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Sia Lagos

Registrar

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AMENDED DEFENCE OF THE THIRD RESPONDENT

Federal Court of Australia
District Registry: Victoria
Division: General

No VID 9 of 2021

IAN EDO JANSSEN AND DEAN TOBIN REEVES

Applicants

ONEPATH CUSTODIANS PTY LTD (ACN 008 508 496) and others

Respondents

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NOTES

- (a) Headings are used in this Defence for convenience only. They do not form part of the Third Respondent's (ANZ) response to the Amended Statement of Claim dated ~~23 December 2020~~ 14 September 2022 and filed on 11 October 2022 (~~Statement of Claim~~ASOC).
- (b) Unless the context otherwise requires, the Third Respondent adopts the defined terms used in the ~~Statement of Claim~~ASOC, but it does not admit any factual assertions contained in, or in any way implied by, any defined term used in the ~~Statement of Claim~~ASOC and repeated in this Defence.
- (c) The Third Respondent does not plead to allegations in the ~~Statement of Claim~~ASOC which do not contain allegations that are relevant (or do not appear to be relevant) to the claims against it (but rather are relevant to claims against the First Respondent and/or Second Respondent only). By adopting this approach, the Third Respondent does not intend to be taken to admit the relevant paragraphs. To the extent that this form of pleading would otherwise be deemed an admission by the Third Respondent, the relevant allegations are denied.

In response to the allegations in the ~~Statement of Claim~~ASOC, the Third Respondent says as follows:

A. PARTIES

- 1 As to paragraph 1, it:
 - (a) refers to and repeats paragraphs 2 and 3 below;
 - (b) otherwise admits the allegations in paragraph 1.
- 2 It does not know and therefore does not admit the allegations in paragraph 2.

3 It does not plead to paragraph 3 which does not contain any allegations relevant to the claims against it.

4 As to paragraph 4, it:

(a) denies that the Applicants or any group members have valid claims against the Third Respondent;

(b) otherwise does not know and does not admit the allegations in paragraph 4.

5 As to paragraph 5, it:

(a) admits the allegations in sub-paragraphs 5.1, 5.3 and 5.4;

(b) as to sub-paragraph 5.2:

(i) admits the allegations in sub-paragraph (a) save that it says that the Zurich Transfer Date was 31 May 2019;

(ii) admits the allegations in sub-paragraph (b).

6 ~~It admits the allegations in~~ As to paragraph 6, it:

(a) admits the allegation in sub-paragraphs 6.1 and 6.2, save that the Zurich Transfer Date was 31 May 2019; and

(b) does not plead to sub-paragraphs 6.1A and 6.1B which do not contain any allegations relevant to the claims against the Third Respondent.

6A It does not plead to paragraph 6A which does not contain any allegations relevant to the claims against the Third Respondent.

7 It admits the allegations in paragraph 7, save that the Zurich Transfer Date was 31 May 2019.

B. THE TRUSTEE'S DUTIES AND OBLIGATIONS

B.1 Covenants and duties under the SIS Act

8 As to paragraph 8, it:

(a) will refer to and rely on s 52 of the SIS Act, as in force up to 30 June 2013, for its full terms and effect;

(b) otherwise admits the allegations in paragraph 8.

9 As to paragraph 9, it:

(a) will refer to and rely on s 52 of the SIS Act, as in force since 1 July 2013, for its full terms and effect;

(b) otherwise admits the allegations in paragraph 9.

10 It does not plead to paragraph 10 which does not contain any allegations relevant to the claims against the Third Respondent.

11 As to paragraph 11, it:

(a) will refer to and rely on s 109 of the SIS Act for its full terms and effect;

(b) otherwise admits the allegations in paragraph 11.

B.2 Duties at general law

12 It does not plead to paragraph 12 which does not contain any allegations relevant to the claims against the Third Respondent.

13 It does not plead to paragraph 13 which does not contain any allegations relevant to the claims against the Third Respondent.

14 It does not plead to paragraph 14 which does not contain any allegations relevant to the claims against the Third Respondent.

C. THE FUNDS

C.1 Master Fund

15 It admits the allegations in paragraph 15.

16 As to paragraph 16, it:

(a) will refer to and rely upon the Master Fund Trust Deed for its full terms and effect;

(b) as to sub-paragraph 16.1:

(i) says that cl 14.13 of the Master Fund Trust Deed, as applicable from 1 March 2013 (**Simplification Date**), provided that any entitlement of

the Trustee to be paid fees or other remuneration out of the Master Fund which existed before the Simplification Date was preserved;

- (ii) says that the Master Fund Trust Deed as applicable prior to the Simplification Date permitted the Trustee to be paid and retain out of the Master Fund:
 - (A) in respect of each Section, such fees as were specified or expressly allowed in the applicable Schedule; or
 - (B) if fees were not specified or expressly allowed in the applicable Schedule for a particular Section, such fees as were notified by the Trustee to members, or otherwise as the Trustee determined to be reasonable from time to time;

Particulars

Clause 38 of the Master Fund Trust Deed as in force prior to the Simplification Date.

- (iii) admits that at all relevant times Schedule 7 of the Master Fund Trust Deed specified and expressly permitted fees or other remuneration to be paid in respect of the Smart Choice Retail and Smart Choice Employer Products;
 - (iv) otherwise denies the allegation in that sub-paragraph;
- (c) admits the allegations in sub-paragraphs 16.2 and 16.3.
- 17 It admits the allegations in paragraph 17.
- 18 As to paragraph 18, it:
- (a) will refer to and rely upon the Governing Rules of the Master Fund for their full terms and effect;
 - (b) otherwise admits the allegations in paragraph 18;
 - (c) repeats paragraph 23(b) and 23(c) below.
- 19 As to paragraph 19 it:
- (a) admits the allegations in sub-paragraphs 19.1 and 19.3;

- (b) says that the assets of the Master Fund, upon the transfer, were allocated to the "OnePath" Part of the RPS Fund and subject to the rules specified for that Part in the RPS Trust Deed, and otherwise denies the allegations in sub-paragraph 19.2.

C.2 RPS Fund

20 It admits the allegations in paragraph 20.

21 As to paragraph 21, it:

- (a) says that that terms "ANZ Legacy Products" and "OnePath Legacy Products" are undefined, vague and embarrassing and the Third Respondent therefore cannot plead to sub-paragraphs 21.9 and 21.10;
- (b) otherwise admits the allegations in paragraph 21.

22 As to paragraph 22, it:

- (a) will refer to and rely upon the Governing Rules of the Master Fund for their full terms and effect;
- (b) otherwise admits the allegations in paragraph 22;
- (c) repeats paragraph 23(b) and 23(c) below.

D. INVESTMENT OPTIONS – CASH AND TERM DEPOSITS

D.1 Cash Advantage Investment Option

23 As to paragraph 23, it:

- (a) save that the relevant Investment Option was titled "ANZ Cash Advantage" (**ANZ Cash Advantage Option**), admits the allegations in paragraph 23;
- (b) says further that the ANZ OneAnswer Products, OnePath OneAnswer Products and Frontier Products included a large number of investment options, including options that invested (directly or indirectly) in cash or money market instruments including:
 - (i) investment options for single manager investment funds including a number of "Defensive" investment options;

- (ii) at various times, the ANZ Cash Advantage Option, the ANZ Term Deposits Option, the BlackRock Monthly Income option, the OnePath Cash option, the OnePath Diversified Fixed Interest option, the Schroder Fixed Income option, and the UBS Diversified Fixed Income option;
- (c) says further that:
- (i) there were over 20 superannuation products available across the Master Fund at relevant times;
 - (ii) there were over 20 superannuation products available across the RPS Fund at relevant times;
 - (iii) there were over 100 individual investment options for the superannuation products in the Master Fund at relevant times, which options could be combined in a large number of potential combinations;
 - (iv) there were over 1,000 investment options for the superannuation products in the RPS Fund at relevant times, which options could be combined in a large number of potential combinations;
 - (v) each investment option has its own properties as to risk, pricing, performance and fees;
 - (vi) members were able to switch their selected investment options;
- (d) says further that:
- (i) in order for an investor to have been invested in the ANZ Cash Advantage Option that investor had to have selected that investment option and directed the Trustee to invest in that option;
 - (ii) each of the ANZ OneAnswer Products, OnePath OneAnswer Products and the Frontier Products contained an investment option titled “ANZ Cash Advantage” which was issued pursuant to a product disclosure statement comprising one or more documents titled product disclosure statement, fees guide, funds guide and additional information guide (together **PDS**);
 - (iii) each PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;

- (iv) each PDS disclosed the fees and costs that may apply;
- (v) members who applied for the ANZ Cash Advantage Option acknowledged that they had read the applicable PDS and consented to be bound by its terms.

24 As to paragraph 24, it:

- (a) will rely on each issued Product Disclosure Statement and Investment Funds Guide which included the ANZ Cash Advantage Option for their full terms and effect and it refers to and repeats paragraph 23(d) above;
- (b) admits the allegations in paragraph 24, including that the relevant Investment Funds Guides stated that the ANZ Cash Advantage Option involved “investing in ANZ bank deposits”;
- (c) says that the investment strategy for the ANZ Cash Advantage Option was at all relevant times stated to be “investing in a portfolio of cash held by ANZ”;
- (d) says that at all relevant times the First Respondent has, in addition to the ANZ Cash Advantage Option, made available numerous other investment options within the ANZ OneAnswer Products, OnePath OneAnswer Products and Frontier Products which options invested (directly or indirectly) in cash or money market instruments, and it refers to and repeats paragraph 23(b) above;
- (e) says that at all relevant times the First Respondent has also made available a larger number of superannuation products and investment options, and it refers to and repeats paragraph 23(c) above.

25 It admits the allegations in paragraph 25 and it refers to and repeats paragraph 23(d) above.

D.2 Term Deposit Investment Option

26 It admits the allegations in paragraph 26 and it refers to and repeats paragraph 23(b) and (c) above.

27 As to paragraph 27, it:

- (a) will rely on the terms of each issued Product Disclosure Statement and Investment Funds Guide which included the ANZ Term Deposits Option for their full terms and effect;

- (b) admits the allegations in paragraph 27, including that at all relevant times the ANZ Term Deposits Option was expressly stated to involve “depositing funds with ANZ”;
- (c) says that the investment strategy for the ANZ Term Deposits Option was at all relevant times stated to be “to invest in term deposit products issued by ANZ”;
- (d) says that at all relevant times the First Respondent has, in addition to the ANZ Term Deposits Option, made available numerous other investment options within the ANZ OneAnswer Products, OnePath OneAnswer Products and Frontier Products which options invested (directly or indirectly) in cash or money market instruments, and it refers to and repeats paragraph 23(b) above;
- (e) says that at all relevant times the First Respondent has also made available a larger number of superannuation products and investment options, and it refers to and repeats paragraph 23(c) above;
- (f) says further that:
 - (i) in order for an investor to have been invested in the Term Deposits Option that investor had to have selected that investment option and directed the Trustee to invest in that option;
 - (ii) each of the ANZ OneAnswer Products, OnePath OneAnswer Products and the Frontier Products contained an investment option titled “ANZ Term Deposits” which was issued pursuant to a product disclosure statement comprising one or more documents titled product disclosure statement, fees guide, funds guide and additional information guide (also together **PDS**);
 - (iii) each PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;
 - (iv) each PDS disclosed the fees and costs that may apply;
 - (v) members who applied for the Term Deposits Option acknowledged that they had read the applicable PDS and consented to be bound by its terms.

28 It admits the allegations in paragraph 28, and it refers to and repeats paragraph 27 above.

D.3 ANZ Smart Choice Cash Option

29 It admits the allegations in paragraph 29 and says further that:

- (a) the ANZ Smart Choice Retail Products included a number of other Investment Options, including:
 - (i) multi-asset class options including a “conservative” option which had an asset allocation that had a significant component of cash and fixed interest investments;
 - (ii) single-asset class options;
- (b) it refers to and repeats paragraph 23(c) above.

30 It admits the allegations in paragraph 30 and says further that:

- (a) the ANZ Smart Choice Employer Product included a large number of other investment options, including:
 - (i) diversified risk based options including a “conservative” option (ANZ Smart Choice Conservative) which had an asset allocation that had a significant component of cash and fixed interest investments;
 - (ii) single-sector class options including options that invested in cash or money market instruments, including OnePath Cash and various fixed interest options (being investment options titled “ANZ Smart Choice Global Fixed Interest”, “ANZ Smart Choice Australian Fixed Interest” and “PIMCO Diversified Fixed Interest”);
- (b) it refers to and repeats paragraph 23(c) above;
- (c) says further that:
 - (i) in order for an investor to have been invested in the Smart Choice Cash Option that investor had to have selected that investment option and directed the Trustee to invest in that option;
 - (ii) each of the ANZ Smart Choice Retail Products and ANZ Smart Choice Employer Product contained an investment option titled “ANZ Smart Choice Cash” or “Cash” which was issued pursuant to a product disclosure statement comprising one or more documents titled product

disclosure statement, fees guide, funds guide and additional information guide (also together PDS);

- (iii) each PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;
- (iv) each PDS disclosed the fees and costs that may apply.

31 As to paragraph 31, it:

- (a) admits that the “investment return objective” for the Smart Choice Cash Option was as alleged in sub-paragraphs 31.1 to 31.3, and otherwise denies the allegations in paragraph 31;
- (b) says that the investment strategy for the Smart Choice Cash Option was:
 - (i) during the Master Fund Period, stated to be to have “exposure to a portfolio of term deposits and cash held at ANZ”;
 - (ii) during the RPS Period, stated to be to have “exposure to a portfolio of cash held at ANZ”;
- (c) says that at all relevant times the First Respondent has, in addition to the Smart Choice Cash Option, made available numerous other investment options within the ANZ Smart Choice Retail Products and the ANZ Smart Choice Employer Product, and it refers to and repeats paragraphs 29(a) and 30(a) above;
- (d) says that at all relevant times the First Respondent also made available a large number of superannuation products and investment options, and it refers to and repeats paragraph 23(c) above.

32 It admits the allegations in paragraph 32 and it refers to and repeats paragraph 31 above.

E. CASH AND TERM DEPOSIT INVESTMENTS – MASTER FUND PERIOD

E.1 Life Policies

33 It does not plead to paragraph 33 which does not contain any allegations relevant to the claims against the Third Respondent.

34 It does not plead to paragraph 34 which does not contain any allegations relevant to the claims against the Third Respondent.

35 As to paragraph 35, the Third Respondent does not presently know and therefore does not admit the allegations in that paragraph.

36 It does not plead to paragraph 36 which does not contain any allegations relevant to the claims against the Third Respondent.

37 It does not plead to paragraph 37 which does not contain any allegations relevant to the claims against the Third Respondent.

E.2 Administration Agreement

38 It does not plead to paragraph 38 which does not contain any allegations relevant to the claims against the Third Respondent.

39 It does not plead to paragraph 39 which does not contain any allegations relevant to the claims against the Third Respondent.

E.3 Underlying investments

40 It does not plead to paragraph 40 which does not contain any allegations relevant to the claims against the Third Respondent.

41 It does not plead to paragraph 41 which does not contain any allegations relevant to the claims against the Third Respondent.

42 It does not plead to paragraph 42 which does not contain any allegations relevant to the claims against the Third Respondent.

43 As to paragraph 43, the Third Respondent does not presently know and therefore does not admit the allegations in that paragraph.

44 As to paragraph 44, it:

(a) admits that ANZ provided the interest rates at which interest was paid on the Master Fund Smart Choice Cash Direct Investments deposited with it;

(b) otherwise denies the allegations in paragraph 44.

45 It does not plead to paragraph 45 which does not contain any allegations relevant to the claims against the Third Respondent.

46 It does not plead to paragraph 46 which does not contain any allegations relevant to the claims against the Third Respondent.

E.4 Payment of Fees to OPL

47 It does not plead to paragraph 47 which does not contain any allegations relevant to the claims against the Third Respondent.

48 It does not plead to paragraph 48 which does not contain any allegations relevant to the claims against the Third Respondent.

49 It does not plead to paragraph 49 which does not contain any allegations relevant to the claims against the Third Respondent.

50 It does not plead to paragraph 50 which does not contain any allegations relevant to the claims against the Third Respondent.

51 It does not plead to paragraph 51 which does not contain any allegations relevant to the claims against the Third Respondent.

52 It does not plead to paragraph 52 which does not contain any allegations relevant to the claims against the Third Respondent.

53 It does not plead to paragraph 53 which does not contain any allegations relevant to the claims against the Third Respondent.

E.5 Interest Rates – Cash and Term Deposits

54 It does not plead to paragraph 54 which does not contain any allegations relevant to the claims against the Third Respondent.

55 It does not plead to paragraph 55 which does not contain any allegations relevant to the claims against the Third Respondent.

56 It does not plead to paragraph 56 which does not contain any allegations relevant to the claims against the Third Respondent.

57 It does not plead to paragraph 57 which does not contain any allegations relevant to the claims against the Third Respondent.

58 As to paragraph 58, it:

(a) admits the allegations in sub-paragraph 58.1;

(b) as to sub-paragraph 58.2:

(i) says that:

- (A) the Master Fund Smart Choice Cash Direct Investments have at all times been invested in at call deposits with ANZ;
- (B) the Master Fund Smart Choice Cash Direct Investments were not subject to investment fees or any separate administration fee;

Particulars

The applicable Product Disclosure Statements for the Master Fund Smart Choice Cash Direct Investments provided that:

- (i) no investment fees or other fees applied to the Master Fund Smart Choice Cash Direct Investments;
 - (ii) a fixed administration fee of \$6 per month applied up until 1 December 2012, and from this time a fee of \$50 per annum (\$4.16 per month) applied to members accounts in the ANZ Smart Choice Retail Products and the ANZ Smart Choice Employer Product.
- (C) based on information that is currently publicly available, it appears that the interest rate offered for the Master Fund Smart Choice Cash Direct Investments was at all material times higher than or competitive with the rate offered by the MLC MasterKey Cash Fund (being the only alleged “equivalent investment” identified by the Applicants);
- (D) the MLC MasterKey Cash Fund may have had a different risk profile, liquidity, fees and tax consequences than the Master Fund Smart Choice Cash Direct Investments;

Particulars

As to investment and administration fees, the applicable MLC MasterKey Super & Pension Product Disclosure Statements stated that:

- (i) for the MLC MasterKey Cash Fund, the fees included an investment fee of between 0.25% to 0.27% per annum of the member’s balance in this investment option;
- (ii) administration fees applied to the MLC MasterKey Fund (including to funds invested in the MLC MasterKey Cash Fund investment option) as follows:

For the period from the Master Fund Start Date up to 7 December 2012

- (a) 0.88% per annum on combined account balances less than \$50,000;
- (b) 0.82% per annum on combined account balances between \$50,000 and less than \$100,000;
- (c) 0.77% per annum on combined account balances between \$100,000 and less than \$200,000;
- (d) 0.72% per annum on combined account balances between \$200,000 and less than \$400,000, or 0.55% per annum after a “fee refund”;
- (e) 0.66% per annum on combined account balances of \$400,000 and over, or 0.34% per annum after a “fee refund”;
- (f) an additional account fee of \$78 per annum.

For the period from 7 December 2012 to 30 September 2017 and 21 May 2018 to 1 October 2019

- (g) 0.40% per annum on the account balance for first \$200,000;
- (h) 0.25% per annum on the account balance for next \$600,000 invested;
- (i) 0.20% on the account balance over \$800,000;
- (j) an additional fee of \$2.50 per week if the account balance is below \$50,000 when the administration fee is deducted;

For the period from 30 September 2017 to 21 May 2018, and 1 October 2019 to the RPS End Date

- (k) 1.20% per annum on combined account balances of up to \$200,000;
- (l) 1.20% per annum on combined account balances between \$200,000 and less than \$400,000, or 1.03% after a “fee refund”;
- (m) 1.20% per annum on combined account balances over \$400,000, or 0.88% after a “fee refund”;
- (n) an additional account fee of \$78 per annum.

The MLC MasterKey Cash Fund did not have a cash deposit option with NAB at any time prior to 7 September 2012, and the relevant investment option which the Applicants refer to as the “MLC MasterKey Cash Fund” was, on and from 7 September 2012, an

option under which the Fund may invest in deposits with NAB and may also invest in other “comparable high quality securities”.

Further particulars as to the features of the MLC MasterKey Cash Fund may be provided after discovery and the return of subpoenas.

- (E) based on information that is currently publicly available, after administration and investment fees, the return to members from the Master Fund Smart Choice Cash Direct Investments was higher than, alternatively competitive with, the MLC MasterKey Cash Fund;
- (F) the rates payable on the Master Fund Smart Choice Cash Direct Investments were competitive with, or higher than, interest rates offered to retail customers making deposits in a similar or equivalent ANZ at call deposit account outside of superannuation;
- (G) based on information that is currently publicly available, the interest rates payable on the Master Fund Smart Choice Cash Direct Investments were competitive with, or higher than, interest rates offered to members of other superannuation funds investing in at call deposits with an ADI with an equivalent credit rating to ANZ;

Particulars

Date	ANZ Smart Choice Cash	MLC MasterKey Cash Fund – deposit with NAB (Note 1)	BT Super for Life – deposit with Westpac (Note 2)	FirstRate Saver – deposit with CBA (Note 3)
31 December 2011	Currently not known	4.38%	3.49%	4.40%
30 June 2012	3.95%	3.55%	3.06%	3.65%
31 December 2012	3.45%	3.05%	2.51%	3.15%
30 June 2013	2.95%	2.80%	2.30%	2.90%
5 November 2013	2.70%	2.56%	2.04%	2.65%

Note 1: The MLC MasterKey Cash Fund rates are those published on the website referred to in the Applicants’ Further and Better Particulars dated 12 April 2021 at paragraph 9(c).

Note 2: the BT Super for Life rates are those published on the BT website at: <https://www.bt.com.au/personal/prices-and-performance/unit-prices/bt-super-product-unit-prices/bt-super-unit-price-history.html?productId=BTS&portfolio=12>

Note 3: the FirstRate Saver rates are those published on the Colonial First State website at: https://www.colonialfirststate.com.au/price_performance/HistoricalSaverInterestRates.aspx?ProductID=11&Public=1&Public=1

The features of the deposits with ADIs other than ANZ noted above are not currently known to the Third Respondent.

- (ii) refers to and repeats paragraphs 29 to 32 above;
- (iii) otherwise does not know and cannot admit the allegations in the subparagraph, and may plead further following the identification of any alleged “equivalent investments” and all of their relevant terms, and following discovery and the return of relevant subpoenas.

59 It does not plead to paragraph 59 which does not contain any allegations relevant to the claims against the Third Respondent.

F. CASH AND TERM DEPOSITS – RPS PERIOD

F.1 Direct Investments

60 It admits the allegations in paragraph 60.

61 It admits the allegations in paragraph 61.

62 As to paragraph 62, it:

- (a) says that during the RPS Period there was an agreement between Oasis Asset Management Limited (as administrator of, among other things, the Fund Products referred to in sub-paragraphs 21.1, 21.2, 21.6, 21.7 and 21.8 of the ~~Statement of Claim~~ ASOC) (**OAM**), and ANZ under which OAM and the Third Respondent agreed to provide services to each other (**OAM/ANZ Services Deed**);

Particulars

OAM/ANZ Services Deed dated 8 August 2019 between the Third Respondent and OAM. The Deed records that it seeks to document an existing arrangement between the parties that commenced on and from the 13 April 2019 (cl 1.3).

- (b) says that the OAM/ANZ Services Deed applied to the “ANZ Products” which included:
 - (i) ANZ term deposits available to an investor through OneAnswer branded products;
 - (ii) the ANZ V2 PLUS account that is available to an investor through the ANZ Cash Advantage and Smart Choice Cash products;
- (c) says that there were terms of the OAM/ANZ Services Deed:
 - (i) that OAM appointed ANZ to provide services, including:
 - (A) opening and hosting pooled ANZ V2 PLUS accounts that will service the ANZ Cash Accounts;
 - (B) providing OAM with competitive interest rates for the ANZ Cash Advantage and Smart Choice Cash investment options;
 - (C) opening new ANZ Term Deposits on its systems;
 - (D) providing OAM with competitive interest rates for the range of ANZ Term Deposits available within OAM’s platforms;

Particulars

Cl 2.1(a) and Schedule 2 (Services).

- (ii) that ANZ was required to provide its services in accordance with prescribed frequency standards (cl 3);
- (iii) that ANZ warranted that it had and would have during the term of the Deed adequate technical and other resources, capacity and staff necessary to perform its obligations (cl 6.1(c));
- (iv) that ANZ was required to adopt and maintain at all times during the term of the Deed a Business Continuity Plan (cl 15.1);
- (v) that neither party was an exclusive service provider to the other, such that OAM was free to obtain similar services from others (cl 2.5);
- (vi) that the Deed could be terminated on 6 months’ notice in writing (cl 17);
- (vii) requiring the undertaking of specified control procedures to ensure the accuracy in communications between ANZ and OAM (Schedule 2,

Item 7), governing any changes to processes (Schedule 2, Item 8), providing for matters concerning compliance and risk management (Schedule 2, Item 9), and governing the relationship between ANZ and OAM (Schedule 2, Item 10);

- (d) otherwise admits the allegations in sub-paragraph 62.1;
- (e) says that ANZ provided the interest rates at which interest was paid on Cash Advantage Direct Investments pursuant to the agreement between ANZ and OAM as referred to in sub-paragraph (c) above;
- (f) otherwise denies the allegations in sub-paragraph 62.2.

63 As to paragraph 63, it:

- (a) refers to and repeats paragraph 62 above;
- (b) otherwise admits the allegations in paragraph 63.1;
- (c) admits that ANZ provided the interest rates at which interest was paid on Term Deposit Money pursuant to the ANZ/OAM agreement as referred to in sub-paragraph 62(c) above;
- (d) otherwise denies the allegations in paragraph 63.2.

64 As to paragraph 64, it:

- (a) refers to and repeats paragraph 62 above;
- (b) otherwise admits the allegations in paragraph 64.1;
- (c) admits that ANZ provided the interest rates at which interest was paid on Smart Choice Money pursuant to the ANZ/OAM agreement as referred to in sub-paragraph 62(c) above;
- (d) otherwise denies the allegations in paragraph 64.2.

F.2 Interest Rates

65 As to paragraph 65, it:

- (a) admits the allegations in sub-paragraph 65.1;
- (b) says further that:

- (i) the Cash Advantage Direct Investments have at all times been invested in at call deposits with ANZ;
- (ii) the Cash Advantage Direct Investments were not subject to any relevant fees, including investment fees;

Particulars

The applicable Product Disclosure Statements during the RPS Period for the ANZ OneAnswer Products and the OnePath OneAnswer Products provided that:

- (i) no fees applied to the Cash Advantage Direct Investments;
- (ii) an investor fee of \$48 per annum applied to balances under \$10,000 for members' accounts in the ANZ OneAnswer Products and OnePath OneAnswer Products.

The applicable Fees Guides during the RPS Period for the Frontier Products provided that no fees applied to the Cash Advantage Direct Investments.

- (iii) based on information that is currently publicly available, it appears that the interest rate offered for the Cash Advantage Direct Investments was at all material times competitive with the rate offered by the MLC MasterKey Cash Fund (being the only alleged "equivalent investment" identified by the Applicants);
- (iv) the MLC MasterKey Cash Fund may have had a different risk profile, liquidity, fees and tax consequences than the Cash Advantage Direct Investments;

Particulars

The particulars to paragraph 58(b)(i)(D) above are repeated.

- (v) based on information that is currently publicly available, after administration and investment fees the return to members from the Cash Advantage Direct Investments was higher than, alternatively was competitive with, those of the MLC MasterKey Cash Fund;
- (vi) the rates payable on the Cash Advantage Direct Investments were competitive with, or higher than, interest rates offered to retail customers making deposits in an at call ANZ account outside of superannuation;

- (vii) based on information that is currently publicly available, the rates payable on the Cash Advantage Direct Investments were competitive with, or higher than, interest rates offered to members of other superannuation funds investing in at call deposits with an ADI with an equivalent credit rating to ANZ;

Particulars

Date	OneAnswer Frontier – deposit with ANZ	MLC MasterKey Cash Fund – deposit with NAB (Note 1)	BT Super for Life – deposit with Westpac (Note 2)	FirstRate Saver – deposit with CBA (Note 3)
14 April 2019	1.55%	2.04%	1.28%	1.50%
1 July 2019	1.30%	1.78%	1.28%	1.25%
1 Nov 2019	0.80%	1.27%	0.57%	0.75%
31 Dec 2019	0.80%	1.28%	0.72%	0.75%
31 Jan 2020	0.80%	1.28%	0.73%	0.75%

Note 1: The MLC MasterKey Cash Fund rates are those published on the website referred to in the Applicants’ Further and Better Particulars dated 12 April 2021 at paragraph 9(c).

Note 2: the BT Super for Life rates are those published on the BT website at: <https://www.bt.com.au/personal/prices-and-performance/unit-prices/bt-super-product-unit-prices/bt-super-unit-price-history.html?productId=BTS&portfolio=12>

Note 3: the FirstRate Saver rates are those published on the Colonial First State website at:

https://www.colonialfirststate.com.au/price_performance/HistoricalSaverInterestRates.aspx?ProductID=11&Public=1&Public=1

The features of the deposits with ADIs other than ANZ noted above are not currently known to the Third Respondent.

- (viii) refers to and repeats paragraphs 23 to 25 above;

- (ix) otherwise does not know and cannot admit the allegations in the subparagraph, and may plead further following the identification of any alleged “equivalent investments” and all of their relevant terms, and following discovery and the return of relevant subpoenas.

66 As to paragraph 66, it says that:

- (a) the return to a member of a superannuation fund on a term deposit will be affected by a number of matters including:
 - (i) any applicable fees which may vary depending on the amount invested by the member;
 - (ii) the frequency at which interest is paid (monthly, annually or at maturity subject to the term); and
 - (iii) whether the term deposit is invested in during a period in which the relevant ADI offers special term deposit interest rates which are only offered on deposits made within a limited period of time;
- (b) interest rates paid by ANZ on the Term Deposit Investments were generally competitive with interest rates offered to members of other superannuation funds investing in term deposits with an ADI with an equivalent credit rating to ANZ;
- (c) from time to time during the RPS Period, for certain amounts invested at certain times, an investor:
 - (i) may have received a higher return on a term deposit with another ADI with an equivalent credit rating to ANZ than the rate received on the ANZ Term Deposits;
 - (ii) would not have received a higher return on a term deposit with another ADI with an equivalent credit rating to ANZ than the rate received on the ANZ Term Deposits;

Particulars

The rates paid by ANZ on the Term Deposit Investments, and those by the MLC Term Deposits (being the only alleged equivalent product identified by the Applicants), were as follows:

Date	ANZ Term Deposits	MLC Term Deposits (Note 1)
14 April 19	6 mth – 2.20%	6 mth – 2.55%
	12 mth – 2.50%	12 mth – 2.55%
1 July 19	6 mth – 2.10%	6 mth – 2.01%
	12 mth – 1.95%	12 mth – 2.00%
1 Nov 19	6 mth – 1.55%	6 mth – 1.61%
	12 mth – 1.60%	12 mth – 1.55%
31 Dec 19	6 mth – 1.55%	6 mth – 1.60%
	12 mth – 1.60%	12 mth – 1.53%
31 Jan 20	6 mth – 1.45%	6 mth – 1.60%
	12 mth – 1.50%	12 mth – 1.53%

Note 1: The MLC Term Deposits Interest Rates are those published on the website referred to in the Applicants' Further and Better Particulars dated 12 April 2021 at paragraph 9(c).

Further particulars may be provided following discovery and the return of relevant subpoenas.

- (d) refers to and repeats paragraphs 26 to 28 above;
- (e) it otherwise denies the allegations in paragraph 66.

67 As to paragraph 67, it:

- (a) admits the allegations in sub-paragraph 67.1 and 67.2;
- (b) says that:
 - (i) the RPS Smart Choice Cash Direct Investments have at all times been invested in at call deposits with ANZ;
 - (ii) the RPS Smart Choice Cash Direct Investments were not subject to investment fees or any separate administration fee;

Particulars

The applicable Product Disclosure Statements (including Additional Information Guides and Fees Guides) for the RPS Smart Choice Cash Direct Investments provided that:

- (i) no investment fees applied to the RPS Smart Choice Cash Direct Investments;
 - (ii) a fixed administration fee of \$50 per annum (\$4.16 per month) applied to members' accounts in the ANZ Smart Choice Retail Products and the ANZ Smart Choice Employer Product.
- (iii) based on information that is currently publicly available, it appears the interest rate offered for the RPS Smart Choice Cash Direct Investments was at all material times competitive with the rate offered by the MLC MasterKey Cash Fund (being the only alleged "equivalent investment" identified by the Applicants);
- (iv) the MLC MasterKey Cash Fund may have had a different risk profile, liquidity, fees and tax consequences than the RPS Smart Choice Cash Direct Investments;

Particulars

The particulars to paragraph 58(b)(i)(D) above are repeated.

- (v) based on information that is currently publicly available, after administration and investment fees the return to members from the RPS Smart Choice Cash Direct Investments was higher than, alternatively competitive with, those of the MLC MasterKey Cash Fund;
- (vi) the relevant investment option which the Applicants refer to as the "MLC MasterKey Cash Fund" was an option under which the Fund may invest in deposits with NAB and may also invest in other "comparable high quality securities";
- (vii) the rates payable on the RPS Smart Choice Cash Direct Investments were competitive with, or higher than, interest rates offered to retail customers making deposits in a similar or equivalent ANZ at call deposit account outside of superannuation;
- (viii) based on information that is currently publicly available, the rates payable on the RPS Smart Choice Cash Direct Investments were

competitive with, or higher than, interest rates offered to members of other superannuation funds investing in at call deposits with an ADI with an equivalent credit rating to ANZ;

Particulars

Date	OnePath Smart Choice Cash	MLC MasterKey Cash Fund – deposit with NAB (Note 1)	BT Super for Life – deposit with Westpac (Note 2)	FirstRate Saver – deposit with CBA (Note 3)
14 April 2019	1.60%	2.04%	1.28%	1.50%
1 July 2019	1.35%	1.78%	1.28%	1.25%
1 Nov 2019	0.85%	1.27%	0.57%	0.75%
31 Dec 2019	0.85%	1.28%	0.72%	0.75%
31 Jan 2020	0.85%	1.28%	0.73%	0.75%

Note 1: The MLC Masterkey Cash Fund rates are those published on the website referred to in the Applicants’ Further and Better Particulars dated 12 April 2021 at paragraph 9(c).

Note 2: the BT Super for Life rates are those published on the BT website at: <https://www.bt.com.au/personal/prices-and-performance/unit-prices/bt-super-product-unit-prices/bt-super-unit-price-history.html?productId=BTS&portfolio=12>

Note 3: the FirstRate Saver rates are those published on the Colonial First State website at: https://www.colonialfirststate.com.au/price_performance/HistoricalSaverInterestRates.aspx?ProductID=11&Public=1&Public=1

The features of the deposits with ADIs other than ANZ noted above are not currently known to the Third Respondent.

- (c) refers to and repeats paragraphs 29 to 32 above;
- (d) otherwise does not know and cannot admit the allegations in sub-paragraph 67.3, and may plead further following the identification of any alleged "equivalent investments" and all of their relevant terms, and following discovery and the return of relevant subpoenas.

G. ALLEGED CONTRAVENTION OF TRUSTEE COVENANTS AND DUTIES – CASH INVESTMENTS

G.1 Alleged contraventions of s 109

68 It does not plead to paragraph 68 which does not contain any allegations relevant to the claims against the Third Respondent.

69 It does not plead to paragraph 69 which does not contain any allegations relevant to the claims against the Third Respondent.

70 It does not plead to paragraph 70 which does not contain any allegations relevant to the claims against the Third Respondent.

71 As to paragraph 71, it:

(a) says that at the time the Master Fund Smart Choice Cash Direct Investments were made the First Respondent was a Closely-Held Subsidiary of ANZ;

(b) refers to and repeats paragraph 43 above;

(c) refers to and repeats paragraphs 29 to 32 above;

(d) says that the Trustee was an RSE Licensee;

(e) by reason of sub-paragraph (d), it was reasonable for ANZ to rely on the Trustee to comply with its obligations under “Prudential Standards SPS 521 – Conflicts of Interest” to manage conflicts of interest;

(f) otherwise denies the allegations in paragraph 71.

72 It denies the allegations in paragraph 72 and it refers to and repeats paragraphs 58 and 71 above.

73 It denies the allegations in paragraph 73 and it refers to and repeats paragraphs 71 and 72 above.

74 As to paragraph 74, it:

(a) says that during the RPS Period the First Respondent was a Closely-Held Subsidiary of ANZ;

(b) refers to and repeats paragraphs 23 to 32;

(c) otherwise denies the allegations in paragraph 74.

75 It denies the allegations in paragraph 75 and it refers to and repeats paragraphs 65 to 67 and 74 above.

76 It denies the allegations in paragraph 76 and it repeats paragraphs 74 and 75 above.

G.2 Alleged Care and Skill Contraventions

77 It does not plead to paragraph 77 which does not contain any allegations relevant to the claims against the Third Respondent.

78 It does not plead to paragraph 78 which does not contain any allegations relevant to the claims against the Third Respondent.

79 It does not plead to paragraph 79 which does not contain any allegations relevant to the claims against the Third Respondent

80 It denies the allegations in paragraph 80 and in further answer it:

(a) refers to and repeats paragraphs 23(c), 29, 30 and 58(b) above;

(b) says that in:

(i) considering whether the Smart Choice Cash Money should have been invested in, or retained in, deposits with ANZ;

(ii) considering whether the Smart Choice Cash Money should have been invested in the ways alleged in sub-paragraph 80.2(a)(i) and (ii) or (b) of the ~~Statement of Claim~~ ASOC;

(iii) formulating and giving effect to an investment strategy; and/or

(iv) assessing the best interest of members,

it is relevant to consider all relevant circumstances, including:

(v) PDS disclosures to members and member expectations that their investments will be made in ANZ deposits;

(vi) the benefits of the arrangements with ANZ, including credit rating, administrative efficiency, scale, liquidity, stability, support and integration of systems;

- (vii) costs and risks involved in changes, including the complexity of change and the ability to properly duplicate a product with another provider;
- (viii) costs of changing or switching products, including costs associated with advice, regulatory compliance, negotiation of agreements, member communications, and re-issue of PDSs;
- (ix) the stated objective of the investment option;
- (x) the availability of other products and investment options offered as part of the product menu from which members can select.

81 As to paragraph 81, it:

- (a) refers to and repeats paragraph 80;
- (b) otherwise admits the allegations in paragraph 81.

82 It denies the allegations in paragraph 82.

83 It does not plead to paragraph 83 which does not contain any allegations relevant to the claims against the Third Respondent.

84 It does not plead to paragraph 84 which does not contain any allegations relevant to the claims against the Third Respondent.

85 It does not plead to paragraph 85 which does not contain any allegations relevant to the claims against the Third Respondent.

86 It denies the allegations in paragraph 86 and repeats paragraph 80 above.

87 As to paragraph 87, it:

- (a) refers to and repeats paragraph 86 above;
- (b) otherwise admits the allegations in paragraph 87.

88 It denies the allegations in paragraph 88.

89 It denies paragraph 89, and in further answer it:

- (a) refers to and repeats paragraphs 23(b), 23(c), 23(d), 27(d), 27(f), 29, 30, 65(b), 66 and 67(b) above;

- (b) says that in:
- (i) considering whether the Cash Money should have been invested in, or retained in, deposits with ANZ;
 - (ii) considering whether the Cash Money should have been invested in the ways alleged in sub-paragraph 89.2(a)(i) and (ii) of the ~~Statement of Claim~~ ASOC;
 - (iii) formulating and giving effect to an investment strategy; and/or
 - (iv) assessing the best interests of members,
- it is relevant to consider all relevant circumstances, including the matters alleged in paragraph 80(b) above.

90 As to paragraph 90, it:

- (a) refers to and repeats paragraph 89 above;
- (b) otherwise admits the allegations in paragraph 90.

91 It denies the allegations in paragraph 91.

G.3 Alleged Best Interests Contravention

92 It does not plead to paragraph 92 which does not contain any allegations relevant to the claims against it.

93 It does not plead to paragraph 93 which does not contain any allegations relevant to the claims against it.

94 It denies the allegations in paragraph 94 and refers to and repeats paragraphs 80 and 86 above.

95 It denies the allegations in paragraph 95 and refers to and repeats paragraph 94 above.

96 It denies the allegations in paragraph 96 and refers to and repeats paragraph 89 above.

97 It denies the allegations in paragraph 97 and refers to and repeats paragraph 96 above.

G.4 Alleged Investment Strategy Contravention

- 98 It does not plead to paragraph 98 which does not contain any allegations relevant to the claims against it.
- 99 It does not plead to paragraph 99 which does not contain any allegations relevant to the claims against it.
- 100 It does not plead to paragraph 100 which does not contain any allegations relevant to the claims against it.
- 101 It does not plead to paragraph 101 which does not contain any allegations relevant to the claims against the Third Respondent.
- 102 It does not plead to paragraph 102 which does not contain any allegations relevant to the claims against the Third Respondent.
- 103 It does not plead to paragraph 103 which does not contain any allegations relevant to the claims against the Third Respondent.
- 104 It denies the allegations in paragraph 104 and refers to and repeats paragraph 80 above.
- 105 As to paragraph 105, it:
- (a) does not know and therefore does not admit whether the Trustee took the steps alleged in paragraph 104.1;
 - (b) admits the Trustee did not take the steps set-out in sub-paragraph 104.2 and refers to and repeats paragraphs 23(c), 29, 30 and 58(b) above;
 - (c) otherwise denies the allegations in paragraph 105.
- 106 It denies the allegations in paragraph 106.
- 107 It denies the allegations in paragraph 107 and repeats paragraph 86 above.
- 108 As to paragraph 108, it:
- (a) does not know and therefore does not admit whether the Trustee took the steps alleged in paragraph 107.1;
 - (b) admits the Trustee did not take the steps set-out in sub-paragraph 107.2 and refers to and repeats paragraphs 23(c), 29, 30 and 58(b) above;

- (c) otherwise denies the allegations in paragraph 108.
- 109 It denies the allegations in paragraph 109.
- 110 It denies the allegations in paragraph 110 and repeats paragraph 89 above.
- 111 As to paragraph 111, it:
- (a) does not know and therefore does not admit whether the Trustee took the steps alleged in paragraph 110.1;
 - (b) admits the Trustee did not take the steps set-out in sub-paragraph 110.2 and refers to and repeats paragraphs 23(b), 23(c), 23(d), 27(d), 27(f), 29, 30, 65(b), 66 and 67(b) above;
 - (c) otherwise denies the allegations in paragraph 110.
- 112 It denies the allegations in paragraph 112.

G.5 Alleged Due Diligence Contraventions

- 113 It does not plead to paragraph 113 which does not contain any allegations relevant to the claims against the Third Respondent.
- 114 It does not plead to paragraph 114 which does not contain any allegations relevant to the claims against the Third Respondent.
- 115 It does not plead to paragraph 115 which does not contain any allegations relevant to the claims against the Third Respondent.
- 116 It denies the allegations in paragraph 116 and repeats paragraph 110 above.
- 117 As to paragraph 117, it:
- (a) does not know and therefore does not admit whether the Trustee took the steps alleged in paragraph 110.1;
 - (b) admits the Trustee did not take the steps set-out in sub-paragraph 110.2 and refers to and repeats paragraphs 23(b), 23(c), 23(d), 27(d), 27(f), 29, 30, 65(b), 66 and 67(b) above;
 - (c) otherwise denies the allegations in paragraph 117.
- 118 It denies the allegations in paragraph 118.

G.6 Alleged Conflicts Contravention

119 It does not plead to paragraph 119 which does not contain any allegations relevant to the claims against the Third Respondent.

120 It denies the allegations in paragraph 120.

121 It denies the allegations in paragraph 121 and repeats paragraphs 86 to 88 above.

122 It does not plead to paragraph 122 which does not contain any allegations relevant to the claims against the Third Respondent.

123 It denies the allegations in paragraph 123.

124 It does not plead to paragraph 124 which does not contain any allegations relevant to the claims against the Third Respondent.

125 It does not plead to paragraph 125 which does not contain any allegations relevant to the claims against the Third Respondent.

G.7 Alleged Financial Interests Contraventions

126 It does not plead to paragraph 126 which does not contain any allegations relevant to the claims against the Third Respondent.

127 It does not plead to paragraph 127 which does not contain any allegations relevant to the claims against the Third Respondent.

G.8 Alleged Proper Performance Contravention

128 It does not plead to paragraph 128 which does not contain any allegations relevant to the claims against the Third Respondent.

129 It does not plead to paragraph 129 which does not contain any allegations relevant to the claims against the Third Respondent.

H. TRUSTEE'S ALLEGED BREACHES OF TRUST – CASH INVESTMENTS

130 It does not plead to paragraph 130 which does not contain any allegations relevant to the claims against the Third Respondent.

131 It does not plead to paragraph 131 which does not contain any allegations relevant to the claims against the Third Respondent.

- 132 It does not plead to paragraph 132 which does not contain any allegations relevant to the claims against the Third Respondent.
- 133 It does not plead to paragraph 133 which does not contain any allegations relevant to the claims against the Third Respondent.
- 134 It does not plead to paragraph 134 which does not contain any allegations relevant to the claims against the Third Respondent.
- 135 It does not plead to paragraph 135 which does not contain any allegations relevant to the claims against the Third Respondent.
- 136 It does not plead to paragraph 136 which does not contain any allegations relevant to the claims against the Third Respondent.
- 137 It does not plead to paragraph 137 which does not contain any allegations relevant to the claims against the Third Respondent.
- 138 It does not plead to paragraph 138 which does not contain any allegations relevant to the claims against the Third Respondent.

I. ALLEGED ACCESSORIAL LIABILITY OF OPL – MASTER FUND PERIOD

I.1 Involvement in statutory contraventions

- 139 It does not plead to paragraph 139 which does not contain any allegations relevant to the claims against the Third Respondent.
- 140 It does not plead to paragraph 140 which does not contain any allegations relevant to the claims against the Third Respondent.

I.2 Knowing receipt in respect of general law breaches by the Trustee

- 141 It does not plead to paragraph 141 which does not contain any allegations relevant to the claims against the Third Respondent.
- 142 It does not plead to paragraph 142 which does not contain any allegations relevant to the claims against the Third Respondent.
- 143 It does not plead to paragraph 143 which does not contain any allegations relevant to the claims against the Third Respondent.

144 It does not plead to paragraph 144 which does not contain any allegations relevant to the claims against the Third Respondent.

145 It does not plead to paragraph 145 which does not contain any allegations relevant to the claims against the Third Respondent.

J. ALLEGED ACCESSORIAL LIABILITY OF ANZ

146 It denies the allegations in paragraph 146 and it refers to and repeats paragraphs 71 to 76, 80 to 82, 86 to 91, 94 to 97, 104 to 112 and 116 to 118.

147 It denies the allegations in paragraph 147 and it refers to and repeats paragraph 146.

K. THE PRE-FOFA REFORM COMMISSIONS AND FEES CHARGED

K.1 Life Policies

148 It does not plead to paragraph 148 which does not contain any allegations relevant to the claims against the Third Respondent.

149 It does not plead to paragraph 149 which does not contain any allegations relevant to the claims against the Third Respondent.

K.2 OneAnswer Members

150 It does not plead to paragraph 150 which does not contain any allegations relevant to the claims against the Third Respondent.

151 It does not plead to paragraph 151 which does not contain any allegations relevant to the claims against the Third Respondent.

152 It does not plead to paragraph 152 which does not contain any allegations relevant to the claims against the Third Respondent.

153 It does not plead to paragraph 153 which does not contain any allegations relevant to the claims against the Third Respondent.

154 It does not plead to paragraph 154 which does not contain any allegations relevant to the claims against the Third Respondent.

155 It does not plead to paragraph 155 which does not contain any allegations relevant to the claims against the Third Respondent.

156 It does not plead to paragraph 156 which does not contain any allegations relevant to the claims against the Third Respondent.

K.3 OptiMix Members

157 It does not plead to paragraph 157 which does not contain any allegations relevant to the claims against the Third Respondent.

158 It does not plead to paragraph 158 which does not contain any allegations relevant to the claims against the Third Respondent.

159 It does not plead to paragraph 159 which does not contain any allegations relevant to the claims against the Third Respondent.

160 It does not plead to paragraph 160 which does not contain any allegations relevant to the claims against the Third Respondent.

161 It does not plead to paragraph 161 which does not contain any allegations relevant to the claims against the Third Respondent.

K.4 ANZ Super Advantage

162 It does not plead to paragraph 162 which does not contain any allegations relevant to the claims against the Third Respondent.

163 It does not plead to paragraph 163 which does not contain any allegations relevant to the claims against the Third Respondent.

164 It does not plead to paragraph 164 which does not contain any allegations relevant to the claims against the Third Respondent.

165 It does not plead to paragraph 165 which does not contain any allegations relevant to the claims against the Third Respondent.

166 It does not plead to paragraph 166 which does not contain any allegations relevant to the claims against the Third Respondent.

K.5 Integra

167 It does not plead to paragraph 167 which does not contain any allegations relevant to the claims against the Third Respondent.

168 It does not plead to paragraph 168 which does not contain any allegations relevant to the claims against the Third Respondent.

169 It does not plead to paragraph 169 which does not contain any allegations relevant to the claims against the Third Respondent.

170 It does not plead to paragraph 170 which does not contain any allegations relevant to the claims against the Third Respondent.

171 It does not plead to paragraph 171 which does not contain any allegations relevant to the claims against the Third Respondent.

K.6 Trustee's agreement to Pre-FOFA Fees

172 It does not plead to paragraph 172 which does not contain any allegations relevant to the claims against the Third Respondent.

L. THE FOFA REFORMS

173 It does not plead to paragraph 173 which does not contain any allegations relevant to the claims against the Third Respondent.

174 It does not plead to paragraph 174 which does not contain any allegations relevant to the claims against the Third Respondent.

175 It does not plead to paragraph 175 which does not contain any allegations relevant to the claims against the Third Respondent.

176 It does not plead to paragraph 176 which does not contain any allegations relevant to the claims against the Third Respondent.

177 It does not plead to paragraph 177 which does not contain any allegations relevant to the claims against the Third Respondent.

M. THE POST-FOFA REFORM COMMISSIONS AND FEES CHARGED

178 It does not plead to paragraph 178 which does not contain any allegations relevant to the claims against the Third Respondent.

179 It does not plead to paragraph 179 which does not contain any allegations relevant to the claims against the Third Respondent.

180 It does not plead to paragraph 180 which does not contain any allegations relevant to the claims against the Third Respondent.

M.1 OneAnswer Members

181 It does not plead to paragraph 181 which does not contain any allegations relevant to the claims against the Third Respondent.

182 It does not plead to paragraph 182 which does not contain any allegations relevant to the claims against the Third Respondent.

M.2 OptiMix Members

183 It does not plead to paragraph 183 which does not contain any allegations relevant to the claims against the Third Respondent.

184 It does not plead to paragraph 184 which does not contain any allegations relevant to the claims against the Third Respondent.

M.3 ANZ Super Advantage Members

185 It does not plead to paragraph 185 which does not contain any allegations relevant to the claims against the Third Respondent.

186 It does not plead to paragraph 186 which does not contain any allegations relevant to the claims against the Third Respondent.

M.4 Integra Members

187 It does not plead to paragraph 187 which does not contain any allegations relevant to the claims against the Third Respondent.

188 It does not plead to paragraph 188 which does not contain any allegations relevant to the claims against the Third Respondent.

M.5 Trustee's agreement to Post-FOFA Fees

189 It does not plead to paragraph 189 which does not contain any allegations relevant to the claims against the Third Respondent.

N. THE CIRCUMSTANCES IN WHICH FEES WERE CHARGED AND COMMISSIONS WERE PAID AFTER FOFA REFORM START DATE

190 It does not plead to paragraph 190 which does not contain any allegations relevant to the claims against the Third Respondent.

191 It does not plead to paragraph 191 which does not contain any allegations relevant to the claims against the Third Respondent.

192 It does not plead to paragraph 192 which does not contain any allegations relevant to the claims against the Third Respondent.

193 It does not plead to paragraph 193 which does not contain any allegations relevant to the claims against the Third Respondent.

194 It does not plead to paragraph 194 which does not contain any allegations relevant to the claims against the Third Respondent.

195 It does not plead to paragraph 195 which does not contain any allegations relevant to the claims against the Third Respondent.

196 It does not plead to paragraph 196 which does not contain any allegations relevant to the claims against the Third Respondent.

197 It does not plead to paragraph 197 which does not contain any allegations relevant to the claims against the Third Respondent.

198 It does not plead to paragraph 198 which does not contain any allegations relevant to the claims against the Third Respondent.

199 It does not plead to paragraph 199 which does not contain any allegations relevant to the claims against the Third Respondent.

O. COMMISSION FREE ALTERNATIVES FOR MEMBERS AFTER FOFA REFORM DATE

O.1 Alternatives to Retail Products

200 It does not plead to paragraph 200 which does not contain any allegations relevant to the claims against the Third Respondent.

201 It does not plead to paragraph 201 which does not contain any allegations relevant to the claims against the Third Respondent.

202 It does not plead to paragraph 202 which does not contain any allegations relevant to the claims against the Third Respondent.

203 It does not plead to paragraph 203 which does not contain any allegations relevant to the claims against the Third Respondent.

204 It does not plead to paragraph 204 which does not contain any allegations relevant to the claims against the Third Respondent.

205 It does not plead to paragraph 205 which does not contain any allegations relevant to the claims against the Third Respondent.

206 It does not plead to paragraph 206 which does not contain any allegations relevant to the claims against the Third Respondent.

207 It does not plead to paragraph 207 which does not contain any allegations relevant to the claims against the Third Respondent.

O.2 Alternatives to Employer Products

208 It does not plead to paragraph 208 which does not contain any allegations relevant to the claims against the Third Respondent.

209 It does not plead to paragraph 209 which does not contain any allegations relevant to the claims against the Third Respondent.

210 It does not plead to paragraph 210 which does not contain any allegations relevant to the claims against the Third Respondent.

211 It does not plead to paragraph 211 which does not contain any allegations relevant to the claims against the Third Respondent.

212 It does not plead to paragraph 212 which does not contain any allegations relevant to the claims against the Third Respondent.

213 It does not plead to paragraph 213 which does not contain any allegations relevant to the claims against the Third Respondent.

214 It does not plead to paragraph 214 which does not contain any allegations relevant to the claims against the Third Respondent.

P. ALLEGED CONTRAVENTION OF TRUSTEE COVENANTS AND DUTIES – COMMISSIONS

P.1 Alleged Contraventions of Best Interests Covenants

215 It does not plead to paragraph 215 which does not contain any allegations relevant to the claims against the Third Respondent.

216 It does not plead to paragraph 216 which does not contain any allegations relevant to the claims against the Third Respondent.

217 It does not plead to paragraph 217 which does not contain any allegations relevant to the claims against the Third Respondent.

Q. TRUSTEE’S ALLEGED BREACHES OF TRUST – COMMISSIONS

218 It does not plead to paragraph 218 which does not contain any allegations relevant to the claims against the Third Respondent.

219 It does not plead to paragraph 219 which does not contain any allegations relevant to the claims against the Third Respondent.

R. OPL’S ALLEGED KNOWING INVOLVEMENT IN TRUSTEE’S STATUTORY CONTRAVENTIONS

220 It does not plead to paragraph 220 which does not contain any allegations relevant to the claims against the Third Respondent.

221 It does not plead to paragraph 221 which does not contain any allegations relevant to the claims against the Third Respondent.

S. ALLEGED HARM TO THE APPLICANTS AND GROUP MEMBERS

S.1 First Applicant and Cash Group Members

222 It does not know and therefore does not admit the allegations in paragraph 222.

223 It denies the allegations in paragraph 223 and says further that:

- (a) it refers to and repeats paragraphs 80 to 82, 86 to 91, 94 to 97, 104 to 112 and 116 to 118 above;

- (b) the Trustee was at all relevant times the legal owner of the trust property constituting the investments in the Master Fund and the RPS Fund, and any diminution in the trust property as a result of the alleged contraventions of the SIS Act (which is denied), did not and cannot cause loss and damage to Cash Group Members;
- (c) further or alternatively, insofar as a Cash Group Member remains a member of the Master Fund or the RPS Fund, they have not suffered loss within the meaning of section 55 of the SIS Act.

Particulars

- (i) If, which is denied, any assets of the Master Fund or the RPS Fund have been misapplied or diminished by reason of the contraventions alleged, then the Trustee is obliged to (and will) make good the assets of the Master Fund or the RPS Fund. Upon the assets of the Master Fund or the RPS Fund being made good, no loss or damage will have been suffered by a Cash Group Member who remains a member of the Master Fund or the RPS Fund and there is no loss or damage to be recovered under s 55 of the SIS Act.
- (ii) Further, if, which is denied, any respondent is liable under s 55 of the SIS Act to compensate the First Applicant or any of the Cash Group Members for any loss or damage, any such compensation must be effected by payment into the relevant person's superannuation balance. No payment can or should be ordered which would effect a de facto release of preserved benefits inconsistent with the scheme established by the *Superannuation Industry (Supervision) Regulations 1994* (Cth) including by the payment of sums to any person other than the Trustee.

224 It denies the allegations in paragraph 224.

225 It denies the allegations in paragraph 225.

226 It denies the allegations in paragraph 226.

S.2 Second Applicant and Commission Group Members

227 It does not plead to paragraph 227 which does not contain any allegations relevant to the claims against the Third Respondent.

228 It does not plead to paragraph 228 which does not contain any allegations relevant to the claims against the Third Respondent.

229 It does not plead to paragraph 229 which does not contain any allegations relevant to the claims against the Third Respondent.

230 It does not plead to paragraph 230 which does not contain any allegations relevant to the claims against the Third Respondent.

231 It does not plead to paragraph 231 which does not contain any allegations relevant to the claims against the Third Respondent.

S.3 Limitations and Other Defences

231A In further answer to the ~~Statement of Claim~~ ASOC, the Third Respondent says:

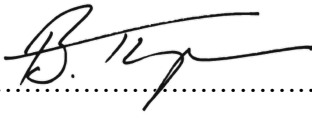
- (a) the claims as against the Third Respondent are statute barred by reason of s 55(4) of the SIS Act and cannot be maintained insofar as those claims concern:
 - (i) conduct before 23 December 2014;
 - (ii) further or alternatively, any loss or damage alleged to have been suffered by the Applicants and any of the Cash Investments Group Members before 23 December 2014.
- (b) it denies that the Applicants are entitled to the relief claimed in the Amended Originating Application filed on ~~23 December 2020~~ 25 August 2022 (or any relief as against the Third Respondent);
- (c) in answer to all of the allegations of contravention of the SIS Act, if (which is denied), the Third Respondent is found to be liable for any loss or damage in respect of any of those alleged contraventions, it says that:
 - (i) it acted honestly at all material times;
 - (ii) having regard to all the circumstances, it ought fairly to be excused for any such contraventions;
 - (iii) in consequence of sub-paragraphs (i) and (ii), under s 221(2) of the SIS Act the Court should relieve the Third Respondent wholly, or alternatively partly, from any such liability.

T. EXTENSION OF TIME

232 As to paragraph 232, it:

- (a) repeats paragraph 231A(a) above;
- (b) otherwise does not know and cannot admit the allegations in paragraph 232.

Date: ~~18 June 2021~~ 31 October 2022



.....
Signed by Belinda Thompson
Lawyer for the Third Respondent

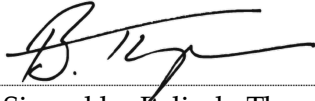
This pleading was prepared by Paul Liondas of counsel.

Certificate of lawyer

I, Belinda Thompson, certify to the Court that, in relation to the amended defence filed on behalf of the Third Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~18 June 2021~~ 31 October 2022



Signed by Belinda Thompson
Lawyer for the Third Respondent