed Poll which occurred before it was terminated.

3. PERFORMANCE OF OBLIGATIONS GENERALLY

The Responsible Entity must comply with its obligations under the Implementation Deed and do all acts and things reasonably necessary or desirable on its part to give full effect to the Scheme.

4. SCHEME OBLIGATIONS

Subject to clause 2, the Responsible Entity undertakes in favour of each Scheme Participant to:

- (a) procure withdrawal requests in respect of Ineligible Units are processed within the timeframes required by the Implementation Deed; and
- (b) undertake all other actions attributed to it under the Scheme and the Implementation Deed,

subject to and in accordance with the provisions of the Scheme and the Implementation Deed (as applicable).

5. WARRANTIES

The Responsible Entity represents and warrants that:

- (a) it is a corporation validly existing under the law of its place of registration;
- (b) the Fund has been duly constituted and registered by ASIC and the Responsible Entity is the sole trustee and responsible entity of the Fund;
- (c) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and carry out the transactions contemplated by this Deed Poll;
- (e) this Deed Poll is valid and binding on it and enforceable against it in accordance with the terms of this Deed Poll;
- (f) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of the Fund Constitution and to the best of the Responsible Entity's knowledge any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound; and
- (g) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

6. LIABILITY OF THE RESPONSIBLE ENTITY

- (a) The Responsible Entity enters into this Deed Poll in its capacity as trustee of the Fund and in no other capacity.

- (b) The liability of the Responsible Entity to the Scheme Participants or any other person under or arising out of this Deed Poll in relation to the Fund is limited to the amount that the Responsible Entity actually receives in the exercise of its right of indemnity against the Fund.
- (c) Scheme Participants may enforce their rights under this Deed Poll against the Responsible Entity only to the extent of the Responsible Entity's right of indemnity out of the assets of the Fund.
- (d) If the Scheme Participants do not recover all money owing to each of them by enforcing the rights referred to in clause 6(c), they may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Responsible Entity in its personal capacity; or
 - (ii) applying to have the Responsible Entity wound up or proving in the winding up of the Responsible Entity unless another creditor has initiated proceedings to wind up the Responsible Entity.
- (e) The limitation in this clause 6 does not apply to the extent that any liability arises from fraud, gross negligence or breach of trust by the Responsible Entity as the trustee of the Fund. For these purposes, the Responsible Entity cannot be regarded as having acted fraudulently, with gross negligence or in breach of trust to the extent to which the fraud, gross negligence or breach of trust has been caused or contributed to by a failure of an Scheme Participant to fulfil its obligations in respect of the Scheme or any other act or omission of the Scheme Participant or any other person.
- (f) Nothing in clause 6(e) shall make the Responsible Entity liable to any claim for an amount greater than the amount which the Responsible Entity would have been able to claim and recover from the assets of the Fund in relation to the relevant liability if the Responsible Entity's right of indemnification out of the assets of the Fund had not been prejudiced by the Responsible Entity's failure to properly perform its duties.
- (g) The Responsible Entity is not obliged to do or refrain from doing anything under this Deed Poll (including incur any liability) unless the Responsible Entity's liability is limited in the same manner as set out in paragraph (a) to (g) of this clause.
- (h) This clause applies despite any other provision in this Deed Poll and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this Deed Poll. In the event of any inconsistency, this clause prevails and survives termination.

7. CONTINUING OBLIGATIONS

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the Responsible Entity has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

8. NOTICES

8.1. Form of notice

Any communication to the Responsible Entity under or in connection with this Deed Poll:

- (a) must be in writing;
- (b) must be addressed as shown below:

Address: Level 2, 575 Bourke Street Melbourne Victoria 3000
Fax no: +61 3 8623 5200
Email: HKalman@eqt.com.au
Attention: Harvey H Kalman, Head of Corporate Fiduciary & Financial Services

- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the Responsible Entity, in accordance with clause 8.1(b), or given in any other way permitted by law; and
- (e) is regarded as received by the Responsible Entity:
 - (i) if sent by prepaid post, on the third Business Day after the date of posting (if posted to an address in the same country), and on the fifth Business Day after the date of posting (if posted to an address in a different country); and
 - (ii) if sent by fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day; and
 - (iii) if delivered by hand, on delivery at the address of the addressee as provided in clause 8.1(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

9. GENERAL

9.1. Governing law and jurisdiction

- (a) This Deed Poll is governed by the laws in force in the State of New South Wales.
- (b) The Responsible Entity irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

9.2. Waiver

- (a) The Responsible Entity may not rely on the words or conduct of any Scheme Participant as a waiver of any right unless the waiver is in writing and signed by the Scheme Participant granting the waiver.
- (b) No Scheme Participant may rely on words or conduct of the Responsible Entity as a waiver of any right unless the waiver is in writing and signed by the Responsible Entity.
- (c) The meanings of the terms used in this clause 9.2 are set out below:

conduct includes delay in the exercising of a right;

right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and

waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

9.3. Variation

A provision of this Deed Poll may not be varied unless:

- (a) if before the Second Court Date, the variation is agreed to by ALF or the Responsible Entity; or
- (b) if on or after the Second Court Date, the variation is agreed to by ALF or the Responsible Entity and is approved by the Court,

in which event the Responsible Entity will enter into a further Deed Poll in favour of the Scheme Participants giving effect to the variation.

9.4. Cumulative rights

The rights created by this Deed Poll are personal to the Responsible Entity and each Scheme Participant under this Deed Poll and cumulative with, and do not exclude, any other rights, powers or remedies provided by law independently of this Deed Poll.

9.5. Assignment

- (a) The rights created by this Deed Poll are personal to the Responsible Entity and each Scheme Participant and must not be dealt with at law or equity without the prior written consent of the Responsible Entity.
- (b) Any purported dealing in contravention of clause 9.5(a) is invalid.

9.6. Further action

The Responsible Entity must do all things and execute all further documents necessary or expedient to give full effect to the Scheme and the transactions contemplated by it.

Executed as a Deed Poll:

EXECUTED by Equity Trustees Limited)	
(ACN 004 031 298) as trustee of)	
Watermark Absolute Return Fund)
(ARSN 631 094 534) by its attorneys under)	Signature of Attorney
Power of Attorney dated 27 May 2016 in the)	
presence of:)	
)
)	Name of Attorney & Schedule Number
)	
.....)	
Signature of witness)
)	Signature of Attorney
)	
.....)	
(Print name))
)	Name of Attorney & Schedule Number

Executed by the Parties as a Deed:

EXECUTED by **Australian Leaders Fund**)
Limited (ACN 106 845 970) in)
accordance with section 127 of the)
Corporations Act:)



Director/Secretary

JOHN ABERNETHY

Name (please print)



Director

JULIAN GOSSE

Name (please print)

EXECUTED by **Equity Trustees Limited**)
(ACN 004 031 298) as trustee of)
Watermark Absolute Return Fund)
(ARSN 631 094 534) by its attorneys under)
Power of Attorney dated 27 May 2016 in the)
presence of:)

.....
Signature of witness

.....
(Print name)

.....
Signature of Attorney

.....
Name of Attorney & Schedule Number

.....
Signature of Attorney

.....
Name of Attorney & Schedule Number

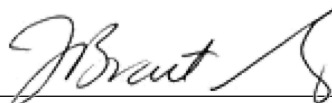
EXECUTED by)
Watermark Funds Management Pty)
Limited)
(ACN 106 302 505) in accordance with)
section 127 of the Corporations Act:)



Witness

CHERISH BEARDMORE

Name (please print)



Director

JUSTIN BRAITLING

Name (please print)

Executed by the Parties as a Deed:

EXECUTED by **Australian Leaders Fund**)
Limited (ACN 106 845 970) in)
accordance with section 127 of the)
Corporations Act:)

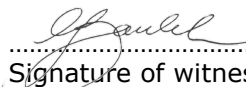
Director/Secretary

Director

Name (please print)

Name (please print)

EXECUTED by **Equity Trustees Limited**)
(ACN 004 031 298) as trustee of)
Watermark Absolute Return Fund)
(ARSN 631 094 534) by its attorneys under)
Power of Attorney dated 27 May 2016 in the)
presence of:)


.....
Signature of witness

.....
Giselle Baulch
(Print name)


.....
Signature of Attorney
Russell Beasley
Authorised Person - Schedule II
Equity Trustees Limited
.....ACN.004.031.298.....
Name of Attorney & Schedule Number


.....
Signature of Attorney
Grace Peterson
Authorised Person - Schedule III
Equity Trustees Limited
.....ACN.004.031.298.....
Name of Attorney & Schedule Number

EXECUTED by)
Watermark Funds Management Pty)
Limited)
(ACN 106 302 505) in accordance with)
section 127 of the Corporations Act:)

Witness

Director

Name (please print)

Name (please print)