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ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Defence of the Second Respondent to the Amended Statement of Claim

No. VID 9 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

Ian Edo Janssen and another
Applicants

OnePath Custodians Pty Limited and others
Respondents

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In answer to the allegations in the Amended Statement of Claim filed on 11 October 2022~~23~~
~~December 2020~~ (ASOC), the Second Respondent (ZALOPL) states as follows. Unless
otherwise stated, this Defence adopts the defined terms used in the ASOC.

A. Parties

1. As to the allegations in paragraph 1 of the ASOC, ZALOPL:
 - 1.1 refers to and repeats paragraphs 2 and 3 below; and
 - 1.2 otherwise does not know and therefore cannot admit the allegations in the paragraph.
2. As to the allegations in paragraph 2 of the ASOC, ZALOPL:
 - 2.1 states that the First Applicant (**Mr Janssen**) does not have an alleged claim in respect of, or arising out of, the same, similar or related circumstances, or claims giving rise to substantial common issues of law or fact, as those alleged by the Second Applicant (**Mr Reeves**) and the Commissions Group Members;
 - 2.2 refers to and repeats paragraphs 222 to 226 below; and
 - 2.3 otherwise does not know and therefore cannot admit the allegations in the paragraph.
3. As to the allegations in paragraph 3 of the ASOC, ZALOPL:
 - 3.1 states that the Mr Reeves does not have an alleged claim in respect of, or arising out of, the same, similar or related circumstances, or claims giving rise to substantial common issues of law or fact, as those alleged by Mr Janssen and the Cash Group Members;
 - 3.2 refers to and repeats paragraphs 227 to 231 below;
 - 3.3 states that it does not adopt the defined term "Excess Ongoing Fees" for the purposes of this Defence and instead uses the defined term "Fees for Products with Commission"; and
 - 3.4 otherwise does not know and therefore cannot admit the allegations in the paragraph.

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[Form approved 01/08/2011]

4. As to the allegations in paragraph 4 of the ASOC, ZALOPL:
 - 4.1 refers to and repeats paragraphs 2 and 3 above; and
 - 4.2 otherwise does not know and therefore cannot admit the allegations in the paragraph.
5. As to the allegations in paragraph 5 of the ASOC, ZALOPL:
 - 5.1 admits the allegations in paragraph 5.1;
 - 5.2 as to the allegations in paragraph 5.2:
 - (a) denies the allegations in paragraph 5.2(a) and states that the Zurich Transfer Date was 31 May 2019; and
 - (b) admits the allegations in paragraph 5.2(b),
 - 5.3 admits the allegations in paragraph 5.3; and
 - 5.4 admits the allegations in paragraph 5.4.
6. As to the allegations in paragraph 6 of the ASOC, ZALOPL:
 - 6.1 admits the allegations in paragraph 6.1; ~~of the SOC, save that the Zurich Transfer Date was 31 May 2019; and~~
 - 6.1.A as to the allegations in paragraphs 6.1A and 6.1B, relies on the Scheme for its full force and effect and otherwise admits the allegations in those paragraphs;
 - 6.1B as to the allegations in paragraph 6.2, refers to and repeats paragraph 5.2(a) above and otherwise admits the allegations in that paragraph;
 - 6.2 states further that:
 - (a) on 13 April 2019 the Trustee redeemed the Life Policies relating to the Cash Advantage Option, the Term Deposits Option and the Smart Choice Cash Option it held with OPL and as such no allegation is made against ZALOPL in relation to those investments after 13 April 2019; and
 - (b) on that basis, where in this defence ZALOPL responds to any allegations in the ASOC relating to the time period after 13 April 2019, it does not know and therefore cannot admit those allegations.

Particulars

Schedule 1 of the Redemption Deed dated 10 April 2019.

- 6A. As to the allegations in paragraph 6A, ZAL refers to and repeats paragraph 6.1A above and otherwise does not know and therefore cannot admit the allegations in paragraph 6A of the ASOC because the paragraph does not contain any allegation against ZAL.

7. ZALOPL admits the allegations in paragraph 7 of the ASOC, 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. ZALOPL relies on s 52 of the SIS Act (as amended from time to time) for its full force and effect and otherwise admits the allegations in paragraph 8 of the ASOC.
9. ZALOPL relies on s 52 of the SIS Act (as amended from time to time) for its full force and effect and otherwise admits the allegations in paragraph 9 of the ASOC.
10. As to the allegations in paragraph 10 of the ASOC, ZALOPL:
- 10.1 relies on s 52 of the SIS Act (as amended from time to time) for its full force and effect and otherwise admits the allegations insofar as the reference to "MySuper Product" and "Choice Product" are references to those terms as used in the SIS Act; and
- 10.2 states that the paragraph is otherwise embarrassing insofar as it uses the defined terms "MySuper Product" and "Choice Product" because the ASOC does not define those terms and, as such, does not know and therefore cannot admit the allegations in the paragraph.
11. ZALOPL relies on s 109 of the SIS Act (as amended from time to time) for its full force and effect and otherwise admits the allegations in paragraph 11 of the ASOC.

B.2 Duties at general law

12. As to paragraph 12 of the ASOC, ZALOPL:
- 12.1 refers to and repeats paragraphs 8 to 10 above;
- 12.2 relies on s 52 of the SIS Act for its full force and effect; and
- 12.3 otherwise denies the allegations in the paragraph.
13. As to the allegations in paragraph 13 of the ASOC, ZALOPL:
- 13.1 refers to and repeats paragraphs 8 to 10 and 12 above; and
- 13.2 otherwise denies the allegations in the paragraph.
14. As to the allegations in paragraph 14 of the ASOC, ZALOPL:
- 14.1 refers to and repeats paragraphs 8 to 10 and 12 above;
- 14.2 admits that it owed duties under the common law as a trustee to its members as beneficiaries;

14.3 denies that its common law duties were in the form or terms alleged in paragraphs 14.1 to 14.4 of the ASOC; and

14.4 otherwise denies the allegations in the paragraph.

C. THE FUNDS

C.1 Master Fund

15. ZALOP admits the allegations in paragraph 15 of the ASOC.

16. ZALOP admits the allegations in paragraph 16 of the ASOC, and states further that:

16.1 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,

16.2 the Master Fund Trust Deed provided that the Trustee acknowledged OPL may be entitled to receive or deduct fees or other remuneration in accordance with one or more investment policies (as defined by the Master Fund Trust Deed as varied from time to time);

16.3 the Master Fund Trust Deed provided that the Trustee acknowledged OPL may be entitled to receive or deduct fees or other remuneration in accordance with one or more investment policies (as defined); and

Particulars

Master Fund Trust Deed clauses 14.13, 14.14 and 38 (as varied from time to time).

16.4 will rely on the terms of the Master Fund Trust Deed (as varied from time to time) for their full force and effect.

17. As to the allegations in paragraph 17 of the ASOC, ZALOP:

17.1 admits that persons were provided with a product disclosure statement comprising one or more documents titled product disclosure statement, fees guide, funds guide, additional information guide, buy sell spread guide, insurance guide or hedge fund guide as applicable (**PDS**), which outlined the features of the Master Fund;

17.2 admits that the Master Fund comprised the products alleged in paragraphs 17.1 to 17.8; and

17.3 otherwise does not know and therefore cannot admit the allegations in the paragraph.

18. ~~ZALOP~~ admits the allegations in paragraph 18 of the ASOC and will rely on the terms of the Governing Rules of the Master Fund (as amended from time to time) for their full force and effect.

19. ~~ZALOP~~ admits the allegations in paragraph 19 of the ASOC.

C.2 RPS Fund

20. ~~ZALOP~~ does not know and therefore cannot admit the allegations in paragraph 20 of the ASOC and refers to and repeats paragraph 6.2 above.

21. ~~ZALOP~~ does not know and therefore cannot admit the allegations in paragraph 21 of the ASOC and refers to and repeats paragraph 6.2 above.

22. ~~ZALOP~~ does not know and therefore cannot admit the allegations in paragraph 22 of the ASOC and refers to and repeats paragraph 6.2 above.

D. INVESTMENT OPTIONS – CASH AND TERM DEPOSITS

D.1 Cash Advantage Investment Option

23. As to the allegations in paragraph 23 of the ASOC, ~~ZALOP~~:

23.1 does not know and therefore cannot admit the allegations insofar as the Cash Advantage Option relates to the period between 13 April 2019 and the end of the Cash Relevant Period (being 31 January 2020) by reason of the matters pleaded in paragraph 6.2 above;

23.2 otherwise admits the allegations in paragraph 23 of the ASOC, save for that the relevant Investment Option was titled “ANZ Cash Advantage”;

23.3 states further that:

- (a) each of the ANZ OneAnswer Products, OnePath OneAnswer Products and the Frontier Products contained an investment option titled “Cash Advantage”, which was issued pursuant to a PDS issued by the Trustee;
- (b) each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;
- (c) each applicable PDS disclosed the fees and costs that may apply;

- (d) members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms and the terms of the applicable trust deed;
- (e) there were multiple superannuation products available across the Master Fund at relevant times;
- (f) there were multiple 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;
- (g) each Investment Option has its own properties as to risk, pricing, performance and fees;
- (h) members were able to switch their selected investment options;
- (i) in order for a member to have been invested in the ANZ Cash Advantage Option that member had to have selected that Investment Option and directed the Trustee to invest in that option; and
- (j) the Trustee had no discretion to select other Investment Options once the member had selected an Investment Option.

24. ~~ZALOP~~ admits the allegations in paragraph 24 of the ASOC, and:

- 24.1 refers to and repeats paragraph 23 above;
- 24.2 relies on the terms of each applicable PDS, including the investment objective, for their full force and effect; and
- 24.3 states that each applicable PDS disclosed the risks associated with investing in the product.

25. ~~ZALOP~~ admits the allegations in paragraph 25 of the ASOC, and:

- 25.1 refers to and repeats paragraph 23 above;
- 25.2 relies on the terms of each applicable PDS, including the investment strategy, for their full force and effect; and
- 25.3 states that each applicable PDS disclosed the risks associated with investing in the product.

D.2 Term Deposit Investment Option

26. As to allegations in paragraph 26 of the ASOC, ~~ZALOP~~:

- 26.1 does not know and therefore cannot admit the allegations insofar as the Term Deposit Option relates to the period between 13 April 2019 and the end of the

Cash Relevant Period (being 31 January 2020) by reason of the matters pleaded in paragraph 6.2 above;

26.2 otherwise admits the allegations in paragraph 26 of the ASOC; and

26.3 states further that:

- (a) each of the ANZ OneAnswer Products, OnePath OneAnswer Products and the Frontier Products contained an investment option titled "Term Deposit", which was issued pursuant to a PDS issued by the Trustee;
- (b) each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;
- (c) each applicable PDS disclosed the fees and costs that may apply;
- (d) members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms and the terms of the applicable trust deed;
- (e) there were multiple superannuation products available across the Master Fund at relevant times;
- (f) there were multiple 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;
- (g) each investment option has its own properties as to risk, pricing, performance and fees;
- (h) members were able to switch their selected Investment Options;
- (i) in order for a member to have been invested in the Term Deposits Option that member had to have selected that Investment Option and directed the Trustee to invest in that option; and
- (j) the Trustee had no discretion to select other Investment Options once the member had selected an investment option.

27. ZALOP admits the allegations in paragraph 27 of the ASOC, and:

27.1 refers to and repeats paragraph 26 above;

27.2 relies on the terms of each applicable PDS, including the investment objective, for their full force and effect; and

27.3 states that each applicable PDS disclosed the risks associated with investing in the product.

28. ZALOP admits the allegations in paragraph 28 of the ASOC, and:

- 28.1 refers to and repeats paragraph 26 above;
- 28.2 relies on the terms of each applicable PDS, including the investment strategy, for their full force and effect; and
- 28.3 states that each applicable PDS disclosed the risks associated with investing in the product.

D.3 ANZ Smart Choice Cash Option

- 29. As to the allegations in paragraph 29 of the ASOC, ZALOPL:
 - 29.1 does not know and therefore cannot admit the allegations insofar as the Smart Choice Cash Option relates to the period between the Master Fund Start Date and 6 November 2013 on the basis that the assets referable to the Smart Choice Cash Option were not invested under life policies issued by OPL to the Trustee, but were invested directly in underlying assets by the Trustee;
 - 29.2 states further that, by reason of the matters pleaded in paragraph 29.1 above, where in this defence ZALOPL responds to an allegation in the ASOC relating to the "Smart Choice Cash Option" ZALOPL does not know and therefore cannot admit the allegations relating to the time period between the Master Fund Start Date and 6 November 2013;
 - 29.3 does not know and therefore cannot admit the allegations insofar as the Smart Choice Cash Option relates to the period between 13 April 2019 and the end of the Cash Relevant Period (being 31 January 2020) by reason of the matters pleaded in paragraph 6.2 above; and
 - 29.4 otherwise admits the allegations in the paragraph, and states further that:
 - (a) each of the ANZ Smart Choice Retail Products contained an investment option variously titled "ANZ Smart Choice – Cash", "Cash" and "Smart Cash" pursuant to a PDS issued by the Trustee;
 - (b) each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;
 - (c) each applicable PDS disclosed the fees and costs that may apply;
 - (d) members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms and the terms of the applicable trust deed;
 - (e) there were multiple superannuation products available across the Master Fund at relevant times;

- (f) there were multiple 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;
- (g) each Investment Option has its own properties as to risk, pricing, performance and fees;
- (h) members were able to switch their selected Investment Options;
- (i) a member could choose to take an active role and invest some or all of their superannuation account balance in a number of diversified funds or single-sector funds, one of which was an option called "ANZ Smart Choice Cash";
- (j) where a member did not elect their own Investment Options the Trustee would invest their superannuation account balance in one of a series of Lifestage investment funds which comprised a strategic mix of growth and defensive investments to suit a members proximity to retirement, depending on the decade in which a member was born; and
- (k) a member could switch Investment Options at any time.

30. ~~ZALOP~~ admits the allegations in paragraph 30 of the ~~ASOC~~ and states that:

- 30.1 the ANZ Smart Choice Employer Product contained an Investment Option variously titled "ANZ Smart Choice – Cash", "Cash" and "Smart Cash" pursuant to a PDS issued by the Trustee;
- 30.2 each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;
- 30.3 each applicable PDS disclosed the fees and costs that may apply;
- 30.4 members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms and the terms of the applicable trust deed;
- 30.5 there were multiple products available across the Master Fund at relevant times;
- 30.6 there were multiple 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;
- 30.7 each investment option has its own properties as to risk, pricing, performance and fees;
- 30.8 members were able to switch their selected Investment Options;

- 30.9 a member could choose to take an active role and invest some or all of their superannuation account balance in a number of diversified funds or single-sector funds, one of which was an option called “ANZ Smart Choice Cash”;
- 30.10 where a member did not elect their own Investment Options the Trustee would invest their superannuation account balance in one of a series of Lifestage investment funds which comprised a strategic mix of growth and defensive investments to suit a member's proximity to retirement, depending on the decade in which a member was born; and
- 30.11 a member could switch Investment Options at any time.
31. ~~ZAL~~~~OPL~~ admits the allegations in paragraph 31 of the ASOC, and:
- 31.1 refers to and repeats paragraphs 29 and 30 above;
- 31.2 relies on the terms of each applicable PDS, including the investment objective, for their full force and effect; and
- 31.3 states that each applicable PDS disclosed the risks associated with investing in the product.
32. ~~ZAL~~~~OPL~~ admits the allegations in paragraph 32 of the ASOC, and:
- 32.1 refers to and repeats paragraphs 29 and 30 above;
- 32.2 relies on the terms of each applicable PDS, including the investment strategy, for their full force and effect; and
- 32.3 states that each applicable PDS disclosed the risks associated with investing in the product.

E. CASH AND TERM DEPOSIT INVESTMENTS – MASTER FUND PERIOD

E.1 Life Policies

33. ~~ZAL~~~~OPL~~ admits the allegations in paragraph 33 of the ASOC, and states further that:
- 33.1 each applicable PDS disclosed that the Trustee invests all contributions in a master life policy issued by OPL;
- 33.2 each of the ANZ OneAnswer Products, OnePath OneAnswer Products and the Frontier Products contained an Investment Option titled “Cash Advantage” made available to members pursuant to a PDS issued by the Trustee;
- 33.3 each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser; and

- 33.4 members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms and the terms of the applicable trust deed.
34. ZALOPL admits the allegations in paragraph 34 of the ASOC on the assumption that the reference to "Term Deposits Option" is a reference to a defined term "ANZ Term Deposits Option", and states further that:
- 34.1 each applicable PDS disclosed that the Trustee invests all contributions in a master life policy issued by OPL;
- 34.2 each of the ANZ OneAnswer Products, OnePath OneAnswer Products and the Frontier Products contained an Investment Option titled "Term Deposit", which was made available to members pursuant to a PDS issued by the Trustee;
- 34.3 each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser; and
- 34.4 members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms and the terms of the applicable trust deed.
35. ZALOPL does not know and therefore cannot admit the allegations in paragraph 35 of the ASOC and refers to and repeats paragraph 29.1 and 29.2 above.
36. ZALOPL admits the allegations in paragraph 36 of the ASOC, and states further that:
- 36.1 each applicable PDS disclosed that the Trustee invests all contributions in a master life policy issued by OPL;
- 36.2 each of the ANZ Smart Choice Retail Products and ANZ Smart Choice Employer Products contained an Investment Option variously titled "ANZ Smart Choice – Cash", "Cash" and "Smart Cash" made available to members pursuant to a PDS issued by the Trustee;
- 36.3 each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser; and
- 36.4 members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms and the terms of the applicable trust deed.
37. As to the allegations in paragraph 37 of the ASOC:
- 37.1 as to paragraph 37.1 of the ASOC, ZALOPL:

- (a) admits the allegations in the paragraph insofar as the reference to “Statutory Funds” is intended to be a reference to statutory funds approved by APRA and referred to in the *Life Insurance Act 1995* (Cth);
- (b) states that the paragraph is otherwise embarrassing insofar as it uses the defined term “Statutory Funds” because the ASOC does not define that term and, as such, ZALOPL does not know and therefore cannot admit the allegations in the paragraph;
- (c) refers to and repeats paragraphs 23, 26, 29 and 30 above; and
- (d) states that each applicable PDS issued by the Trustee disclosed that all amounts invested under the policies issued by OPL to the Trustee was referable to a statutory fund approved by APRA,

37.2 As to the allegations in paragraph 37.2 of the ASOC, ZALOPL:

- (a) admits that it was a term of the MIT that it did not give a Member or the Trustee any legal or beneficial interest in any Statutory Fund assets and relies on the terms of the MIT for their full force and effect;
- (b) refers to and repeats paragraphs 23, 26, 29 and 30 above; and
- (c) otherwise denies the allegations in the paragraph,

37.3 ZALOPL admits the allegations in paragraph 37.3 of the ASOC and:

- (a) refers to and repeats paragraphs 23 and 26 above; and
- (b) states that each applicable PDS disclosed that members would be charged fees,

37.4 ZALOPL admits the allegations in paragraph 37.4 of the ASOC:

- (a) save that the reference to Commission Product Life Policies in subparagraph 37.4(b) of the ASOC should be a reference to Cash Advantage Life Policies;
- (b) refers to and repeats paragraphs 23 and 26 above; and
- (c) states that each applicable PDS disclosed that members would be charged fees,

37.5 ZALOPL admits the allegations in paragraph 37.5 of the ASOC and refers to and repeats paragraphs 29 and 30 above;

37.6 ZALOPL admits the allegations in paragraph 37.6 of the ASOC:

- (a) refers to and repeats paragraphs 29 and 30 above; and

- (b) states that each applicable PDS disclosed that members would be charged fees,

37.7 will rely on the Life Policies for their full force and effect.

E.2 Administration Agreement

38. ZALOPL admits the allegations in paragraph 38 of the ASOC.

39. ZALOPL admits the allegations in paragraph 39 of the ASOC.

E.3 Underlying Investments

40. As to the allegations in paragraph 40 of ASOC, ZALOPL:

40.1 admits that all of the Cash Advantage Money was invested in the form of cash deposits with ANZ;

40.2 states that any agreement between OPL and ANZ by which the Cash Advantage Money was invested in the form of cash deposits with ANZ was entered into in accordance with the terms of the relevant life policy issued by OPL to the Trustee into investments selected by the Trustee (at the election of the member);

40.3 denies that OPL had a separate agreement with ANZ by which OPL agreed to invest the Cash Advantage Money in the form of cash deposits with ANZ;

40.4 refers to and repeats paragraph 23 above; and

40.5 otherwise denies the allegations in the paragraph.

41. As to the allegations in paragraph 41 of the ASOC, ZALOPL:

41.1 admits the allegations in paragraph 41.1 of the ASOC;

41.2 as to the allegations in paragraph 41.2 of the ASOC, ZALOPL states that the Cash Advantage Master Fund Interest Rates were the result of commercial negotiations between the Trustee and ANZ and otherwise denies the allegations in the paragraph;

41.3 as to the allegations in paragraph 41.3 of the ASOC, ZALOPL:

(a) admits that each month, ANZ paid to OPL a fee which was calculated as a percentage of the Cash Advantage Money deposited with ANZ;

(b) states that the Cash Advantage Fee was the subject of a commercially negotiated agreement entered into between OPL and ANZ; and

(c) otherwise denies the allegations in the paragraph,

41.4 refers to and repeats paragraphs 23 above and 68 below; and

- 41.5 states that each applicable PDS disclosed that OPL may receive payments from ANZ in relation to amounts held in the Cash Advantage Option with ANZ.

Particulars

Services Agreement dated 5 January 2015 between ANZ and OPL in respect of the Cash Advantage Money attributable to the OnePath OneAnswer Products.

42. As to the allegations in paragraph 42 of the ASOC, ZALOPL:
- 42.1 admits the allegations in paragraph 42.1 of the ASOC;
- 42.2 as to the allegations in paragraph 42.2 of the ASOC, ZALOPL states that the Term Deposit Master Fund Interest Rates were the result of commercial negotiations between the Trustee and ANZ and otherwise denies the allegations in the paragraph;
- 42.3 as to the allegations in paragraph 42.3 of the ASOC, ZALOPL:
- (a) admits that each month, ANZ paid to OPL a fee which was calculated as percentage of the Term Deposit Money deposited with ANZ;
- (b) states that the Term Deposit Fee was the subject of a commercially negotiated agreement entered into between OPL and ANZ; and
- (c) otherwise denies the allegations in the paragraph,
- 42.4 refers to and repeats paragraphs 26 above and 68 below; and
- 42.5 states that each applicable PDS disclosed that OPL may receive payments from ANZ in relation to amounts held in the Term Deposit Option with ANZ.

Particulars

Services Agreement dated 18 December 2014 between ANZ and OPL in respect of the Term Deposit Money attributable to the OnePath OneAnswer Products.

43. ZALOPL does not know and therefore cannot admit the allegations in paragraph 43 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
44. ZALOPL does not know and therefore cannot admit the allegations in paragraph 44 of the ASOC, because the paragraph does not contain any allegation against ZALOPL.
45. As to the allegations in paragraph 45 of ASOC, ZALOPL:
- 45.1 admits that all of the Smart Choice Cash Money was invested in the form of cash deposits with ANZ;
- 45.2 states that any agreement between OPL and ANZ by which the Smart Choice Cash Money was invested in the form of cash deposits with ANZ was entered into

- in accordance with the terms of the relevant life policy issued by OPL to the Trustee into investments selected by the Trustee (at the election of the member);
- 45.3 denies that OPL had a separate agreement with ANZ by which OPL agreed to invest the Smart Choice Cash Money in the form of cash deposits with ANZ;
- 45.4 refers to and repeats paragraphs 29 and 30 above;
- 45.5 states that each applicable PDS disclosed that OPL may receive payments from ANZ in relation to amounts held in the Smart Choice Cash Option with ANZ; and
- 45.6 otherwise denies the allegations in the paragraph.
46. ZALOPL admits the allegations in paragraph 46 of the ASOC, and:
- 46.1 admits the allegations in paragraph 46.1 of the ASOC;
- 46.2 as to the allegations in paragraph 46.2 of the ASOC, ZALOPL states that the Smart Choice Master Fund Interest Rates were the result of commercial negotiations between the Trustee and ANZ and otherwise denies the allegations in the paragraph;
- 46.3 as to the allegations in paragraph 46.3 of the ASOC, ZALOPL:
- (a) admits that OPL was entitled to be paid a fee calculated as a proportion, per annum, of the total Smart Choice Money invested in the pooled ANZ v.2 Plus Account; and
- (b) otherwise denies the allegations in the paragraph,
- 46.4 refers to and repeats paragraphs 29 and 30 above and 68 below; and
- 46.5 states that each applicable PDS disclosed that OPL may receive payments from ANZ in relation to amounts held in the Smart Choice Cash Option with ANZ.

Particulars

Services Agreement undated between ANZ and OPL in respect of the Smart Choice Cash attributable to the Smart Choice Products.

E.4 Payment of Fees to ZALOPL

47. ZALOPL denies the allegations in paragraph 47 of the ASOC, and:
- 47.1 refers to and repeats paragraphs 23, 26, 29, 30 and 40 to 46 above;
- 47.2 states further that:
- (a) the reference to “Smart Choice Fee” ought be a reference to the “Smart Choice Cash Fee” as defined in paragraph 46.3 in the ASOC;
- (b) the Cash Investment Fees were paid by ANZ in respect of services provided by OPL to ANZ, and were not the same as the services OPL

provided as issuer of the Life Policies and or under the Master Fund Administration Agreement;

- (c) the Cash Investment Fees were disclosed in each applicable PDS;
- (d) the Cash Investment Fees appropriately reflected the benefits provided by OPL to ANZ;
- (e) states that any fees paid to OPL pursuant to the Master Fund Administration Agreement:
 - (i) were agreed by the Trustee;
 - (ii) were the subject of periodic benchmarking by a third party engaged by the Trustee; and
 - (iii) appropriately reflected the benefits provided by OPL to the Trustee and therefore to the members of the Master Fund,
- (f) states that if OPL did not receive the Cash Investment Fees, it would have sought to charge an additional or a higher fee to the Trustee pursuant to the Life Policies and or the Master Fund Administration Agreement.

- 48. ZALOPL denies the allegations in paragraph 48 of the ASOC, and refers to and repeats paragraph 47 above.
- 49. ZALOPL denies the allegations in paragraph 49 of the ASOC, and refers to and repeats paragraph 47 above.
- 50. ZALOPL denies the allegations in paragraph 50 of the ASOC, and refers to and repeats paragraph 47 above.
- 51. ZALOPL denies the allegations in paragraph 51 of the ASOC, and refers to and repeats paragraph 47 above.
- 52. ZALOPL denies the allegations in paragraph 52 of the ASOC, and refers to and repeats paragraph 47 to 51 above.
- 53. ZALOPL does not know and therefore cannot admit the allegations in paragraph 53 of the ASOC, because the paragraph does not contain any allegation against ZALOPL.

E.5 Interest Rates – Cash and Term Deposits

- 54. ZALOPL denies the allegations in paragraph 54 of the ASOC.
- 55. As to the allegations in paragraph 55 of the ASOC, ZALOPL:
 - 55.1 says that the differences between the Cash Advantage Master Fund Interest Rates for the ANZ OneAnswer Products and OnePath OneAnswer Products, on the one hand, and for the Frontier Product, on the other hand, occurred in part

because a commission was not payable under the Frontier Product to a member's Financial Adviser;

- 55.2 says further that if the member's Financial Adviser under the ANZ OneAnswer Products and OnePath OneAnswer Products agreed not to receive a commission, the amount of the commission was rebated to the member;
- 55.3 says that the allegation that the rates were "around" 0.30% lower is vague and embarrassing; and
- 55.4 otherwise admits that the Cash Advantage Master Fund Interest Rates for the ANZ OneAnswer Products and OnePath OneAnswer Products were lower than the Cash Advantage Master Fund Interest Rates for the Frontier Product.
56. As to the allegations in paragraph 56 of the ASOC, ZALOP:
- 56.1 admits that from time to time there were interest rates offered by other ADIs higher than the Cash Advantage Master Fund Interest Rates;
- 56.2 otherwise denies the allegations in the paragraph; and
- 56.3 states further that:
- (a) there are numerous products and Investment Options and many potential combinations of products and investments options which may have different pricing, insurance, fees, rebates, interest rates and tax treatment;
 - (b) refers to and repeats subparagraphs 23.3(e), 23.3(f) and 23.3(g) above;
 - (c) in order for a member to have been invested in the Cash Advantage Option, that member had to have selected that Investment Options and directed the Trustee to invest in that option;
 - (d) the Trustee had no discretion to select other Investment Options for the member once the member had selected an Investment Option;
 - (e) at all material times in the Master Fund Period, OPL invested the Cash Advantage Money in at call deposits with ANZ (**Cash Advantage Investments**);
 - (f) the Cash Advantage Master Fund Interest Rates (being the interest rate payable on the Cash Advantage Investments) were published on the OnePath website;
 - (g) members were able to review and research the Cash Advantage Master Fund Interest Rates, and compare those rates to other publicly available rates in respect of other cash investments, and also compare those rates to other Investment Options;

- (h) the Cash Advantage Option was designed for and disclosed to be designed for conservative account holders who wanted very low levels of risk and a high level of capital security;
- (i) at all material times, the Cash Advantage Option provided benefits to members who had invested in that option, being:
 - (i) liquidity;
 - (ii) a high level of capital security while achieving returns generally in line with cash management accounts by investing in ANZ bank deposits;
 - (iii) a steady and reliable income stream with a high level of capital security;
 - (iv) an Investment Option with no minimum time horizon;
 - (v) an Investment Option with no investment fees, no administration fees, no switching fees, no or minimal exit fees and no advice fees;
 - (vi) the simplicity and protection of a stable unit price and a declared interest rate (achieved through the life policy structure);
 - (vii) one Investment Option amongst a suite of Investment Options offered under a life policy;
 - (viii) access to available insurance cover as part of the product; and
 - (ix) a rate of return comparable with other 'cash' options offered by other superannuation trustees,
- (j) one or more of the benefits pleaded at paragraph 56.3(i) was not part of products offered by other ADIs;
- (k) one or more of the matters pleaded at paragraph 56.3(i) lowered the interest rates offered on a product;
- (l) the Cash Advantage Master Fund Interest Rates are, and at all material times since they were first offered have been, comparable or higher than interest rates offered to retail customers making deposits in an ANZ Online Savings account, being an equivalent (or similar) at call deposit product offered by ANZ outside superannuation, and competitive with interest rates on similar at call deposit products offered by other ADIs with an equivalent credit rating to ANZ outside superannuation;

Particulars

Date	Cash Advantage Master Fund Interest Rates (ANZ)	Interest rate payable on ANZ Savings Account	RBA Retail Deposit and Investment Rates
31 December 2011	(Not currently known)	(Not currently known)	4.35%
31 December 2012	(Not currently known)	(Not currently known)	3.05%
31 December 2013	(Not currently known)	3.00% (as at January)	2.50%
31 December 2014	Entry Fee (EF) – 2.47% No Entry Fee (NEF) – 2.47% Select – 2.78%	2.50%(as at January)	2.45%
31 December 2015	EF – 2.23% NEF – 2.23% Select – 2.54%	2.50%(as at January)	1.80%
31 December 2016	EF – 1.85% NEF – 1.85% Select – 2.16%	(Not currently known)	1.7%
31 December 2017	EF – 1.36% NEF – 1.36% Select – 1.66%	(Not currently known)	1.50%
31 December 2018	EF – 1.26% NEF – 1.26% Select – 1.56%	(Not currently known)	0.85%
31 December 2019	(Not currently known)	(Not currently known)	0.35%

- (m) interest rates paid by ANZ on the Cash Advantage Investments were generally competitive with 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	FirstRate Saver - Cash and Essential Cash Deposit (deposit with CBA)	BT Super for Life – Cash (deposit with Westpac)	BT Lifetime – Personal Super – BT Cash	OnePath OneAnswer Personal Super Select – Cash Advantage (deposit with ANZ)	OnePath OneAnswer Personal Super Frontier –Cash Advantage (deposit with ANZ)	Asgard – eCash (St George / Westpac)	MLC Cash Fund (Super and Pension)
31 December 2011	4.40%	4.10%	-	4.13%	(Not currently known)	(Not currently known)	4.38%
31 December 2012	3.15%	2.95%	2.54%	4.06%	4.07%	(Not currently known)	3.05%
31 December 2013	2.65%	2.40%	1.70%	2.98%	2.97%	(Not currently known)	2.55%
31 December 2014	2.65%	2.40%	1.57%	2.36%	2.35%	(Not currently known)	2.55%
31 December 2015	2.00%	1.9%	1.41%	2.14%	2.14%	1.80%	2.05%
31 December 2016	1.50%	1.40%	1.23%	1.77%	2.16%	1.30%	1.55%
31 December 2017	1.50%	1.30%	1.54%	1.37%	1.37%	1.10%	1.56%
31 December 2018	1.50%	(Not currently known)	1.01%	1.29%	1.28%	(Not currently known)	1.76%
31 December 2019	0.75%	(Not currently known)	(Not currently known)	(Not currently known)	(Not currently known)	(Not currently known)	1.28%

- (n) while the Cash Advantage Investments and the MLC Cash Fund (referred to by the Applicant in the particulars subjoined to paragraph 56 of the ASOC) were all low risk investment options, the Cash Advantage Investments had a slightly lower risk profile than the MLC Cash Fund;
- (o) from time to time since they were first offered, the Cash Advantage Investments have provided a higher return after administration and investment fees than the MLC Cash Fund (referred to by the Applicant in the particulars subjoined to paragraphs 56 of the ASOC);

Particulars

Date	Investments in Cash Advantage Option	MLC Cash Fund
31 December 2011	4.13%	4.38%
31 December 2012	4.06%	3.05%
31 December 2013	2.98%	2.55%
31 December 2014	2.36%	2.55%
31 December 2015	2.14%	2.05%
31 December 2016	1.77%	1.55%
31 December 2017	1.37%	1.56%
31 December 2018	1.29%	1.76%
31 December 2019	(Not currently known)	1.28%

- (p) in any case, after taking into account the matters in 56.3(i) above, the Cash Advantage Master Fund Interest Rates were competitive with interest rates offered by other ADIs with an equivalent credit rating to ANZ; and
- (q) interest rates are not the only factor in determining whether it was in the best interests of members of the Master Fund for the Trustee to invest in and or remain invested in a product.

57. As to the allegations in paragraph 57 of the ASOC, ZALOP:

57.1 admits that from time to time there were interests rates offered by other ADIs that were higher than the Term Deposits Master Fund Interest Rates;

57.2 otherwise denies the allegations in the paragraph;

57.3 states further that:

- (a) there are numerous products and Investment Options and many potential combinations of products and Investments Options which may have different pricing, insurance fees, rebates, interest rates and tax treatment;
- (b) refers to and repeats subparagraphs 26.3(e), 26.3(f) and 26.3(g);

- (c) in order for a member to have been invested in the Term Deposit Option that member had to have selected that Investment Option and directed the Trustee to invest in that option;
- (d) the Trustee had no discretion to select other Investment Options for the member once the member had selected an Investment Option;
- (e) at all material times in the Master Fund Period, OPL invested the Term Deposit Money in term deposits with ANZ (**Term Deposit Investments**);
- (f) the Term Deposits Master Fund Interest Rates (being the interest rate payable on the Term Deposit Investments) were published on the OnePath website;
- (g) members were able to review and research the Term Deposits Master Fund Interest Rates, and compare those rates to other rates available in respect of other cash investments, and also compare those rates to other investment options;
- (h) the Term Deposits Option was designed for and disclosed to be designed for conservative account holders who wanted very low levels of risk and a high level of capital security;
- (i) at all material times, the Term Deposits Option provided benefits to members who had invested in that option, being:
 - (i) 6 options of investment terms ranging from 3 months to 5 years;
 - (ii) a steady and reliable income stream;
 - (iii) a high level of capital security by investing in ANZ term deposits;
 - (iv) an Investment Option with no investment fees, no administration fees, no switching fees, no or minimal exit fees and no advice fees;
 - (v) the flexibility to withdraw early;

Particulars

Section titled "Fees and other costs" of each issued PDS for the ANZ OneAnswer Products, OnePath OneAnswer Products and Frontier Products since the Master Fund Start Date.

- (vi) the simplicity and protection of a stable unit price and a declared interest rate (achieved through the life policy structure);
- (vii) access to available insurance cover as part of the product;
- (viii) one Investment Option amongst a suite of Investment Options offered under a life policy; and

- (ix) a rate of return comparable with other 'term deposit' options offered by other superannuation trustees,
- (j) one or more of the benefits pleaded at paragraph 57.3(i) was not part of products offered by other ADIs;
- (k) one or more of the matters pleaded at paragraph 57.3(i) lowered the interest rates offered on a product;
- (l) the return to a member of a superannuation fund on a term deposit will be affected by a number of matters including:
 - (i) the interest rate payable on the term deposit which will depend on the amount invested by the member;
 - (ii) any applicable fees which may vary depending on the amount invested by the member;
 - (iii) the frequency at which interest is paid (monthly, annually or at maturity subject to the term); and
 - (iv) whether the term deposit is invested 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,
- (m) 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 at call deposits with an ADI with an equivalent credit rating to ANZ;
- (n) in any case, after taking into account the matters in 57.3(i) above, the Term Deposit Master Fund Interest Rates were competitive with interest rates offered by other ADIs with an equivalent credit rating to ANZ;
- (o) the MLC Term Deposits (referred to by the Applicant in the particulars subjoined to paragraph 57 of the ASOC) did not offer the features pleaded at paragraph 57.3(i);
- (p) while the Term Deposit Investments and the MLC Cash Fund (referred to by the Applicant in the particulars subjoined to paragraph 57 of the ASOC) were all low risk investment options, the Term Deposit Investments had a slightly lower risk profile than the MLC Term Deposits because all the funds invested in the Cash Advantage Investments were deposited at call, whereas around 80% of the funds invested in the MLC Cash Fund were invested in a 90 day rolling deposit; and

- (q) interest rates are not the only factor in determining whether it was in the best interests of members of the Master Fund for the Trustee to invest in and or continue to remain invested in a product.
58. ZALOPL does not know and therefore cannot admit the allegations in paragraph 58 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
59. As to the allegations in paragraph 59 of the ASOC, ZALOPL:
- 59.1 admits that from time to time there were interest rates offered by other ADIs that were higher than the Smart Choice Cash Master Fund Interest Rates;
- 59.2 otherwise denies the allegations in the paragraph;
- 59.3 states further that:
- (a) there are numerous products and Investment Options and many potential combinations of products and Investment Options which may have different pricing, fees, rebates, interest rates and tax treatment;
 - (b) refers to and repeats subparagraphs 29.3, 29.4, 30.1, 30.3, 30.4 and 45;
 - (c) in order for a member to have been invested in the Smart Choice Cash Option that member had to:
 - (i) have elected not to invest in the applicable default Lifestage Investment Option; and
 - (ii) have selected that Investment Option and directed the Trustee to invest in that option,
 - (d) the Trustee had no discretion to select other Investment Options for the member, once the member had selected an Investment Option;
 - (e) at all material times in the Master Fund Period, OPL invested the Smart Choice Money in at call deposits with ANZ (**Smart Choice Investments**);
 - (f) the Smart Choice Cash Master Fund Interest Rates (being the interest rate payable on the Smart Choice Investments) were published on various websites from time to time;
 - (g) members were able to review and research the interest rates payable on the Smart Choice Cash Option and compare those rates to other rates available in respect of other cash investments, and also compare those rates to other investment options;
 - (h) the Smart Choice Cash Option was designed for and disclosed to be designed for conservative account holders who wanted very low levels of risk and to preserve their capital;

- (i) at all material times, the Smart Choice Cash Option provided benefits to members who had invested in that option, being:
- (i) liquidity;
 - (ii) a high level of capital security while achieving returns generally in line with cash management accounts and term deposits, less fees, charges and taxes;
 - (iii) designed for conservative investors who want very low levels of risk and to preserve their capital;
 - (iv) an Investment Option with no minimum time horizon;
 - (v) an Investment Option with no investment fees, minimal administration fees, no switching fees, no or minimal exit fees and no advice fees;
 - (vi) access to available insurance cover as part of the product;
 - (vii) one Investment Option amongst a suite of Investment Options offered under a life policy; and
 - (viii) a rate of return comparable with other 'cash' options offered by other superannuation trustees,

Particulars

Section titled "Fees and other costs" of each issued PDS for the ANZ Smart Choice Products since the Master Fund Start Date.

- (j) one or more of the benefits pleaded at paragraph 59.3(i) was not part of products offered by other ADIs;
- (k) one or more of the matters pleaded at paragraph 59.3(i) lowered the interest rates offered on a product;
- (l) the Smart Choice Cash Master Fund Interest Rates are, and at all material times since they were first offered have been, comparable or higher than interest rates offered to retail customers making deposits in an ANZ Online Savings account, being an equivalent (or similar) at call deposit product offered by ANZ outside superannuation, and competitive with interest rates on similar at call deposit products offered by other ADIs with an equivalent credit rating to ANZ outside superannuation;

Date	Smart Choice Cash Master Fund Interest Rates (ANZ)	Interest rate payable on ANZ Savings Account	RBA Retail Deposit and Investment Rates (note 1)
31 December 2011	(Not currently known)	(Not currently known)	4.35%
31 December 2012	4.80%	(Not currently known)	3.05%

31 December 2013	3.51%	3.00%^	2.50%
31 December 2014	2.35%	2.50%^	2.45%
31 December 2015	2.22%	2.50%^	1.80%
31 December 2016	1.87%	(Not currently known)	1.7%
31 December 2017	1.46%	(Not currently known)	1.50%
31 December 2018	1.37%	(Not currently known)	0.85%
31 December 2019	(Not currently known)	(Not currently known)	0.35%

- (m) interest rates paid by ANZ on the Smart Choice Investments were generally competitive with 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	FirstRate Saver - Cash and Essential Cash Deposit (deposit with CBA)	BT Super for Life – Cash (deposit with Westpac)	BT Lifetime – Personal Super – BT Cash	Smart Choice Cash Master Fund Interest Rates (ANZ)	Asgard – eCash (St George / Westpac)	MLC Cash Fund (Super and Pension)
31 December 2011	4.40%	4.10%	-	(Not currently known)	(Not currently known)	4.38%
31 December 2012	3.15%	2.95%	2.54%	4.80%	(Not currently known)	3.05%
31 December 2013	2.65%	2.40%	1.70%	3.51%	(Not currently known)	2.55%
31 December 2014	2.65%	2.40%	1.57%	2.35%	(Not currently known)	2.55%
31 December 2015	2.00%	1.9%	1.41%	2.22%	1.80%	2.05%
31 December 2016	1.50%	1.40%	1.23%	1.87%	1.30%	1.55%
31 December 2017	1.50%	1.30%	1.54%	1.46%	1.10%	1.56%
31 December 2018	1.50%	(Not currently known)	1.01%	1.37%	(Not currently known)	1.76%
31 December 2019	0.75%	(Not currently known)	(Not currently known)	(Not currently known)	(Not currently known)	1.28%

- (n) while the Smart Choice Investments and the MLC Cash Fund (referred to by the Applicant in the particulars subjoined to paragraphs 58.2 and 59.3 of the ASOC) were all low risk investment options, the Smart Choice Investments had a slightly lower risk profile than the MLC Cash Fund;
- (o) at all material times since they were first offered, the Smart Choice Investments have provided a higher return after administration and investment fees than the MLC Cash Fund (referred to by the Applicant in the particulars subjoined to paragraphs 58.2 and 59.3 of the ASOC);

Particulars

Date	Investments in Smart Choice Option	MLC Cash Fund
31 December 2011	(Not currently known)	4.38%
31 December 2012	4.80%	3.05%
31 December 2013	3.51%	2.55%
31 December 2014	2.35%	2.55%
31 December 2015	2.22%	2.05%
31 December 2016	1.87%	1.55%
31 December 2017	1.46%	1.56%
31 December 2018	1.37%	1.76%
31 December 2019	(Not currently known)	1.28%

- (p) in any case, after taking into account the matters in 59.3(i) above, the Smart Choice Cash Master Fund Interest Rates were competitive with interest rates offered by other ADIs with an equivalent credit rating to ANZ; and
- (q) interest rates are not the only factor in determining whether it was in the best interests of members of the Master Fund for the Trustee to invest in and or remain invested in a product.

F. CASH AND TERM DEPOSIT INVESTMENTS – RPS PERIOD

F.1 Direct Investments

60. ZALOP refers to and repeats paragraph 6.2 above and otherwise admits the allegations in paragraph 60 of the ASOC.
61. ZALOP admits the allegations in paragraph 61 of the ASOC.
62. ZALOP does not know and therefore cannot admit the allegations in paragraph 62 of the ASOC and refers to and repeats paragraph 6.2 above.
63. ZALOP does not know and therefore cannot admit the allegations in paragraph 63 of the ASOC and refers to and repeats paragraph 6.2 above.
64. ZALOP does not know and therefore cannot admit the allegations in paragraph 64 of the ASOC and refers to and repeats paragraph 6.2 above.

F.2 Interest Rates

65. ZALOP does not know and therefore cannot admit the allegations in paragraph 65 of the ASOC and refers to and repeats paragraph 6.2 above.
66. ZALOP does not know and therefore cannot admit the allegations in paragraph 66 of the ASOC and refers to and repeats paragraph 6.2 above.

67. ZALOPL does not know and therefore cannot admit the allegations in paragraph 67 of the ASOC and refers to and repeats paragraph 6.2 above.

G. CONTRAVENTION OF TRUSTEE COVENANTS AND DUTIES – CASH INVESTMENTS

G.1 Contraventions of s 109

68. As to the allegations in paragraph 68 of the ASOC, ZALOPL:

68.1 does not know and therefore cannot admit the allegations insofar as the Smart Choice Money is intended to refer to all contributions, assets and other amounts paid into or otherwise attributable to the Smart Choice Cash Option between the Master Fund Start Date and 6 November 2013 as pleaded in paragraph 35 of the ASOC and refers to and repeats paragraphs 29.1, 29.2 and 35 above;

68.2 admits that the Trustee was an Associate and Related Body Corporate of OPL;

68.3 refers to and repeats paragraphs 6, 23, 26, 29 and 30 above;

68.4 states that the investment of Cash Money and the Cash Investment Fees and the fees paid pursuant to the Life Policies and the Master Fund Administration Agreement were the subject of commercial negotiations in the manner set out at paragraphs 40 to 46 above;

68.5 states that OPL had a board independent of ANZ and the Trustee;

68.6 states that OPL had an independent Appointed Actuary;

68.7 states that the Trustee had its own independent board;

68.8 states that OPL was entitled to and did rely on the Trustee to act in the best interests of the members of the Master Fund;

68.9 states that there were policies in place to address any conflict of interests between ANZ, the Trustee and OPL;

Particulars

- i. Conflicts of Interest Policy as amended from time to time.
- ii. Conflicts of Interest Schedule as amended from time to time.
- iii. Conflicts of Interest Framework as amended from time to time.
- iv. Conflicts of Interest Register as amended from time to time.

68.10 states that OPL complied with the policies particularised at 68.9 above;

68.11 states that it was reasonable for OPL to rely on the Trustee and ANZ to comply with the policies particularised at 68.9 above;

- 68.12 states that the Trustee was an RSE Licensee;
- 68.13 by reason of paragraph 68.12, it was reasonable for OPL to rely on the Trustee to comply with its obligations under "Prudential Standard SPS 521 – Conflicts of Interest" to manage conflicts of interest; and
- 68.14 otherwise denies the allegations in the paragraph.
69. ZALOPL denies the allegations in paragraph 69 of the ASOC, and:
- 69.1 refers to and repeats paragraph 68 above;
- 69.2 states that the terms of the Fund Products were offered on market competitive terms and further refers to paragraphs 47, 48, 56, 57 and 59 above;
- 69.3 states that the fees which OPL was entitled to receive in connection with the investments made under the Life Policies were at least as favourable to, or more favourable than, the fees that OPL charged to other unrelated entities during the Master Fund Period;
- 69.4 in the alternative, states that if, which is denied, the fees which OPL was entitled to receive in connection with the investments made under the Life Policies were not the result of an arm's length dealing then, insofar as the Trustee had a greater ability to influence the fees, the fees charged were, as a result of not being at arm's length, at least as favourable to the Trustee (and therefore as favourable to the Cash Investment Group Members), than it is reasonable to expect would have been the case had the Trustee been dealing with OPL at arm's length;
- 69.5 states that the interest rates paid by ANZ on the Cash Advantage Investments, the Term Deposit Investments and the Smart Choice Investments were generally competitive with interest rates offered to members of other superannuation funds investing in equivalent (or similar) products offered by other ADIs with an equivalent credit rating to ANZ;

Particulars

- ZALOPL refers to and repeats paragraphs 56, 57 and 59.
- 69.6 further states that, the fees payable by the Trustee to OPL under the Life Policies, and the fees which OPL was entitled to receive from third parties in connection with the investments made under the Life Policies, were generally competitive with fees payable to the Trustee or Administrator on equivalent (or similar) products offered by other ADIs with an equivalent credit rating to ANZ;
- 69.7 states that the interest rates offered by ANZ in connection with the investments made under the Life Policies were higher than or not materially lower than the

interest rates ANZ offered to other unrelated entities during the Master Fund Period;

69.8 in the alternative, states that if the interest rates offered by ANZ in connection with the investments made under the Life Policies were not the result of an arm's length dealing then, insofar as the Trustee had a greater ability to influence the interest rates, interest rates were as a result higher than or not materially lower than the interest rates that it is reasonable to expect would have been obtained by the Trustee had the Trustee been dealing with ANZ at arm's length; and

69.9 says further that the Trustee was not obliged to offer beneficiaries of the Master Fund Investment Options with other ADIs even if other ADIs, from time to time, offered higher rates than the ANZ interest rates, taking into account the matters referred to in paragraphs 56.3, 57.3 and 59.3 above and the cost that the Trustee would incur, and time that would be required, to make those additional investment options available to beneficiaries in circumstances where the Trustee did not charge administration fees in respect of the Investment Options it did offer.

70. ZALOP denies the allegations in paragraph 70 of the ASOC and refers to and repeats paragraph 68 and 69 above.

71. ZALOP does not know and therefore cannot admit the allegations in paragraph 71 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.

72. ZALOP does not know and therefore cannot admit the allegations in paragraph 72 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.

73. ZALOP does not know and therefore cannot admit the allegations in paragraph 73 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.

74. ZALOP does not know and therefore cannot admit the allegations in paragraph 74 of the ASOC and refers to and repeats paragraph 6.2 above.

75. ZALOP does not know and therefore cannot admit the allegations in paragraph 75 of the ASOC and refers to and repeats paragraph 6.2 above.

76. ZALOP does not know and therefore cannot admit the allegations in paragraph 76 of the ASOC and refers to and repeats paragraph 6.2 above.

G.2 Care and skill contraventions

77. ZALOP denies the allegations in paragraph 77 of the ASOC, and:

77.1 refers to and repeats paragraphs 23 to 32, 33 to 37, 40 to 46, 47 to 53, 54 to 59 and 68 to 69 above; and

77.2 states further that in:

- (a) considering whether the Cash Money should have been invested in, or retained in, deposits with ANZ;
- (b) considering whether the Cash Money should have been invested in the ways alleged in paragraph 77.2 of the ASOC;
- (c) formulating and giving effect to an investment strategy; and/or
- (d) assessing the best interest of members,

an ordinary and prudent person in the position of the Trustee would have considered all relevant circumstances, including:

- (e) PDS disclosures to members and member expectations that their investments will be made in ANZ deposits;
- (f) the benefits of the arrangements with ANZ, including credit rating, administrative efficiency, scale, liquidity, stability, support and integration of systems;
- (g) costs and risks involved in changes, including the complexity of change and the ability to properly duplicate a product with another provider;
- (h) costs of changing or switching products, including costs associated with advice, regulatory compliance, negotiation of agreements, member communications, and re issue of PDSs;
- (i) the stated objective of the applicable Investment Options;
- (j) the availability of other products and Investment Options offered as part of the product menu from which members can select; and
- (k) individual members may have different investment preferences which include considerations beyond interest rates including the matters pleaded at paragraph 56.3(i), 57.3(i) and 59.3(i) of this defence; and
- (l) individual members had financial advisers or had access to financial advice.

78. ZALOP admits the allegations in paragraph 78 of the ASOC, and refers to and repeats paragraph 77 above.

79. ZALOP denies the allegations in paragraph 79 of the ASOC, and refers to and repeats paragraph 77 above.

80. ZALOP does not know and therefore cannot admit the allegations in paragraph 80 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.

81. ZALOP does not know and therefore cannot admit the allegations in paragraph 81 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.

82. ZALOP does not know and therefore cannot admit the allegations in paragraph 82 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
83. ZALOP denies the allegations in paragraph 83 of the ASOC:
- 83.1 refers to and repeats paragraphs 23 to 32, 33 to 37, 40 to 46, 47 to 53, 54 to 59 and 68 to 69 above; and
- 83.2 states that in:
- (a) considering whether the Cash Money should have been invested in, or retained in, deposits with ANZ;
 - (b) considering whether the Cash Money should have been invested in the ways alleged in paragraph 89.2 of the ASOC Statement of Claim;
 - (c) formulating and giving effect to an investment strategy; and/or
 - (d) assessing the best interests of members,
- a prudent person in the position of the Trustee whose profession, business or employment is or includes acting as a trustee of a Superannuation Entity would have considered all relevant circumstances, including the matters referred to in paragraph 77.2 above.
84. ZALOP admits the allegations in paragraph 84 of the ASOC, and refers to and repeats paragraph 83 above.
85. ZALOP denies the allegations in paragraph 85 of the ASOC, and refers to and repeats paragraph 83 above.
86. ZALOP does not know and therefore cannot admit the allegations in paragraph 86 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
87. ZALOP does not know and therefore cannot admit the allegations in paragraph 87 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
88. ZALOP does not know and therefore cannot admit the allegations in paragraph 88 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
89. ZALOP does not know and therefore cannot admit the allegations in paragraph 89 of the ASOC and refers to and repeats paragraph 6.2 above.
90. ZALOP does not know and therefore cannot admit the allegations in paragraph 90 of the ASOC and refers to and repeats paragraph 6.2 above.
91. ZALOP does not know and therefore cannot admit the allegations in paragraph 91 of the ASOC and refers to and repeats paragraph 6.2 above.

G.3 Best Interests Contraventions

92. ZALOP denies the allegations in paragraph 92 of the ASOC, and refers to and repeats paragraphs 77 and 83 above.
93. ZALOP denies the allegations in paragraph 93 of the ASOC, and refers to and repeats paragraphs 77 and 83 above.
94. ZALOP does not know and therefore cannot admit the allegations in paragraph 94 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
95. ZALOP does not know and therefore cannot admit the allegations in paragraph 95 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
96. ZALOP does not know and therefore cannot admit the allegations in paragraph 96 of the ASOC and refers to and repeats paragraph 6.2 above.
97. ZALOP does not know and therefore cannot admit the allegations in paragraph 97 of the ASOC and refers to and repeats paragraph 6.2 above.

G.4 Investment Strategy Contraventions

98. ZALOP denies the allegations in paragraph 98 of the ASOC, and refers to and repeats paragraph 77 above.
99. ZALOP admits the allegations in paragraph 99 of the ASOC, and refers to and repeats paragraph 98 above.
100. ZALOP denies the allegations in paragraph 100 of the ASOC, and refers to and repeats paragraph 98 above.
101. ZALOP denies the allegations in paragraph 101 of the ASOC, and refers to and repeats paragraph 83 above.
102. ZALOP admits the allegations in paragraph 102 of the ASOC, and refers to and repeats paragraph 101 above.
103. ZALOP denies the allegations in paragraph 103 of the ASOC, and refers to and repeats paragraph 101 above.
104. ZALOP does not know and therefore cannot admit the allegations in paragraph 104 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
105. ZALOP does not know and therefore cannot admit the allegations in paragraph 105 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
106. ZALOP does not know and therefore cannot admit the allegations in paragraph 106 of the ASOC and refers to and repeats paragraph 29.1 and 29.2 above.

107. ZALOP does not know and therefore cannot admit the allegations in paragraph 107 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
108. ZALOP does not know and therefore cannot admit the allegations in paragraph 108 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
109. ZALOP does not know and therefore cannot admit the allegations in paragraph 109 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
110. ZALOP does not know and therefore cannot admit the allegations in paragraph 110 of the ASOC and refers to and repeats paragraph 6.2 above.
111. ZALOP does not know and therefore cannot admit the allegations in paragraph 111 of the ASOC and refers to and repeats paragraph 6.2 above.
112. ZALOP does not know and therefore cannot admit the allegations in paragraph 112 of the ASOC and refers to and repeats paragraph 6.2 above.

G.5 Due Diligence Contraventions

113. ZALOP denies the allegations in paragraph 113 of the ASOC, and refers to and repeats paragraphs 101 and 107 above.
114. ZALOP admits the allegations in paragraph 114 of the ASOC, and refers to and repeats paragraph 113 above.
115. ZALOP denies the allegations in paragraph 115 of the ASOC, and refers to and repeats paragraph 113 above.
116. ZALOP does not know and therefore cannot admit the allegations in paragraph 116 of the ASOC and refers to and repeats paragraph 6.2 above.
117. ZALOP does not know and therefore cannot admit the allegations in paragraph 117 of the ASOC and refers to and repeats paragraph 6.2 above.
118. ZALOP does not know and therefore cannot admit the allegations in paragraph 118 of the ASOC and refers to and repeats paragraph 6.2 above.

G.6 Conflicts Contraventions

119. ZALOP denies the allegations in paragraph 119 of the ASOC, and refers to and repeats paragraphs 68 to 69 above.
120. ZALOP does not know and therefore cannot admit the allegations in paragraph 120 of the ASOC, because the paragraph does not contain any allegation against ZALOP.
121. ZALOP denies the allegations in paragraph 121 of the ASOC, and refers to and repeats paragraphs 85 and 88 above.

122. ZALOP denies the allegations in paragraph 122 of the ASOC, and refers to and repeats paragraph 121 above.
123. ZALOP does not know and therefore cannot admit the allegations in paragraph 123 of the ASOC, because the paragraph does not contain any allegation against ZALOP and refers to and repeats paragraph 6.2 above.
124. ZALOP does not know and therefore cannot admit the allegations in paragraph 124 of the ASOC, because the paragraph does not contain any allegation against ZALOP and refers to and repeats paragraph 6.2 above.
125. ZALOP does not know and therefore cannot admit the allegations in paragraph 125 of the ASOC, because the paragraph does not contain any allegation against ZALOP and refers to and repeats paragraph 6.2 above.

G.7 Financial Interests Contraventions

126. ZALOP does not know and therefore cannot admit the allegations in paragraph 126 of the ASOC and refers to and repeats paragraph 6.2 above.
127. ZALOP does not know and therefore cannot admit the allegations in paragraph 127 of the ASOC and refers to and repeats paragraph 6.2 above.

G.8 Proper Performance Contravention

128. ZALOP denies the allegations in paragraph 128 of the ASOC, and refers to and repeats paragraphs 33 to 37, 47 to 53 and 54 to 59 above.
129. ZALOP denies the allegations in paragraph 129 of the ASOC, and refers to and repeats paragraph 128 above.

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

130. As to the allegations in paragraph 130 of the ASOC, ZALOP:
 - 130.1 denies the allegations in paragraph 130 of the ASOC insofar as they relate to the Master Fund Trust Deed and refers to and repeats paragraphs 68 to 129 above;
and
 - 130.2 otherwise does not know and therefore cannot admit the allegations in paragraph 130 of the ASOC and refers to and repeats paragraph 6.2 above.
131. ZALOP denies the allegations in paragraph 131 of the ASOC, and refers to and repeats paragraph 93 above.
132. ZALOP does not know and therefore cannot admit the allegations in paragraph 132 of the ASOC and refers to and repeats paragraphs 6.2, 29.1 and 29.2 above.

133. ZALOPL denies the allegations in paragraph 133 of the ASOC, and refers to and repeats paragraphs 79, 85, 100, 103 and 115 above.
134. ZALOPL does not know and therefore cannot admit the allegations in paragraph 134 of the ASOC and refers to and repeats paragraphs 6.2, 29.1 and 29.2 above.
135. ZALOPL denies the allegations in paragraph 135 of the ASOC, and refers to and repeats paragraphs 119 to 122 above.
136. ZALOPL does not know and therefore cannot admit the allegations in paragraph 136 of the ASOC and refers to and repeats paragraphs 29.1 and 29.2 above.
137. ZALOPL does not know and therefore cannot admit the allegations in paragraph 137 of the ASOC and refers to and repeats paragraphs 6.2, 29.1 and 29.2 above.
138. ZALOPL denies the allegations in paragraph 138 of the ASOC, and refers to and repeats paragraphs 47 to 53 and 119 to 122 above.

I. ACCESSORIAL LIABILITY OF ZALOPL – MASTER FUND PERIOD

I.1 Involvement in statutory contraventions

139. ZALOPL denies the allegations in paragraph 139 of the ASOC and states that:
- 139.1 the material facts giving rise to the allegation that OPL was "knowingly concerned" and "party to" are not specified;
- 139.2 on that basis, the paragraph is vague and embarrassing and liable to be struck out;
- 139.3 refers to and repeats paragraphs 40 to 46, 47 to 53 and 56 to 59 above and subparagraphs 68.5 to 68.14 above; and
- 139.4 OPL's involvement was and is limited to accepting the Cash Money from the Trustee on behalf of members of the Master Fund and, in respect of those monies, investing that money at the direction of the Trustee (and at the election of the member) in the applicable ANZ deposit and in accordance with the terms of the applicable life policies and OPL's arrangements with ANZ.
140. ZALOPL denies the allegations in paragraph 140 of the ASOC and states that:
- 140.1 The material facts giving rise to the allegation that OPL was "involved in" and "knowingly concerned in, or party to" are not specified;
- 140.2 on that basis, the paragraph is vague and embarrassing and liable to be struck out; and
- 140.3 refers to and repeats paragraphs 47 to 53 and 54 to 59 and 139 above and subparagraphs 68.5 to 68.14 above.

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

141. As to the allegations in paragraphs 141 of the ASOC, ZALOPL refers to and repeats paragraphs 139 and 140 above.
142. ZALOPL admits the allegations in paragraph 142 of the ASOC.
143. ZALOPL admits the allegations in paragraph 143 of the ASOC.
144. ZALOPL denies the allegations in paragraph 144 of the ASOC, and states that:
- 144.1 the material facts giving rise to the allegations of OPL's knowledge are not specified;
- 144.2 on that basis, the paragraph is vague and embarrassing and liable to be struck out; and
- 144.3 refers to and repeats paragraphs 47 to 53 and 54 to 59 and 141 above, as well as subparagraphs 68.5 to 68.14 above.
145. ZALOPL denies the allegations in paragraph 145 of the ASOC, and:
- 145.1 further denies that the Applicants are entitled to the relief claimed or relief at all;
- 145.2 refers to and repeats paragraphs 222 and 226 below; and
- 145.3 states further that in any event the Cash Investment Fees have been placed into OPL's "operational bank account" held with ANZ.

J. ACCESSORIAL LIABILITY OF ANZ

146. ZALOPL does not know and therefore cannot admit the allegations in paragraph 146 of the ASOC, because the paragraph does not contain any allegation against ZALOPL.
147. ZALOPL does not know and therefore cannot admit the allegations in paragraph 147 of the ASOC, because the paragraph does not contain any allegation against ZALOPL.

K. THE PRE-FOFA REFORM COMMISSIONS PAID AND FEES CHARGED

K.1 Life Policies

148. ZALOPL admits the allegations in paragraph 148 of the ASOC, and states further that:
- 148.1 each of the ANZ OneAnswer Products, OnePath OneAnswer Products, OptiMix Products, Integra Products and ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;
- 148.2 it relies on the terms of each applicable PDS for their full force and effect;

148.3 each applicable PDS disclosed that the Trustee invests all contributions in a master life policy issued by OPL which then invests in selected investment funds (selected by the member or the member's employer as applicable); and

148.4 members who applied for products- acknowledged that they had read the applicable PDS or the applicable trust deed and consented to be bound by its terms.

149. As to the allegations in paragraph 149 of the ASOC, ZALOPL:

149.1 admits the allegations in paragraph 149.1 of the ASOC insofar as the reference to "Statutory Funds" is intended to be a reference to statutory funds approved by APRA and referred to in the *Life Insurance Act 1995* (Cth);

149.2 as to the allegations in paragraph 149.2 of the ASOC:

(a) admits that it was a term of the MIT that it did not give a member or the Trustee any legal or beneficial interest in any Statutory Fund assets and relies on the terms of the MIT for their full force and effect; and

(b) otherwise denies the allegations in the paragraph,

149.3 states further that each of the ANZ OneAnswer Products, OnePath OneAnswer Products, OptiMix Products, Integra Products and ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;

149.4 states further that members who applied for the product acknowledged that they had read the applicable PDS or the applicable trust deed and consented to be bound by its terms;

149.5 states further that OPL deducted fees from members' accounts at the direction of the member, and paid commissions to Financial Advisers in accordance with the terms of the applicable agreement with the Financial Adviser;

149.6 states further that each applicable PDS disclosed that members could be charged fees, including, fees to pay Financial Advisers;

149.7 relies on the terms of the Commission Products Life Policies for their full force and effect; and

149.8 otherwise admits the paragraph.

K.2 OneAnswer Members

150. ZALOPL admits the allegations in paragraph 150 of the ASOC, and:

150.1 refers to and repeats paragraph 148.3 above;

- 150.2 states further that each of the ANZ OneAnswer Products and OnePath OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 150.3 states further that it relies on the terms of each applicable PDS for their full force and effect;
- 150.4 states further that members who applied for the products acknowledged that they had read the applicable PDS or applicable trust deed and consented to be bound by its terms; and
- 150.5 states further that each of the matters alleged in paragraph 150 of the ASOC were disclosed in each applicable PDS.
151. ZALOP admits the allegations in paragraph 151 of the ASOC and states further that:
- 151.1 each of the ANZ OneAnswer Products and OnePath OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 151.2 members who applied for the products acknowledged that they had read the applicable PDS or applicable trust deed and consented to be bound by its terms;
- 151.3 it relies on the terms of each applicable PDS for their full force and effect; and
- 151.4 each of the matters alleged in paragraph 151 of the ASOC were disclosed in each applicable PDS.
152. ZALOP admits the allegations in paragraph 152 of the ASOC, and states further that:
- 152.1 each of the ANZ OneAnswer Products and OnePath OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 152.2 members who applied for the products acknowledged that they had read the applicable PDS or applicable trust deed and consented to be bound by its terms;
- 152.3 it relies on the terms of each applicable PDS for their full force and effect;
- 152.4 each of the matters alleged in paragraph 152 of the ASOC were disclosed in each applicable PDS; and
- 152.5 it was open for members to seek to negotiate any rebate with their Financial Adviser.
153. ZALOP admits the allegations in paragraph 153 of the ASOC, and states further that:
- 153.1 each of the ANZ OneAnswer Products and OnePath OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 153.2 members who applied for the products acknowledged that they had read the applicable PDS or applicable trust deed and consented to be bound by its terms;
- 153.3 it relies on the terms of each applicable PDS for their full force and effect; and

- 153.4 each of the matters alleged in paragraph 153 of the ASOC were disclosed in each applicable PDS.
154. ZALOP admits the allegations in paragraph 154 of the ASOC, and states further that:
- 154.1 each of the ANZ OneAnswer Products and OnePath OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 154.2 members who applied for the products acknowledged that they had read the applicable PDS or applicable trust deed and consented to be bound by its terms; and
- 154.3 each of the matters alleged in paragraph 154 of the ASOC were disclosed in each applicable PDS.
155. As to the allegations in paragraph 155 of the ASOC, ZALOP:
- 155.1 admits that Contribution Fees and Ongoing Fees were deducted from members accounts;
- 155.2 admits that Contribution Commissions and Trail Commissions were paid;
- 155.3 states further that each of the ANZ OneAnswer Products and OnePath OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 155.4 states further that members who applied for the products acknowledged that they had read the applicable PDS or applicable trust deed and consented to be bound by its terms;
- 155.5 each of the matters alleged in paragraph 155 of the ASOC were disclosed in each applicable PDS;
- 155.6 states further that it will rely on the terms of each applicable PDS for their full force and effect;
- 155.7 refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 below; and
- 155.8 otherwise denies the allegations in the paragraph.
156. ZALOP does not know and therefore cannot admit the allegations in paragraph 156 of the ASOC.

K.3 OptiMix Members

157. As to the allegations in paragraph 157 of the ASOC, ZALOP:
- 157.1 admits that at all material times prior to the FOFA Start Date it had Advisor Arrangements pursuant to which it paid commissions to Financial Advisers in respect of persons who become OptiMix Members for whom a Financial Adviser was linked to their account;

157.2 refers to and repeats paragraph 148.3 above;

157.3 states that the Master Fund Start Date was 1 September 2011; and

157.4 otherwise does not know and therefore cannot admit the allegations in the paragraph.

158. As to allegations in paragraph 158 of the ASOC, ZALOP:

158.1 admits that at all material times during the Master Fund Period ZALOP charged fees to OptiMix Members, including Contribution Fees, Ongoing Fees and Adviser Fees;

158.2 refers to and repeats paragraph 157 above; and

158.3 otherwise does not know and therefore cannot admit the allegations in the paragraph.

159. As to the allegations in paragraph 159 of the ASOC, ZALOP:

159.1 refers to and repeats paragraph 157 above; and

159.2 otherwise does not know and therefore cannot admit the allegations in the paragraph.

160. As to the allegations in paragraph 160 of the ASOC, ZALOP:

160.1 refers to and repeats paragraph 157 above;

160.2 admits that Contribution Fees and Ongoing Fees were deducted from members' accounts;

160.3 admits that Contribution Commissions and Trail Commissions were paid to Financial Advisers in respect of the OptiMix Products;

160.4 states further that each of the OptiMix Products were issued pursuant to a PDS issued by the Trustee;

160.5 states further that it relies on the terms of each applicable PDS for their full force and effect;

160.6 refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 below; and

160.7 otherwise denies the allegations in the paragraph.

161. ZALOP does not know and therefore cannot admit the allegations in paragraph 161 of the ASOC.

K.4 ANZ Super Advantage

162. ZALOP admits the allegations in paragraph 162 of the ASOC, and:

162.1 refers to and repeats paragraphs 148.3 and 149.5 above;

- 162.2 states further that each of the ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;
- 162.3 states further that it relies on the terms of each applicable PDS for their full force and effect; and
- 162.4 states further that each of the matters alleged in paragraph 162 of the ASOC were disclosed in each applicable PDS.
163. As to the allegations in paragraph 163 of the ASOC, ZALOPL:
- 163.1 states that the fees described as additional "administration fees" was an amount equal to a maximum of 0.71% of the member's funds under management in the ANZ Super Advantage Product;
- 163.2 states that the agreement pleaded in paragraph 163.3 of the ASOC was between the Financial Adviser and a member's employer; and
- 163.3 otherwise admits the allegations in paragraph 163 of the ASOC, and states further that:
- (a) each of the ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;
 - (b) the applicable PDS provided that members were bound by its terms;
 - (c) it relies on the terms of each applicable PDS for their full force and effect; and
 - (d) each of the matters alleged in paragraph 163 of the ASOC were disclosed in each applicable PDS.
164. As to the allegations in paragraph 164 of the ASOC, ZALOPL:
- 164.1 denies that OPL participated in any negotiations as to the Adviser Commissions; and
- 164.2 otherwise admits the allegations in paragraph 164 of the ASOC, and states further that:
- (a) each of the ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;
 - (b) the applicable PDS provided that members were bound by its terms;
 - (c) it relies on the terms of each applicable PDS for their full force and effect; and
 - (d) each of the matters alleged in paragraph 164 of the ASOC were disclosed in each applicable PDS.

165. As to the allegations in paragraph 165 of the ASOC, ZALOP:
- 165.1 admits that Contribution Fees and Ongoing Fees were deducted from members accounts;
 - 165.2 admits that Contribution Commissions and Trail Commissions were paid;
 - 165.3 states further that each of the ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;
 - 165.4 states further that it relies on the terms of each applicable PDS for their full force and effect;
 - 165.5 states further that each of the matters alleged in paragraph 165 of the ASOC were disclosed in each applicable PDS;
 - 165.6 refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 below; and
 - 165.7 otherwise denies the allegations in the paragraph.
166. ZALOP does not know and therefore cannot admit the allegations in paragraph 166 of the ASOC.

K.5 Integra

167. ZALOP admits the allegations in paragraph 167 of the ASOC, and:
- 167.1 refers to and repeats paragraph 148.3 and 149.5 above;
 - 167.2 states further that each of the Integra Products were issued pursuant to a PDS issued by the Trustee;
 - 167.3 states further that members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms; and
 - 167.4 states further that each of the matters alleged in paragraph 167 of the ASOC were disclosed in each applicable PDS.
168. As to the allegations in paragraph 168 of the ASOC, ZALOP:
- 168.1 states that the agreement pleaded in paragraph 168.2 of the ASOC was between the Financial Adviser and a member's employer; and
 - 168.2 otherwise admits the allegations in paragraph 168 of the ASOC, and states further that:
 - (a) each of the Integra Products were issued pursuant to a PDS issued by the Trustee;
 - (b) relies on the terms of each applicable PDS for their full force and effect; and

- (c) each of the matters alleged in paragraph 168 of the ASOC were disclosed in each applicable PDS.

169. As to the allegations in paragraph 169 of the ASOC, ZALOPL:

169.1 denies that OPL participated in any negotiations as to the Adviser Commissions;

169.2 otherwise admits the allegations in paragraph 169 of the ASOC, and states further that:

- (a) each of the Integra Products were issued pursuant to a PDS issued by the Trustee;
- (b) relies on the terms of each applicable PDS for their full force and effect;
- (c) members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms; and
- (d) each applicable PDS disclosed that the Adviser Commissions could be negotiated between the member's employer and the Financial Adviser.

170. As to the allegations in paragraph 170 of the ASOC, ZALOPL:

170.1 admits that Ongoing Fees were deducted from members accounts;

170.2 admits that Trail Commissions were paid;

170.3 states further that each of the Integra Products were issued pursuant to a PDS issued by the Trustee;

170.4 states further that each of the matters alleged in paragraph 170 of the ASOC were disclosed in each applicable PDS;

170.5 states further that it relies on the terms of each applicable PDS for their full force and effect;

170.6 refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 below; and

170.7 otherwise denies the allegations in the paragraph.

171. ZALOPL does not know and therefore cannot admit the allegations in paragraph 171 of the ASOC.

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

172. ZALOPL admits the allegations in paragraph 172 of the ASOC and:

172.1 refers to and repeats paragraphs 68, 151, 154, 158, 163 and 168 above and paragraph 190 below; and

172.2 states further that OPL charged Contribution Fees and Ongoing Fees in accordance with the direction given by the Trustee.

L. THE FOFA REFORMS

173. ZALOPL admits the allegations in paragraph 173 of the ASOC.
174. ZALOPL admits the allegations in paragraph 174 of the ASOC.
175. ZALOPL admits the allegations in paragraph 175 of the ASOC.
176. ZALOPL admits the allegations in paragraph 176 of the ASOC.
177. ZALOPL admits the allegations in paragraph 177 of the ASOC.

M. THE POST PRE-FOFA REFORM COMMISSIONS PAID AND FEES CHARGED

178. ZALOPL admits the allegations in paragraph 178 of the ASOC.
179. As to the allegations in paragraph 179 of the ASOC, ZALOPL:
- 179.1 denies that the Adviser Commissions were Conflicted Remuneration within the meaning of the Conflicted Remuneration Provisions between 1 July 2012 and 1 July 2013; and
- 179.2 otherwise admits the allegations in paragraph 179 of the ASOC.
180. As to the allegations in paragraph 180 of the ASOC, ZALOPL refers to and repeats paragraph 179 of the ASOC and otherwise admits the allegations in the paragraph.

M.1 OneAnswer Members

181. ZALOPL admits the allegations in paragraph 181 of the ASOC on the assumption that "Transferred OneAnswer Members" refers to "Transferring OneAnswer Members", and states further that:
- 181.1 each of the ANZ OneAnswer Products and OnePath OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 181.2 it relies on the terms of each applicable PDS for their full force and effect;
- 181.3 members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms; and
- 181.4 the PDS disclosed that Financial Advisers could be paid a commission.
182. As to the allegations in paragraph 182 of the ASOC, ZALOPL:
- 182.1 admits the allegations in paragraph 182.1 of the ASOC;
- 182.2 as to the allegations in paragraph 182.2 of the ASOC, ZALOPL admits that OPL continued to charge Ongoing Fees and otherwise denies the allegations in the paragraph;

- 182.3 states further that each of the OnePath OneAnswer Products and ANZ OneAnswer Products were issued pursuant to a PDS issued by the Trustee;
- 182.4 states further that it relies on the terms of each applicable PDS for their full force and effect;
- 182.5 states further that each applicable PDS disclosed that members could be charged fees, including, fees to pay Financial Advisers; and
- 182.6 states that members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms.

M.2 OptiMix Members

183. As to the allegations in paragraph 183 of the ASOC, ZALOPL:
- 183.1 refers to and repeats paragraph 157 above;
- 183.2 denies that Adviser Commissions were paid to Financial Advisers in respect of Optimix Members who became members of Optimix after 1 July 2013;
- 183.3 otherwise admits the allegations in paragraph 183 of the ASOC, and states further that:
- (a) each of the OptiMix Products were issued pursuant to a PDS issued by the Trustee; and
 - (b) relies on the terms of each applicable PDS for their full force and effect.
184. As to the allegations in paragraph 184 of the ASOC, ZALOPL:
- 184.1 as to the allegations in paragraph 184.1, ZALOPL:
- (a) denies that OPL charged Contribution Fees in respect of Optimix Members who became members of Optimix after 1 July 2013;
 - (b) otherwise admits the allegations in paragraph 184.1 of the ASOC; and
- 184.2 as to the allegations in paragraph 184.2 of the ASOC, ZALOPL admits that OPL continued to charge Ongoing Fees and otherwise denies the allegations in the paragraph.

M.3 ANZ Super Advantage Members

185. As to the allegations in paragraph 185 of the ASOC:
- 185.1 ZALOPL denies that Adviser Commissions were paid to Financial Advisers in respect of ANZ Super Advantage Members who became members of ANZ Super Advantage after 1 July 2013; and

185.2 otherwise admits the allegations in paragraph 185 of the ASOC, and states further that:

- (a) each of the ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;
- (b) it relies on the terms of each applicable PDS for their full force and effect;
- (c) the applicable PDS provided that members were bound by its terms; and
- (d) the PDS disclosed that Financial Advisers could be paid a commission.

186. As to the allegations in paragraph 186 of the ASOC, ZALOPL:

186.1 As to the allegations in paragraph 186.1, ZALOPL:

- (a) admits the allegations in paragraph 186.1 of the ASOC; and
- (b) denies that OPL charged Contribution Fees in respect of ANZ Super Advantage Members who became members of ANZ Super Advantage after 1 July 2013;

186.2 as to the allegations in paragraph 186.2 of the ASOC, ZALOPL admits that OPL continued to charge Ongoing Fees and otherwise denies the allegations in the paragraph;

186.3 states further that each of the ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;

186.4 states further that it relies on the terms of each applicable PDS for their full force and effect;

186.5 states further that each applicable PDS disclosed that members could be charged fees, including, fees to pay Financial Advisers; and

Particulars

Each applicable PDS issued by the Trustee for the ANZ Super Advantage Products since the Master Fund Start Date contained a section disclosing the fees and costs.

186.6 states further that members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms.

M.4 Integra Members

187. As to the allegations in paragraph 187 of the ASOC, ZALOPL:

187.1 denies that Adviser Commissions were paid to Financial Advisers in respect of Integra Members who became members of Integra after 1 July 2013; and

187.2 otherwise admits the allegations in paragraph 187 of the ASOC, and states further that:

- (a) each of the Integra Products were issued pursuant to a PDS issued by the Trustee;
- (b) it relies on the terms of each applicable PDS for their full force and effect;
- (c) the applicable PDS provided that members were bound by its terms; and
- (d) the PDS disclosed that Financial Advisers could be paid a commission.

188. As to the allegations in paragraph 188 of the ASOC, ZALOPL:

188.1 ZALOPL admits that OPL continued to charge Ongoing Fees and otherwise denies the allegations in the paragraph;

188.2 states further that each of the Integra Products were issued pursuant to a PDS issued by the Trustee;

188.3 states further that it relies on the terms of each applicable PDS for their full force and effect;

188.4 states further that each applicable PDS disclosed that members could be charged fees, including, fees to pay Financial Advisers; and

Particulars

Each applicable PDS issued by the Trustee for the Integra Products since the Master Fund Start Date contained a section disclosing the fees and costs.

188.5 states further that members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms.

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

189. ZALOPL admits the allegations in paragraph 189 of the ASOC and refers to and repeats paragraphs 181 to 188 above.

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

190. As to the allegations in paragraph 190 of the ASOC, ZALOPL:

190.1 as to allegations in paragraph 190.1 of the ASOC, ZALOPL:

- (a) admits that a purpose of charging Contribution Fees was to fund the payment by OPL of the Contribution Commissions;

- (b) admits that a purpose of charging Ongoing Fees was to fund the payment by OPL of the Trail Commissions; and
- (c) otherwise denies the allegation in the paragraph.

190.2 as to allegations in paragraph 190.2 of the ASOC, ZALOPL:

- (a) admits that a purpose of continuing to charge Contribution Fees was to fund the payment by OPL of the Contribution Commissions;
- (b) admits that a purpose of charging Ongoing Fees was to fund the payment of Fees for Products with Commission; and
- (c) otherwise denies the allegation in the paragraph.

191. ZALOPL does not know and therefore cannot admit the allegations in paragraph 191 of the ASOC, because the paragraph does not contain any allegation against ZALOPL.

192. As to the allegations in paragraph 192 of the ASOC, ZALOPL:

192.1 states that the members derived a benefit from the payment of the Adviser Commissions;

Particulars

- i. In most cases Members obtain financial advice and access to Financial Advisers at a lower cost than would have been payable if the Grandfathered Commissions were not paid.
- ii. By reason of obtaining such financial advice, members were able to structure their affairs in a way which was most financially advantageous to them.
- iii. The Master Fund was not diminished by the payment of the amounts for which the Trustee would otherwise have been liable (as damages or compensation), as alleged in paragraphs 199.1(f), 199.1(g) and 199.1(h) below.
- iv. The size and the scale of the Master Fund was not diminished due to members exiting the Master Fund.
- v. The Master Fund was not diminished by the need for the Trustee, or OPL at the Trustee's expense, to fund administrative services which were otherwise carried out by Financial Advisers who were paid the Grandfathered Commissions.

192.2 states that maintaining the size and the scale of the Master Fund was beneficial for members, and the payment of Grandfathered Commissions was one method of achieving and maintaining size and scale; and

192.3 otherwise denies the allegations in the paragraph.

193. ZALOPL denies the allegations in paragraph 193 of the ASOC and refers to and repeats paragraphs 192 above and 199.1, 199.2 and 199.3 below.

194. As to the allegations in paragraph 194 of the ASOC, ZALOPL:
- 194.1 admits ~~it~~OPL continued to pay Grandfathered Commissions after the FOFA Start Date in the circumstances pleaded in section M of this defence; and
- 194.2 otherwise does not know and therefore cannot admit the allegations in the paragraph.
195. As to the allegations in paragraph 195 of the ASOC, ZALOPL refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 and otherwise does not know and therefore cannot admit the allegations in the paragraph.
196. As to the allegations in paragraph 196 of the ASOC, ZALOPL refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 and otherwise does not know and therefore cannot admit the allegations in the paragraph.
197. As to the allegations in paragraph 197 of the ASOC, ZALOPL:
- 197.1 admits that the payment of Contribution Fees and Ongoing Fees reduced the assets held by the Master Fund;
- 197.2 admits that the Financial Advisers were paid Contribution Commissions and Trail Commissions in the circumstances pleaded in section M of this defence;
- 197.3 refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3;
- 197.4 states that the allegations are vague insofar as they refer to the Financial Advisers being "enriched";
- 197.5 states that the allegations are vague insofar as they refer to the "benefits" of members in the Master Fund; and
- 197.6 otherwise denies the allegations in the paragraph.
198. ZALOPL denies the allegations in paragraph 198 of the ASOC, and:
- 198.1 refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3; and
- 198.2 states that, in some circumstances it may be in the best financial interests of members for Grandfathered Commissions to be paid in order for those members to obtain financial advice.
199. As to the allegations in paragraph 199 of the ASOC, ZALOPL:
- 199.1 as to paragraph 199.1 of the ASOC, ZALOPL refers to and repeats paragraphs 192 and 193 and:
- (a) states that, at all material times, the payment of Grandfathered Commissions was not prohibited at law;

Particulars

Corporations Act, s 1528 and Corporations Regulations, regs 7.7A, 15B to 7.7A, 16F.

- (b) states that other administrators and trustees continued to pay Grandfathered Commissions after the FOFA Start Date;
- (c) states that:
 - (i) each of the ANZ OneAnswer Products, OnePath OneAnswer Products, OptiMix Products, Integra Products and the ANZ Super Advantage Products were issued pursuant to a PDS issued by the Trustee;
 - (ii) it will rely on the terms of each applicable PDS for their full force and effect;
 - (iii) each applicable PDS indicated that it was important for applicants to discuss their personal circumstances with their adviser;
 - (iv) each applicable PDS disclosed that Adviser Commissions may be paid; and
 - (v) members who applied for the product acknowledged that they had read the applicable PDS and consented to be bound by its terms,
- (d) states that the Grandfathered Commissions were paid pursuant to a contractually binding relationship between Financial Advisers and OPL;
- (e) the cessation of payment of Grandfathered Commissions would have required the consent of Financial Advisers or otherwise exposed OPL to liability;
- (f) insofar as the Trustee caused OPL to breach its contracts with the Financial Advisers:
 - (i) the Trustee may have been exposed to legal liability arising from the inducement of a breach of contract; and
 - (ii) the Trustee may have exercised its right to be indemnified for that legal liability out of the assets of the Master Fund,
- (g) states that the continued relationship between OPL and the Financial Advisers (and in consequence the relationship between the Master Fund and the Financial Advisers) depended, at least in part, on the continued payment of Grandfathered Commissions;
- (h) states that there are significant costs and operational difficulties associated with the cessation of the payment of Grandfathered Commissions;

Particulars

Witness statement of Mark James Pankhurst dated 1 August 2018 provided on behalf of the Trustee to the Banking Royal Commission, paragraph 142.

- (i) states that an individual member on advice from their Financial Adviser may exit the fund, with the consequence that:
 - (i) that individual member would incur costs associated with such a transaction; and
 - (ii) the size of the Master Fund would be reduced,
- (j) insofar as OPL was exposed to liability to Financial Advisers, OPL may have ceased providing Administration Services to the Trustee (to the detriment of members); and
- (k) states that the decision to cease paying Grandfathered Commissions could only practically be made by ANZ,

199.2 as to paragraph 199.2 of the ASOC, admits OPL could cease to pay Adviser Commissions, but states that this would have the consequences pleaded at paragraphs 192, 193 and 199.1 above and otherwise denies the allegation in the paragraph;

199.3 as to the allegations in paragraph 199.3 of the ASOC, ZALOPL:

- (a) states that the allegations are vague insofar as they refer to OPL being able to "absorb" the costs;
- (b) refers to and repeats paragraphs 192, 193, 199.1 and 199.2 and
- (c) does not know and therefore cannot admit the allegations in the paragraph,

199.4 admits the allegations in paragraph 199.4 of the ASOC and refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 above; and

199.5 admits the allegations in paragraph 199.5 of the ASOC and refers to and repeats paragraphs 192, 193, 199.1, 199.2 and 199.3 above.

O. COMMISSION FREE ALTERNATIVES FOR MEMBERS AFTER FOFA REFORM DATE

O.1 Alternatives to Retail Products

200. As to the allegations in paragraph 200 of ASOC, ZALOPL:

200.1 admits the allegations in paragraph 200.1 of the ASOC; and

200.2 does not know and therefore cannot admit the allegations in paragraph 200.2 of the ASOC.

201. ZALOP does not know and therefore cannot admit the allegations in paragraph 201 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

202. ZALOP does not know and therefore cannot admit the allegations in paragraph 202 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

203. ZALOP does not know and therefore cannot admit the allegations in paragraph 203 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

204. ZALOP does not know and therefore cannot admit the allegations in paragraph 204 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

205. As to the allegations in paragraph 205 of the ASOC, ZALOP:

205.1 denies that it had the ability to advise Pre-FOFA OneAnswer Members and OptiMix Members of the matters in 205.1 to 205.3 of the ASOC;

205.2 refers to and repeats paragraph 68 above; and

205.3 otherwise does not know and therefore cannot admit the allegations in the paragraph.

206. ZALOP does not know and therefore cannot admit the allegations in paragraph 206 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

207. ZALOP does not know and therefore cannot admit the allegations in paragraph 207 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

O.2 Alternatives to Employer Products

208. As to the allegations in paragraph 208 of the ASOC, ZALOP:

208.1 admits the allegations in paragraph 208.1 of the ASOC;

208.2 does not know and therefore cannot admit the allegations in paragraph 208.2 of the ASOC.

209. ZALOP does not know and therefore cannot admit the allegations in paragraph 209 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

210. ZALOP does not know and therefore cannot admit the allegations in paragraph 210 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

211. ZALOP does not know and therefore cannot admit the allegations in paragraph 211 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

212. As to the allegations in paragraph 212 of the ASOC, ZALOP:

212.1 denies that it had the ability to advise Pre-FOFA ANZ Super Advantage Members and Integra Members of the matters in 212.1 to 212.3 of the ASOC;

212.2 refers to and repeats paragraph 68 above; and

212.3 otherwise does not know and therefore cannot admit the allegations in the paragraph.

213. ZALOP does not know and therefore cannot admit the allegations in paragraph 213 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

214. ZALOP does not know and therefore cannot admit the allegations in paragraph 214 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

P. CONTRAVENTION OF TRUSTEE COVENANTS AND DUTIES – COMMISSIONS

P.1 Contraventions of Best Interests Covenants

215. ZALOP denies the allegations in paragraph 215 of the ASOC and refers to and repeats paragraphs 179, 192, 193, 199.1, 199.2 and 199.3 above.

216. ZALOP does not know and therefore cannot admit the allegations in paragraph 216 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

217. ZALOP does not know and therefore cannot admit the allegations in paragraph 217 of the ASOC, because the paragraph does not contain any allegation against ZALOP.

Q. THE TRUSTEE'S BREACHES OF TRUST – COMMISSIONS

218. As to the allegations in paragraph 218 of the ASOC, ZALOP:

218.1 denies the allegations insofar as they relate to the Trustee's conduct pleaded in paragraph 215 of the ASOC;

218.2 refers to and repeats paragraph 215 above; and

218.3 otherwise does not know and therefore cannot admit the allegations in the paragraph.

219. As to the allegations in paragraph 219 of the ASOC, ZALOP:

219.1 denies the allegations insofar as they relate to the Trustee's conduct pleaded in paragraph 215 of the ASOC;

219.2 refers to and repeats paragraph 215 above; and

219.3 otherwise does not know and therefore cannot admit the allegations in the paragraph.

R. OPLZAL'S KNOWING INVOLVEMENT IN TRUSTEE'S STATUTORY CONTRAVENTIONS

220. ZALOPL denies the allegations in paragraph 220 of the ASOC and states that:

220.1 the material facts giving rise to the allegation that OPL was "knowingly concerned" and "party to" are not specified;

220.2 the paragraph is otherwise embarrassing insofar as it uses the defined term "First Commissions SIS Contravention" because the ASOC does not define that term;

220.3 on those bases, the paragraph is vague and embarrassing and liable to be struck out; and

220.4 refers to and repeats paragraphs 68.5 to 68.14, 192, 193, 199.1, 199.2 and 199.3 and 215 above.

221. ZALOPL denies the allegations in paragraph 221 of the ASOC and refers to and repeats paragraph 220 above.

S. HARM TO THE APPLICANTS AND GROUP MEMBERS

S.1 First Applicant and Cash Group Members

222. ZALOPL does not know and therefore cannot admit the allegations in paragraph 222 of the ASOC.

223. As to the allegations in paragraph 223 of the ASOC, ZALOPL:

223.1 refers to and repeats paragraphs 122, 124, 131, 132, 133 and 134 above;

223.2 states that, 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; and

Particulars

- i. If, which is denied, any assets of the Master Fund have been misapplied, then the Trustee is obliged to (and will) make good the assets of the Master Fund, and the appropriate relief is an order that it do so. Upon the assets of the Master 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 and there is no loss or damage to be recovered under s 55 of the SIS Act.
- ii. Further, if, which is denied, the Trustee 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 damaged, 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 third party.

223.3 otherwise denies the allegations in the paragraph.

224. As to the allegations in paragraph 224 of the ASOC, ZALOP:

224.1 refers to and repeats paragraph 223 above; and

224.2 otherwise denies the allegations in the paragraph.

225. As to the allegations in paragraph 225 of the ASOC, ZALOP:

225.1 refers to and repeats paragraphs 130 to 138 and paragraph 223.2 above; and

225.2 otherwise denies the allegations in the paragraph.

226. As to the allegations in paragraph 226 of the ASOC, ZALOP:

226.1 refers to and repeats paragraph 225 above; and

226.2 otherwise denies the allegations in the paragraph.

S.2 Second Applicant and Commissions Group Members

227. ZALOP does not know and therefore cannot admit the allegations in paragraph 227 of the ASOC.

228. As to the allegations in paragraph 228 of the ASOC, ZALOP:

228.1 refers to and repeats paragraph 219 above;

228.2 states that, insofar as a Commissions 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; and

Particulars

- i. If, which is denied, any assets of the Master Fund have been misapplied, then the Trustee is obliged to (and will) make good the assets of the Master Fund, and the appropriate relief is an order that it do so. Upon the assets of the Master Fund being made good, no loss or damage will have been suffered by a Commissions Group Member who remains a member of the Master Fund and there is no loss or damage to be recovered under s 55 of the SIS Act.
- ii. Further, if, which is denied, the Trustee is liable under s 55 of the SIS Act to compensate the Second Applicant or any of the Commissions Group Members for any loss or damaged, any such compensation must be effected by payment into the relevant persons 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 third party.

228.3 otherwise denies the allegations in the paragraph.

229. As to the allegations in paragraph 229 of the ASOC, ZALOP:

229.1 refers to and repeats paragraph 228 above; and

229.2 otherwise denies the allegations in the paragraph.

230. As to the allegations in paragraph 230 of the ASOC, ZALOP:

230.1 refers to and repeats paragraph 219 and 228.2 above; and

230.2 otherwise denies the allegations in the paragraph.

231. As to the allegations in paragraph 231 of the ASOC, ZALOP:

231.1 refers to and repeats paragraph 230 above; and

231.2 otherwise denies the allegations in the paragraph.

T. EXTENSION OF TIME

232. As to the allegations in paragraph 232 of the ASOC, ZALOP:

232.1 refers to and repeats paragraph 233 and 234 below; and

232.2 otherwise does not know and therefore cannot admit the allegations in the paragraph.

U. LIMITATIONS

U.1 First Applicant and Cash Investment Group Members

233. In further answer to the claims by the First Applicant and the Cash Investment Group Members, ZALOP states that if (which is denied) any of the First Applicant or the Cash Investment Group Members have suffered any loss or damage alleged, they are not entitled to recover any loss or damage or relief claimed in the Originating Application filed on 23 December 2020 (or any relief as against ZALOP):

233.1 suffered prior to 23 December 2014 as their claims before that date are time-barred;

233.2 further or alternatively, insofar as their claims concern conduct prior to 23 December 2014 because those claims are time-barred.

Particulars

- i. Section 55(4) of the SIS Act

- ii. Sections 14 and 48 of the *Limitations Act 1969* (NSW)
- iii. Section 21 of the *Limitation of Actions Act 1958* (Vic)
- iv. Section 11 of the *Limitations Act 1985* (ACT)
- v. Section 13 of the *Limitations Act 2005* (WA)
- vi. Section 33 of the *Limitations Act 1981* (NT)
- vii. Section 27 of the *Limitations of Actions Act 1974* (Qld)
- viii. Section 32 of the *Limitation of Actions Act 1936* (SA)
- ix. Section 24 of the *Limitation Act 1974* (Tas)

U.2 Second Applicant and Commissions Group Members

234. In further answer to the claims by the Second Applicant and the Commissions Group Members, ZALOP states that if (which is denied) any of the Second Applicant or the Commissions Group Members have suffered any loss or damage alleged, they are not entitled to recover any loss or damage or relief claimed in the Originating Application filed on 23 December 2020 (or any relief as against ZALOP):

234.1 suffered prior to 23 December 2014 as their claims before that date are time-barred;

234.2 further or alternatively, insofar as their claims concern conduct prior to 23 December 2014 because those claims are time-barred.

Particulars

- i. Section 55(4) of the SIS Act
- ii. Sections 14 and 48 of the *Limitations Act 1969* (NSW)
- iii. Section 21 of the *Limitation of Actions Act 1958* (Vic)
- iv. Section 11 of the *Limitations Act 1985* (ACT)
- v. Section 13 of the *Limitations Act 2005* (WA)
- vi. Section 33 of the *Limitations Act 1981* (NT)
- vii. Section 27 of the *Limitations of Actions Act 1974* (Qld)
- viii. Section 32 of the *Limitation of Actions Act 1936* (SA)
- ix. Section 24 of the *Limitation Act 1974* (Tas)

V. OTHER DEFENCES

235. Further, and in answer to all of the allegations of contravention of sections 54B and 109(1) of the SIS Act, if (which is denied) ZALOPL is found to be liable for any loss or damage in respect of any of those alleged contraventions, ZALOPL states that:
- 235.1 OPL acted honestly at all material times;
- 235.2 in the circumstances, OPL ought fairly to be excused for any such contraventions;
- 235.3 in consequence of subparagraphs 235.1 and 235.2, the Court should relieve OPL (and therefore ZAL) wholly, or alternatively partly, from any such liability under s 221(2) of the SIS Act.
236. Further, and in answer to all of the allegations of contravention of sections 54B and 109(1) of the SIS Act and relief sought pursuant to subsection 55(3) of the SIS Act, if (which is denied) ZALOPL is found to be liable for any loss or damage in respect of any of those alleged contraventions, ZALOPL states that:
- 236.1 each contravention was due to some other cause beyond OPL's control; and
- 236.2 OPL took reasonable precautions and exercised due diligence to avoid the contravention, and OPL (and therefore ZAL) is not liable under s 323 of the SIS Act.

Date: ~~18 June 2021~~ 1 November 2022



Signed by David Andrew Taylor

[Note: an electronic signature affixed at the direction of the person required to sign the document may suffice under Rule 2.15

Lawyer for the Second Respondent

This pleading was prepared by James Charles Beaton and David Andrew Taylor, the lawyers for OnePath Life Limited and settled by Steven Finch SC, Robert Craig QCKC, Sera Mirzabegian SC and Derek Wong, counsel for the Second Respondent.

Certificate of lawyer

I David Andrew Taylor certify to the Court that, in relation to the defence filed on behalf of the Second 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~~ 1 November 2022



Signed by David Andrew Taylor

Lawyer for the Second Respondent