



ASIC

Australian Securities &
Investments Commission

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Notice that specified clauses of company's constitution cease to have effect

RIGHTS OF REVIEW

Persons affected by certain decisions made by ASIC under the *Corporations Act 2001* and the other legislation administered by ASIC may have rights of review. ASIC has published Regulatory Guide 57 *Notification of rights of review* (RG57) and Information Sheet *ASIC decisions – your rights* (INFO 9) to assist you to determine whether you have a right of review. You can obtain a copy of these documents from the ASIC Digest, the ASIC website at www.asic.gov.au or from the Administrative Law Co-ordinator in the ASIC office with which you have been dealing.

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**Australian Securities and Investments Commission
Notice ceasing the application of specified constitutional rules**

Written Notice

1. This is a notice by the Australian Securities and Investments Commission (*ASIC*) of the kind described in clause 8.1 of Schedule 3 to the constitution of Victoria Teachers Limited ACN 087 651 769 (the *Company*).

Commencement

2. This notice takes effect when ASIC has published it and given a copy of it to the Company.

Background

3. The Company has requested that ASIC publish a notice that Schedule 3 (other than clause 8.2) to the Company's constitution ceases to have effect in relation to certain proposed resolutions to be put to its members at its 2014 Annual General Meeting, and give a copy of the notice to the Company.
4. ASIC Report 369 *Response to submissions on CP 210 Demutualisation approval procedure rules: Minimum member participation requirement* outlines the two situations in which ASIC will issue a written notice disapplying rules such as those in Schedule 3 to the Company's constitution. These two situations are:
 - (a) where an entity's circumstances raise potential prudential concerns and the Australian Prudential Regulation Authority considers it necessary for a particular proposed transaction to occur expeditiously; and
 - (b) where the only trigger for the application of the rules is the adoption of 'mutual bank' status and branding by an entity.
5. The Company was previously known as Victoria Teachers Credit Union Limited. In 2012 it changed its name and rebranded as a mutual bank.
6. The resolutions in respect of which the Company has sought to have Schedule 3 disapplied propose constitutional amendments that reflect the Company's status as a mutual bank. The proposed amendments also recognise a situation in which the Company may voluntarily transfer its business to another former credit union that is now a mutual bank no longer permitted to use the term credit union.
7. ASIC considers that the Company's request is consistent with the policy referred to in paragraph 4(b) and publishes and gives this notice on that basis.

Cessation

8. Schedule 3 (other than clause 8.2) to the Company's constitution ceases to have effect in relation to the Company, subject to paragraphs 9 to 14 of this notice.

Demutualisation Resolution

9. Paragraph 8 of this notice applies only in relation to a resolution or resolutions (**Demutualisation Resolution**), to be considered by the Company's members at its 2014 Annual General Meeting, the effect of which would be to modify the clauses in Schedule 3 to the Company's constitution as set out in the Attachment to this notice.
10. Schedule 3 to the Company's constitution continues to have effect on its terms in relation to a resolution other than the Demutualisation Resolution.

Conditions

11. The Company must convene and conduct its 2014 Annual General Meeting in accordance with the *Corporations Act 2001* and the terms of its constitution other than Schedule 3, to consider the Demutualisation Resolution as a special resolution.
12. The Company must ensure that the notice of meeting for the Company's 2014 Annual General Meeting clearly states that ASIC has issued this notice to cease the effect of Schedule 3 (other than clause 8.2) to the Company's constitution in relation to the Demutualisation Resolution, and either:
 - (a) include a copy of this notice; or
 - (b) include the web address of the page on ASIC's website where this notice is published.
13. The Company must ensure that the Demutualisation Resolution is only passed at the Company's 2014 Annual General Meeting if at least 75% of the votes cast by members entitled to vote on the Demutualisation Resolution approve the Demutualisation Resolution.
14. If the Company does not comply with any of the conditions in paragraphs 11 to 13, this notice ceases to have effect in relation to the Demutualisation Resolution.

Interpretation

15. In this notice:

member has the meaning given by the constitution of the Company as at the date of this notice.

notice of meeting has the meaning given by section 249J of the *Corporations Act 2001*.

special resolution means a resolution:

- (a) in relation to which notice as set out in paragraph 249L(1)(c) of the *Corporations Act 2001* has been given; and
- (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

Dated this 4th day of September 2014



Signed by Michael Saadat
as a delegate of the Australian Securities and Investments Commission

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SCHEDULE 3 DEMUTUALISATION

1. Interpretation

In this Schedule, unless the contrary intention appears:

'Additional Costs' means all costs reasonably incurred by the Credit Union Company in complying with its obligations under **clauses 4** and **5.1(b)** of this Schedule.

'Additional Information' means:

- (a) an explanation as to how the Demutualisation Resolution will affect Member rights as a holder of Shares and as a customer of the Credit Union Company;
- (b) an explanation as to the effect of the Demutualisation Resolution on the Credit Union Company and Members with respect to:
 - i. the rights of Members to vote and to participate in the distribution of profits and reserves of the Credit Union Company and the loss of any such rights; and
 - ii. the effect on the business, operations, employees, products, services, pricing and distribution network of the Credit Union Company;
- (c) an explanation of the mutuality benefits to Members that will be lost if the Demutualisation Resolution is passed; and
- (d) an explanation of the availability and effect of other alternatives to the Demutualisation Resolution.

'Ballot Closing Date' means the date upon which a Direct Ballot closes, being a date fixed by the Returning Officer under **clause 4.6** of this Schedule and specified in the notice referred to in **clause 4.9(c)** of this Schedule.

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'Demutualisation Resolution' means a proposed resolution, or combination of proposed resolutions:

- (a) which, if passed, will or may result in ~~a Re-structure; or~~
- ~~the Credit Union ceasing to be an authorised deposit-taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*; or~~
- ~~a voluntary transfer of the Credit Union's business, pursuant to the *Financial Sector (Business Transfer and Group Restructure) Act 1999*, to an Entity that is not an authorised deposit taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*; or~~
- ~~Membership Shares or Redeemable Preference Shares becoming transferable or capable of sale or assignment; or~~
- ~~a Member becoming entitled to hold more than one Membership Share or more than one Redeemable Preference Share; or~~
- ~~a right to vote attaching to any Share other than a Membership Share or a Redeemable Preference Share; or~~
- (b) in relation to which the consent of the Treasurer is required pursuant to either section 63 of the *Banking Act 1959* or section ~~11-13~~ of the *Financial Sector (Shareholdings) Act 1998*, unless the consent is required for the purposes of a voluntary transfer of the ~~Credit Union Company~~'s business, pursuant to the *Financial Sector (Business Transfer and Group Restructure) Act 1999*, to an Entity that is an authorised deposit taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "Credit Co-operative" without committing an offence under the *Banking Act 1959*; or whose authority to use such expressions has been withdrawn by reason of the granting under section 66 of the *Banking Act 1959* of authority to use the expressions "Bank", "Banker" or "Banking"; or
- (c) the effect of which would be to modify or repeal any clause in this Schedule; or

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- (d) the effect of which would be to modify or repeal the Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the clauses in this Schedule.

'Direct Ballot' means a ballot of Qualifying Members in respect of a Demutualisation Resolution that is conducted in accordance with **clause 4** of this Schedule.

'Directors' Statement' means a statement by the Directors containing:

- (a) the recommendation of each Director as to whether the Demutualisation Resolution should be passed and their reasons for making that recommendation;
- (b) details of any benefit to be received by the Directors if the Demutualisation Resolution is passed.

'Entity' includes any:

- (a) incorporated or unincorporated bodies;
- (b) trust or partnership; or
- (c) any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives.

'Information' means:

- (a) a disclosure statement that:
- i. contains all the information that Members would reasonably require and expect to be given to make an informed decision about the Demutualisation Resolution, including but not limited to the Additional Information;

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- ii. states that the Demutualisation Resolution may alter the Credit Union Company's mutual structure and outlines the intentions of the Member or Entity seeking to convene or convening a meeting of the Credit Union Company:
 - I. in relation to the future of the Credit Union Company if the Demutualisation Resolution is passed;
 - II. in relation to Members' interests if the Demutualisation Resolution is passed;
 - III. in relation to the Directors if the Demutualisation Resolution is passed; and
 - iii. explains the effect the passing of the Demutualisation Resolution is likely to have on the business, operations, employees, products, services, pricing and distribution network of the Credit Union Company;
- (b) an estimate of the financial benefits (if any) the Members, the Directors and/or other officers of the Credit Union Company will be offered if the Demutualisation Resolution is passed;
- (c) a report by an expert that:
- i. states:
 - I. the Demutualisation Resolution is in the best interests of the Members of the Credit Union Company as a whole;
 - II. whether the Demutualisation Resolution is fair and reasonable to Members having regard to any change of voting rights and the right to participate in profits and reserves; and

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- ii. sets out the expert's opinions in relation to the Additional Information; and
- iii. gives the expert's reasons for forming those opinions; and
- iv. complies with the requirements of **clause 33 of Schedule 4** of the Corporations Act;
- v. contains any additional information required to be provided under the Corporations Act.

'Qualifying Member' means:

- (a) a Member who has been admitted to membership of the ~~Credit Union Company~~ under this Constitution on the date that this Schedule takes effect under the Corporations Act; or
- (b) a Member admitted to membership of the ~~Credit Union Company~~ under this Constitution after the date on which this Schedule 3 takes effect under the Corporations Act who has been a Member for not less than two years.

'Requisitionists' means the Members who request the convening of a general meeting that is convened by the Directors at the request of Members made under **clause 7.1(b)(i)** or who call the meeting in accordance with sections 249E or 249F of the *Corporations Act*.

'Reserves' means the retained profits of the ~~Credit Union Company~~ at the Ballot Closing Date.

'Re-structure' means when the ~~Credit Union Company~~ (whether acting through its Board, its members or otherwise) conducts or proposes to conduct a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business or any other form of corporate re-structure where after completion of the re-structure will or may result in

- i. ~~the Credit Union Company ceasing to be an authorised deposit-taking institution that can or could assume or use the expressions "Credit Union", "Credit Society", "Credit Co-operative" or~~

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“Bank”, “Banker” or “Banking” without committing an offence under the *Banking Act 1959*; or

- ii. a voluntary transfer of the ~~Credit Union Company's~~ business, pursuant to the *Financial Sector (Business Transfer and Group Restructure) Act 1999*, except to an Entity that is at the time an authorised deposit taking institution that can or could assume or use the expressions “Credit Union”, “Credit Society” or “Credit Co-operative” without committing an offence under the *Banking Act 1959* or whose authority to use such expressions has been withdrawn by reason of the granting under section 66 of the *Banking Act 1959* of authority to use the expressions “Bank”, “Banker” or “Banking”; or
- iii. Membership Shares or Redeemable Preference Shares becoming transferable or capable of sale or assignment; or
- iv. a Member becoming entitled to hold more than one Membership Share or more than one Redeemable Preference Share; or
- v. a right to vote attaching to any Share other than a Membership Share or a Redeemable Preference Share.

and/or the Credit Union Company to no longer have a mutual structure.

‘Returning Officer’ means a person appointed by the Directors as a Returning Officer under **clause 4.1** of this Schedule.

‘Special Resolution’ means a resolution:

- (a) in relation to which notice as set out in paragraph 249L(1)(c) of the *Corporations Act* has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

2. Application of Schedule 3

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Notwithstanding any provision contained in this Constitution to the contrary, this Schedule will apply if a meeting of the ~~Credit Union Company~~ is convened, or is to be convened, at which a Demutualisation Resolution will be considered.

3. Requirement for General Meeting and Direct Ballot

If a meeting of the ~~Credit Union Company~~ is convened, or is to be convened, at which a Demutualisation Resolution will be considered:

- (a) A general meeting must be convened and conducted in accordance with this Constitution to consider the Demutualisation Resolution as a Special Resolution;
- (b) The information required by **clause 5** of this Schedule must be provided to Members in convening the general meeting to consider the Demutualisation Resolution;
- (c) The Demutualisation Resolution may not be moved at the general meeting, or passed at the general meeting, if the Demutualisation Resolution, or a substantially similar Demutualisation Resolution, was moved at a general meeting held within the 3 years prior to the general meeting and:
 - i. not passed; or
 - ii. passed but its adoption was not subsequently approved by a Direct Ballot;
- (d) The Demutualisation Resolution shall only be passed at the general meeting if at least 75% of the votes cast by Members entitled to vote on the Demutualisation Resolution approve the Demutualisation Resolution;
- (e) The Demutualisation Resolution, if passed at the general meeting, shall not have any effect unless and until:
 - i. a Direct Ballot is held within 4 months of the date of the general meeting to consider whether the adoption of the Demutualisation Resolution should be approved; and

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- ii. by the Ballot Closing Date the Credit Union has received votes from 15% of Qualifying Members; and
- iii. of the votes received from Qualifying Members by the Ballot Closing Date, 75% of the votes are in favour of approving the adoption of the Demutualisation Resolution.

4. Conduct of Direct Ballot

- 4.1. Within 7 days of a Demutualisation Resolution being passed at a general meeting the Directors must appoint a Returning Officer, who must not be a Director or Officer of the ~~Credit Union Company~~, and who must then conduct a Direct Ballot in accordance with this **clause 4**.
- 4.2. The Returning Officer must prepare a roll of the full names and addresses of the Members of the ~~Credit Union Company~~, as disclosed by the register of members as at midnight on the day before the general meeting referred to in **clause 3(a)** of this Schedule, who are Qualifying Members.
- 4.3. Only Members who are Qualifying Members as at midnight on the day before the general meeting referred to in **clause 3(a)** of this Schedule are entitled to vote in the Direct Ballot.
- 4.4. (a) The Directors may determine:
 - (i) that the Qualifying Members may record their votes by an electronic voting system; and
 - (ii) the manner in which Qualifying Members will be identified for the purposes of an election.
- (b) If the Directors make such a determination, the election procedures must incorporate the requirements of that determination.

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- (c) If a determination has been made pursuant to this sub-clause the term 'ballot paper' includes, where appropriate, a vote submitted by a Qualifying Member electronically using the electronic voting system; and
 - (d) 'electronic voting system' means the system approved by the Directors which enables Qualifying Members to submit their vote by means of an electronic or telephonic device.
- 4.5. The Returning Officer must cause ballot papers to be prepared for the Direct Ballot.
- 4.6. On issuing each ballot paper the Returning Officer must mark the Qualifying Member's name off the Roll of Qualifying Members.
- 4.7. Each ballot paper must be initialled or marked by the Returning Officer or an appointed assistant.
- 4.8. The Returning Officer must fix a Ballot Closing Date, which must be a date not more than 4 months after the date of the general meeting at which the Demutualisation Resolution was passed.
- 4.9. (a) Voting must be conducted according to the rules and instructions specified by the Returning Officer as approved by the Directors;
- (b) Qualifying Members may only vote once;
- (c) The Returning Officer must send to each qualifying Member who is eligible to vote at least 21 days before the Ballot Closing Date:
- (i) a ballot paper;
 - (ii) a notice which sets out:

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1. details of the Demutualisation Resolution upon which the decision of the Qualifying Members is to be sought;
 2. details of the number of Qualifying Members who were eligible to vote at the general meeting at which the Demutualisation Resolution was passed and of the number of those Qualifying Members who voted;
 3. the Ballot Closing Date;
 4. instructions for voting; and
 5. such further information, if any, as the Directors consider appropriate;
- (ii) the information supplied to the Credit Union Company and the Director's Statement;
- (iii) any other documents required by the voting procedure specified by the Returning Officer as approved by the Directors; and
- (iv) if a determination has been made pursuant to **clause 4.4**, all information reasonably necessary to facilitate electronic voting.
- (d) The documents required to be provided pursuant to **clause 4.9(c)** may be delivered personally or posted to Qualifying Members at their addresses shown in the Register of Members including to a nominated electronic address;
- (e) Any Qualifying Member exercising a right to vote by post must, in accordance with the rules and instructions for postal voting specified by the Returning Officer as approved by the Directors:
- (i) complete the ballot paper; and
 - (ii) return the ballot paper to the Returning Officer.
- (f) If a determination has been made pursuant to **clause 4.4** any Qualifying Member exercising a right to vote electronically must, in accordance with the rules and

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instructions for electronic voting specified by the Returning Officer as approved by the Directors:

- (i) complete the ballot paper; and
 - (ii) ensure that the ballot paper is submitted to the Returning Officer;
- (g) A Qualifying Member must ensure that his or her ballot paper is received by the Returning Officer by 5:00 pm on the day fixed for the closing of the ballot;
- (h) Any ballot paper not received by the Returning Officer prior to the closing of the ballot is excluded from the ballot;
- (i) The Returning Officer is not liable for an electronic ballot paper not received in accordance with the rules and instructions for electronic lodgement as a result of any failure in the electronic information or computer system of the ~~Credit Union Company~~, of the Qualifying Member or of any third party provider;
- (j) Any ballot papers received by the Returning Officer are to be kept in secured ballot boxes until the closure of the ballot. Any electronic ballot papers received by the Returning officer are to be protected no less favourably than ballot papers received by post;
- (k) A Qualifying Member who has not received the documents required to be provided pursuant to **clause 4.9(c)** or who has spoiled their postal ballot paper or who wishes to submit a duplicate postal ballot paper after an electronic ballot paper has been submitted may send to the Returning Officer a declaration to that effect and the Returning Officer must:
- (i) resend the documents referred to in **clause 4.9(c)** together with the rules and instructions for lodging a duplicate ballot paper specified by the Returning Officer as approved by the Directors; and
 - (ii) keep a record of all duplicate ballot papers issued, including such records as may be necessary in relation to electronic voting.

- 4.10. The counting of votes received by Direct Ballot shall be supervised by the Returning Officer.

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- 4.11. The Returning Officer may be assisted in the performance of his or her duties by any person (who would be eligible to be a Returning Officer) appointed by the Returning Officer.
- 4.12. The Returning Officer must:
- (a) deal with the ballot papers in accordance with the rules and instructions in place pursuant to **clause 4.4(a)** ensuring always that there is a system in place to mark Qualifying Members' names off the electoral role, count and record votes, deal with the counting of duplicate ballot papers and do all other things the Returning Officer considers necessary;
 - (b) cause the ballot papers to be scrutinised under his or her supervision and reject such ballot papers as he or she finds to be informal under **clause 4.12(c)**;
 - (c) The ballot papers must be scrutinised by the Returning Officer who must reject as informal any ballot paper that:
 - (i) it is not authenticated by the authenticating mark of the Returning Officer or the electoral database system; or
 - (ii) is so imperfectly completed that the intention of the Qualifying Member cannot be ascertained by the Returning Officer; or
 - (iii) has any mark or writing not authorised by this Schedule which, in the opinion of a Returning Officer, will enable the Qualifying Member to be identified; or
 - (iv) has not been completed as prescribed on the ballot paper itself.
 - (d) count all votes cast and make out and sign a statement of:
 - (i) the number of formal votes in favour of approving the adoption of the Demutualisation Resolution;
 - (ii) the number of formal votes against approving the adoption of the Demutualisation Resolution;
 - (iii) the number of informal votes;
 - (iv) the proportion of the formal votes that were in favour of approving the adoption of the Demutualisation Resolution.

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- 4.13. The Returning Officer must forward a copy of the statement to the Chairperson of the Credit Union.
- 4.14. No meeting of Members is required to be held for the counting of the votes received by the ~~Credit Union Company~~ by Direct Ballot.
- 4.15. Following the counting of votes in the Direct Ballot the ~~Credit Union Company~~:
- (a) will display the result on the notice board at the Office and on the ~~Credit Union Company~~'s website;
 - (b) will notify Members of the result of the Direct Ballot within 21 days; and
 - (c) retain the Direct Ballot votes in the possession of the ~~Credit Union Company~~ for a period of 3 months, at the end of which period they will be destroyed.
- 4.16. The result of the Ballot shall not be voided on account of any error or omission of the Returning Officer which did not affect the result of the Ballot.

5. Disclosure Requirements

- 5.1. If a meeting of the ~~Credit Union Company~~ at which a Demutualisation Resolution will be considered is convened or is to be convened in accordance with ~~clause 7.1(b)(i)~~, or otherwise than in accordance with ~~clause 7.1(b)(ii)~~:
- (a) the Member or Members requesting the convening of the meeting shall at the time of requesting the convening of the meeting provide the Information to the ~~Credit Union Company~~; and
 - (b) the ~~Credit Union Company~~ shall at the time of convening the meeting provide the Members with:

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- i. notice of the Demutualisation Resolution and of the intention to consider the Demutualisation Resolution as a special resolution in accordance with section 249L(1)(c) of the Corporations Act;
- ii. the Information supplied to the ~~Credit Union Company~~;
- iii. the Directors' Statement; and
- iv. such further information, if any, as the Directors consider appropriate.

5.2. If a meeting of the ~~Credit Union Company~~ at which a Demutualisation Resolution will be considered is convened or is to be convened in accordance with **clause 7.1(b)(ii)**, the Member or Members requesting the convening of the meeting shall at the time of convening the meeting provide the Information to the Members.

6. Costs

6.1. If a meeting of the ~~Credit Union Company~~ at which a Demutualisation Resolution will be considered is convened by the Directors at the request of Members made under **clause 7.1(b)** or by Members in accordance with sections 249E or 249F of the *Corporations Act*, then the Requisitionists will, at the time of making the request or convening the meeting:

- (a) provide to the ~~Credit Union Company~~ an indemnity in respect of the liability that the Requisitionists may incur to the ~~Credit Union Company~~ for the Additional Costs in a form satisfactory to the Directors; and
- (b) if so requested by the ~~Credit Union Company~~, deposit with the ~~Credit Union Company~~ an amount of \$1.25 per member of the ~~Credit Union Company~~ on account of the liability that the Requisitionists may incur to the ~~Credit Union Company~~ for Additional Costs, which sum the ~~Credit Union Company~~ may set off against the Requisitionists' liability to the ~~Credit Union Company~~ for Additional Costs if and when the Requisitionists become

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liable to pay the Additional Costs to the ~~Credit Union Company~~;

and, if the Demutualisation Resolution is not passed at a general meeting, or if the Demutualisation Resolution is passed at a general meeting but its adoption is not approved by a Direct Ballot, the Requisitionists will be jointly and severally liable to the ~~Credit Union Company~~ for the Additional Costs and will pay the Additional Costs to the ~~Credit Union Company~~ within 7 days of the ~~Credit Union Company~~ making a written demand for payment.

6.2. The ~~Credit Union Company~~ will refund to the Requisitionists:

- (a) if the Demutualisation Resolution is passed at a general meeting and its adoption is approved by a Direct Ballot, the whole of any amount deposited with the ~~Credit Union Company~~ pursuant to **clause 6.1(b)** of this Schedule;
- (b) if the Demutualisation Resolution is not passed at a general meeting, or if the Demutualisation Resolution is passed at a general meeting but its adoption is not approved by a Direct Ballot, any amount by which the amount deposited with the ~~Credit Union Company~~ pursuant to **clause 6.1(b)** of this Schedule exceeds the Additional Costs.

7. Entitlement to Reserves

7.1. If the Demutualisation Resolution is passed at a general meeting and its adoption is approved by a Direct Ballot only a Qualifying Member is entitled to participate in the surplus and profits of the ~~Credit Union Company~~.

8. Termination of this Schedule

8.1. This Schedule other than **clause 8.2** will cease to have effect if and when the Australian Securities and Investments Commission or its successor publishes a notice that this Schedule ceases to have effect in relation to the ~~Credit Union Company~~ and gives a copy of the notice to the ~~Credit Union Company~~. This clause is subject to any terms and conditions in the written notice.

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- 8.2. If this Schedule ceases to have effect by reason of **clause 8.1** it will again come into effect by Board resolution upon the Australian Securities and Investments Commission doing any of the following:
- (a) withdrawing the written notice referred to in **clause 8.1**;
 - (b) making an order or exemption that permits the Credit Union Company to adopt or recommence the operation of this Schedule or provisions to the effect of this Schedule; or
 - (c) otherwise permitting the Credit Union Company to recommence the operation of this Schedule.

