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Details of Filing

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File Title: In the matter of Avestra Asset Management Ltd (in liquidation) (ACN 119 227 440)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 2/05/2016 4:37:14 PM AEST

Registrar

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STATEMENT OF CLAIM

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

NO. VID514/2015

IN THE MATTER OF AVESTRA ASSET MANAGEMENT LTD (IN LIQUIDATION) (ACN 119 227 440)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**AVESTRA ASSET MANAGEMENT LIMITED (IN LIQUIDATION) (ACN 119 227 440) and
others named in the Schedule**

Defendants

Filed on behalf of
Prepared by
Tel
Email
Address for service

Plaintiff
Savas Miriklis
+61 3 9280 3200 Fax +61 3 9280 3444
savas.miriklis@asic.gov.au
Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne, Victoria 3000

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I. INTRODUCTION

A. ASIC

1. The Plaintiff (**ASIC**) is:

1.1 a body corporate:

(a) established by s 7 of the *Australian Securities and Investments Commission Act 1989* (Cth);

(b) continued by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

1.2 able to sue in its corporate name by reason of s 8 of the ASIC Act.

B. Avestra Asset Management Limited (AAM)

2. The 1st defendant (**AAM**):

2.1 is and was since 11 April 2006 a company incorporated in Australia, capable of being sued or suing in its corporate name;

2.2 has at all relevant times been the holder of Australian Financial Services Licence (**AFS licence**) 305130, under which it is authorised to carry on a financial services business to:

(a) provide general financial product advice for certain classes of financial products;

(b) deal in financial products, including by:

(i) issuing certain classes of financial products; and

(ii) applying for, acquiring, varying or disposing of certain classes of financial products, both in its own right and on behalf of other persons; and

(c) operating certain specified registered management investment schemes.

3. AAM has been the responsible entity of:
 - 3.1 the Avestra Advantage Fund (ARSN 136 421 497) (the **Advantage Fund**) since 16 April 2009; and
 - 3.2 the Excela Australian Equity Income Accelerator Fund (ARSN 139 641 946) (the **Accelerator Fund**), Emergent (ARSN 130 533 747) (the **Emergent Fund**), Generator (ARSN 127 699 754) (the **Generator Fund**), and Maximiser (ARSN 130 533 685) (the **Maximiser Fund**) since 30 January 2014 (collectively, the **AG Schemes**).
4. AAM has been the trustee of the following managed investment schemes that were not required to be registered under s 601ED of the *Corporations Act 2001* (Cth) (the **Corporations Act**):
 - 4.1 the Avestra Credit Fund, since around 31 January 2014;
 - 4.2 Canton Mackenzie Fund (the **Canton Fund**), since around mid-2012;
 - 4.3 the Worberg Global Fund, since around March 2012; and
 - 4.4 the Safecrest Capital Fund (the **Safecrest Fund**), since around April 2013.
5. During the period between 20 March 2013 and 1 February 2015:
 - 5.1 the directors of AAM were the 2nd defendant (**Rowles**) (until 6 January 2015), the 3rd defendant (**Dempsey**); Rizwan Alikhan (**Alikhan**) and Jason Dixon (**Dixon**); and
 - 5.2 the compliance committee of AAM was comprised of Nirmal Hansra and Stuart Milne (both external consultants) and Dempsey, .
6. Since November 2012, AAM has had its registered office and principal place of business at Level 1, 2 Miami Key, Broadbeach Waters, Queensland.
7. On 27 October 2015, provisional liquidators were appointed to AAM, upon application by ASIC in this proceeding.
8. On 19 February 2016, AAM was wound up by the Court on the basis that it was just and equitable to do so.

C. Bridge Global Securities Pty Ltd

9. Bridge Global Securities is a company incorporated in Australia:

9.1 which was formerly named:

- (a) Avestra Funds Management Pty Ltd, until 25 March 2013; and
- (b) AFM Global Pty Ltd, from 26 March 2013 until 8 July 2014;

9.2 which was:

- (a) wholly owned by Avestra Holdings, until 1 October 2012; and
- (b) owned by CCSM Holdings and PRHL Capital, in equal holdings, from 1 October 2012 until 14 July 2014;

9.3 whose directors, during the relevant period, have been:

- (a) Rowles, from 31 August 2011 until 9 July 2014, and from 20 August 2014 until 23 February 2015;
- (b) Dempsey, from 9 March 2012 until 9 July 2014;
- (c) Dixon, from 13 August 2013 until 3 November 2014;
- (d) Nicholas McDonald (**McDonald**), from 9 July 2014 until 1 March 2016;
- (e) Neil Sheather (**Sheather**), since 9 July 2014; and
- (f) Dale Klynhout, since 20 August 2014.

9.4 which has been the fund manager of the Advantage Fund, the Worberg Global Fund and the Avestra Credit Fund at all relevant times;

9.5 which was engaged by AGF Funds Management as fund sub-manager for each of the AG Schemes on 1 April 2013, pursuant to the agreements referred to at paragraph 59 below.

D. Rowles and Dempsey

D.1 Paul Rowles

10. Rowles:

10.1 has been a director of AAM:

(a) from 1 July 2010 until 6 January 2015; and

(b) since 10 July 2015;

10.2 has been a responsible manager under AAM's AFS licence since 18 August 2010;

10.3 was a director of Bridge Global Securities Pty Ltd:

(a) from 31 August 2011 until 9 July 2014; and

(b) from 20 August 2014 until 23 February 2015;

10.4 has been a director of Avestra Holdings Pty Ltd:

(a) from 14 May 2012 until 15 November 2013; and

(b) since 10 July 2015;

10.5 has been a director of Bridge Global Asset Management Ltd since 10 March 2014; and

10.6 has been a director of Bridge Global Absolute Return Fund SPC since 26 February 2014.

11. Within AAM or Bridge Global Securities (as applicable), Rowles:

11.1 at all relevant times, had sole, alternatively primary, responsibility for making investment decisions for:

(a) the Advantage Fund; and

(b) the Canton Fund;

11.2 at all relevant times, was responsible, together with Alikhan, for making investment decisions for the Worberg Global Fund; and

- 11.3 from 1 April 2013, had primary responsibility, alternatively was responsible together with Dempsey, for making investment decisions for each of the AG Schemes.
12. Prowler Holdings Pty Ltd (ACN 115 839 999) is a company:
- 12.1 of which Rowles has been the sole director at all relevant times;
 - 12.2 which is wholly owned by PRHL Capital Pty Ltd;
 - 12.3 held a 14.0% shareholding in AAM as at 3 February 2015; and
 - 12.4 held a 3.8% shareholding in AG Financial as at 14 October 2014.
13. PRHL Capital Pty Ltd (ACN 156 021 582) is a company:
- 13.1 of which Rowles' wife, Rachael Rowles, has been the sole director and shareholder at all relevant times;
 - 13.2 which has a shareholding in Avestra Holdings Pty Ltd; and
 - 13.3 which was a 50% shareholder in Bridge Global Securities between 1 October 2012 and 14 July 2014.

D.2 Clayton Dempsey

14. Dempsey:
- 14.1 has been a director of AAM since 1 July 2010;
 - 14.2 has been a responsible manager under AAM's AFS licence since 5 July 2010;
 - 14.3 has been a board representative on AAM's compliance committee since around 30 November 2011;
 - 14.4 was a director of Bridge Global Securities Pty Ltd from 9 March 2012 until 9 July 2014;
 - 14.5 has been a director of Avestra Holdings Pty Ltd since 14 May 2012;
 - 14.6 was a director of Avestra Capital Pty Ltd from 29 May 2012 until 28 September 2015;

- 14.7 was a director of AG Financial Ltd from 12 July 2013 until 24 September 2015;
- 14.8 was a director of AGF Funds Management Pty Ltd from 12 July 2013 until 28 September 2015; and
- 14.9 has been a director of AG Stockbroking Ltd since 12 July 2013.
15. Within AAM or Bridge Global Securities (as applicable), Dempsey:
- 15.1 at all relevant times, had primary responsibility within AAM and Bridge Global Securities for monitoring and ensuring compliance with their legal and regulatory obligations;
- 15.2 was responsible for maintaining AAM's conflict of interest register; and
- 15.3 from 1 April 2013, was responsible together with Rowles, for making investment decisions for each of the AG Schemes.
16. CCSM Holdings Pty Ltd (ACN 155 856 152) is a company:
- 16.1 of which Dempsey's wife, Catherine Joyce Dempsey, has been the sole director and shareholder at all relevant times;
- 16.2 which held an 11.5% shareholding in AAM as at 3 February 2015;
- 16.3 which held a 3.6% shareholdings in AG Financial Ltd as at 14 October 2014; and
- 16.4 which was a 50% shareholder in Bridge Global Securities between 1 October 2012 and 14 July 2014.

E. Other companies associated with AAM

17. Avestra Holdings Pty Ltd (**Avestra Holdings**) is a company incorporated in Australia:
- 17.1 whose shareholders, as at 24 August 2015, were:
- (a) Universal Global Investments Ltd, a company whose registered office is situated in the Republic of Seychelles;
 - (b) CCSM Holdings Pty Ltd;
 - (c) PRHL Capital Pty Ltd and Prowler Holdings Pty Ltd; and

- (d) Syed Akbar Alikhan; and
- 17.2 whose directors, since 14 May 2012, have been Dempsey, Rowles and Alikhan.
- 18. Longhou Capital Markets Pty Ltd (**Avestra Capital**) is a company incorporated in Australia:
 - 18.1 which was formerly named:
 - (a) Avestra Capital Pty Ltd, until 13 March 2015; and
 - (b) AG Capital Markets Pty Ltd, from 13 March 2015 until 15 April 2016;
 - 18.2 which originally operated a financial advice business within the Avestra Group;
 - 18.3 whose shareholders, immediately prior to 21 August 2014, were:
 - (a) Universal Global Investments Ltd;
 - (b) Avestra Holdings Pty Ltd;
 - (c) CCSM Holdings Pty Ltd; and
 - (d) PRHL Capital Pty Ltd and Prowler Holdings Pty Ltd; and
 - 18.4 which was, from 21 August 2014 until around April 2016, wholly owned by AG Financial Ltd.
- 19. Ennox Group Ltd (**AG Financial**) is an Australian-incorporated public company:
 - 19.1 which has been listed on the Australian Securities Exchange since 15 May 2007;
 - 19.2 which was formerly named:
 - (a) Excela Ltd, from 12 January 2010 until 29 November 2013; and
 - (b) AG Financial Ltd, from 29 November 2013 until 13 April 2016;
 - 19.3 had its registered office and principal place of business:
 - (a) at Level 2, 2 Miami Key, Broadbeach Waters, Queensland, from April to November 2013; and

(b) at Level 1, 2 Miami Key, Broadbeach Waters, Queensland, from November 2013 until 14 March 2016;

19.4 whose directors during the relevant period were:

(a) Yosse Goldberg (**Goldberg**), from 20 March 2013 until 31 December 2015;

(b) Delan Pagliaccio (**Pagliaccio**), from 20 March 2013 until 4 December 2014;

(c) John Margerison, from 20 March 2013 until 3 June 2014;

(d) Craig Burbury from 20 March 2013 until 12 July 2013; and

(e) Dempsey, from 12 July 2013 until 24 September 2015.

20. AGF Funds Management Pty Ltd (**AGF Funds Management**) is a company:

20.1 which was formerly named Excela Funds Management Pty Ltd, until 24 February 2014;

20.2 which has, at all relevant times, been wholly owned by AG Financial;

20.3 which originally operated a funds management business within the Excela group (as AG Financial was then known);

20.4 whose directors, between July 2013 and December 2014, were Dempsey, Goldberg and Pagliaccio;

20.5 which was fund manager of the Accelerator, Emergent, Generator and Maximiser Funds immediately prior to 1 April 2013; and

20.6 which retained its appointment as fund manager of those Funds after 1 April 2013, but delegated its responsibilities as fund manager to Bridge Global Securities from that date pursuant to the investment management agreements referred to at paragraph 59 below.

21. AG Stockbroking Ltd (**AG Stockbroking**) is a public company incorporated in Australia:

21.1 which was formerly named Excela Equities Ltd, until 3 December 2013;

- 21.2 which has, at all relevant times, been wholly owned by AG Financial;
- 21.3 which originally operated a stockbroking business within the Excelsa group (as AG Financial was then known); and
- 21.4 which was placed into voluntary administration on 27 March 2015.
22. Bridge Global Asset Management Ltd (**BGAM**) is a company:
- 22.1 incorporated in the Cayman Islands on 2 August 2012;
- 22.2 which was formerly named:
- (a) Bridge Partners Investment Management (Cayman) Ltd, until 20 February 2014;
 - (b) Connect Capital Asset Management Ltd, from 20 February 2014 until 3 March 2014;
 - (c) Avestra Global Asset Management Ltd, from 3 March until 1 June 2014;
 - (d) AG Global Asset Management Ltd, from 1 June 2014 until 11 August 2014;
- 22.3 whose shareholders, since 7 March 2014, have been:
- (a) AAM, as to 40%; and
 - (b) Connect Capital Group Ltd, as to 60%;
- 22.4 whose directors, since 10 March 2014, have been Rowles and Sze-Wei Samuel Goh (**Goh**); and
- 22.5 which was appointed as investment manager for the segregated portfolios of Bridge Global Absolute Return Fund Segregated Portfolio on 3 March 2014.
23. Bridge Global Absolute Return Fund SPC (**Bridge Global SPC**) is a company :
- 23.1 incorporated as a segregated portfolio company in the Cayman Islands;
- 23.2 wholly owned by BGAM;

- 23.3 whose directors, as at 24 February 2015, were Rowles, Goh, Dixon, McDonald and Sheather; and
 - 23.4 which operates multiple managed funds, each through a segregated portfolio, one of which is the Bridge Global CMC Fund.
24. Hanhong (Cayman) SPC Ltd (**Hanhong SPC**) is a company:
- 24.1 incorporated as a segregated portfolio company in the Cayman Islands;
 - 24.2 which, as at 23 October 2014, was wholly owned by Hanhong Management (Cayman) Ltd;
 - 24.3 whose directors, as at 28 July 2014, were Dixon, McDonald, Sheather, Ni Lin and Yang Liu; and
 - 24.4 which operates multiple managed funds, each through a segregated portfolio, one of which is the Hanhong High-Yield Fund.

F. The registered schemes

F.1 The Advantage Fund

25. The Advantage Fund is a registered management investment scheme:
- 25.1 of which AAM has been the responsible entity at all relevant times; and
 - 25.2 of which Bridge Global Securities has been the fund manager at all relevant times; and
 - 25.3 whose funds under management declined from \$7.4 million as at 31 October 2014, to \$1.8 million as at 30 June 2015; and
 - 25.4 whose unit value decreased from \$0.75 as at 31 October 2014, to \$0.43 as at 30 June 2015.
26. The Constitution of the Advantage Fund has at all relevant times included the following provisions:

11.3 Investment powers

... [T]he Manager may in its capacity as trustee or responsible entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.¹⁴ This includes the power to invest the whole or part of the

Assets in related or like trusts or such other investments as the Manager determines.

¹⁴ Subject to Section 601FC(4).

16.3 Other capacities

Subject to the Corporations Act,³¹ if the Corporations Act applies, the Manager (or its associates) may:

- (a) deal with itself (as trustee or responsible entity of the Trust or in another capacity), or with any of its associates or with any Member;
- (b) be interested in any contract or transaction with itself (as trustee or responsible entity of the Trust or in another capacity) or with any Member or retain for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) act in the same or a similar capacity in relation to any other managed investment scheme.

³¹ Refer Part 5C.7

Particulars

Constitution of the Pegasus 1SPORT Income Fund dated 31 March 2009, a copy of which is available for inspection on reasonable notice.

27. On 19 December 2012, AAM issued a product disclosure statement (**PDS**) for the Advantage Fund, which disclosed that:

- 27.1 the Fund would invest, *inter alia*, in listed Australian and international shares, either directly or by investing in other approved funds;
- 27.2 the Fund's investment objective is to provide a regular level of income of at least RBA + 3%, while aiming to maintain low volatility, with the potential for capital growth over the medium to long term; and
- 27.3 the majority of the Fund's equity investments are publicly traded and are traded on the ASX, the Hong Kong Stock Exchange, the BURSA Malaysia, the Singapore Exchange, the NYSE or the FTSEurofirst.

Particulars

Replacement product disclosure statement for the Avestra Advantage Fund, dated 19 December 2012. A copy of the PDS is available for inspection on reasonable notice.

F.2 The AG Schemes

28. Fundhost Pty Ltd (**Fundhost**) is an investment fund management company, which was independent of AG Financial and AAM at all relevant times.

a) The Accelerator Fund

29. The Accelerator Fund is a registered management investment scheme:

29.1 of which:

(a) Fundhost was the responsible entity at all relevant times until 30 January 2014; and

(b) AAM has been the responsible entity since 30 January 2014;

29.2 of which:

(a) AGF Funds Management acted as fund manager at all relevant times until 1 April 2013; and

(b) Bridge Global Securities has acted as fund manager since 1 April 2013, pursuant to the agreement referred to in paragraph 59 below;

29.3 whose funds under management declined from \$2.7 million as at 31 October 2014, to approximately \$950,000 as at 30 June 2015; and

29.4 whose unit value decreased from \$0.33 as at 31 October 2014, to \$0.17 as at 30 June 2015.

30. The Constitution of the Accelerator Fund has at all relevant times included the following provisions:

8.1 The manager may invest in any asset it chooses, subject to what it tells investors from time to time (for example, in the trust's product disclosure statement or telling investors of any material change in investment policy in accordance with the Corporations Act).

17.7 Subject to the Corporations Act, the manager may:

(a) deal with itself (as trustee of the trust or in any other capacity), or any associate or any investor

(b) be interested in any contract or transaction with itself (as trustee of the trust or in another capacity), any associate or investor and

- (c) act in the same or a similar capacity in relation to any other trust or managed investment scheme,

and retain any benefit or benefits from doing so.

Particulars

Consolidated Constitution of the Excelsa Australian Equity Income Accelerator Fund dated 9 March 2011, a copy of which is available for inspection on reasonable notice.

- 31. The PDS for the Accelerator Fund, which was issued by Fundhost on 25 June 2012:
 - 31.1 disclosed that the Accelerator Fund primarily invested in shares within the S&P/ASX Top 50, but may also hold S&P/ASX Top 200 shares (or an equivalent index tracking fund) on an index weighted basis; and
 - 31.2 did not indicate that the Accelerator Fund would invest in offshore, developing market or Malaysian equities.

Particulars

PDS for the Excelsa Australian Equity Income Accelerator Fund, dated 25 June 2012. A copy of the PDS is available for inspection on reasonable notice.

b) *The Emergent Fund*

- 32. The Emergent Fund is a registered management investment scheme:
 - 32.1 of which:
 - (a) Fundhost was the responsible entity at all relevant times until 30 January 2014; and
 - (b) AAM has been the responsible entity since 30 January 2014;
 - 32.2 of which:
 - (a) AGF Funds Management acted as fund manager at all relevant times until 1 April 2013; and
 - (b) Bridge Global Securities has acted as fund manager since 1 April 2013, pursuant to the agreement referred to in paragraph 59 below;
 - 32.3 whose funds under management declined from \$2.5 million as at 31 October 2014, to \$1.3 million as at 30 June 2015; and

32.4 whose unit value decreased from \$1.17 as at 31 October 2014, to \$0.81 as at 30 June 2015.

33. The Constitution of the Emergent Fund has at all relevant times included provisions identical to those excerpted from the Constitution of the Accelerator Fund in paragraph 30 above.

Particulars

Clauses 8.1 and 17.7 of the Consolidated Constitution of Emergent dated 16 April 2008, a copy of which is available for inspection on reasonable notice.

34. The PDS for the Emergent Fund, which was issued by Fundhost on 25 June 2012:
- 34.1 disclosed that the Emergent Fund primarily invested in emerging markets-orientated managed funds and equities; and
- 34.2 expressly referred to emerging markets risk as a risk of investing in the Emergent Fund

Particulars

PDS for Excelsa Emergent, dated 25 June 2012. A copy of the PDS is available for inspection on reasonable notice.

c) *The Generator Fund*

35. The Generator Fund is a registered management investment scheme:
- 35.1 of which:
- (a) Fundhost was the responsible entity at all relevant times until 30 January 2014; and
- (b) AAM has been the responsible entity since 30 January 2014;
- 35.2 of which:
- (a) AGF Funds Management acted as fund manager at all relevant times until 1 April 2013; and
- (b) Bridge Global Securities has acted as fund manager since 1 April 2013, pursuant to the agreement referred to in at paragraph 59 below;

- 35.3 whose funds under management declined from approximately \$790,000 as at 31 October 2014, to approximately \$430,000 as at 30 June 2015; and
- 35.4 whose unit value decreased from \$0.45 as at 31 October 2014, to \$0.23 as at 30 June 2015.
36. The Constitution of the Generator Fund has at all relevant times included provisions identical to those excerpted from the Constitution of the Accelerator Fund in paragraph 30 above.

Particulars

Clauses 8.1 and 17.7 of the Consolidated Constitution of the Generator Fund dated 8 October 2007, a copy of which is available for inspection on reasonable notice.

37. The PDS for the Generator Fund, which was issued by Fundhost on 18 November 2008:
- 37.1 disclosed that the Generator Fund invested in a portfolio of managed funds and ASX-listed companies; and
- 37.2 did not indicate that the Generator Fund would invest in offshore, developing market or Malaysian equities.

Particulars

Generator PDS, dated 18 November 2008. A copy of the PDS is available for inspection on reasonable notice.

d) *The Maximiser Fund*

38. The Maximiser Fund is a registered management investment scheme:
- 38.1 of which:
- (a) Fundhost was the responsible entity at all relevant times until 30 January 2014; and
- (b) AAM has been the responsible entity since 30 January 2014;
- 38.2 of which:
- (a) AGF Funds Management acted as fund manager at all relevant times until 1 April 2013; and

(b) Bridge Global Securities has acted as fund manager since 1 April 2013, pursuant to the agreement referred to in paragraph 59 below;

38.3 whose funds under management declined from \$7.5 million as at 31 October 2014, to \$3.4 million as at 30 June 2015; and

38.4 whose unit value decreased from \$0.95 as at 31 October 2014, to \$0.60 as at 30 June 2015.

39. The Constitution of the Maximiser Fund has at all relevant times included provisions identical to those excerpted from the Constitution of the Accelerator Fund in paragraph 30 above.

Particulars

Clauses 8.1 and 17.7 of the Consolidated Constitution of Maximiser dated 16 April 2008, a copy of which is available for inspection on reasonable notice.

40. The PDS for the Maximiser Fund, which was issued by Fundhost on 25 June 2012:

40.1 disclosed that the Maximiser Fund invested in a portfolio of managed funds, direct equities, cash and fixed interest securities; and

40.2 did not indicate that the Maximiser Fund would invest in offshore, developing market or Malaysian equities.

Particulars

PDS for Excela Maximiser, dated 25 June 2012. A copy of the PDS is available for inspection on reasonable notice.

G. The Australian unregistered schemes

G.1 The Avestra Credit Fund

41. The Avestra Credit Fund is a trust:

41.1 which is otherwise known as the AG Capital Fund;

41.2 established on or around 31 January 2014, by the Constitution of the Avestra Credit Fund, being a deed executed by Dempsey and Rowles as directors of AAM;

41.3 of which AAM has at all relevant times been the trustee; and

41.4 of which Bridge Global Securities was the fund manager.

42. The Constitution of the Avestra Credit Fund has at all relevant times included the following provisions:

18.1 Subject to the Act,¹⁶ the RE (and its related bodies corporate and associates or officers or any of them) (each **RE Associates**) may:

- (a) deal with the RE (as trustee of the Trust or in another capacity), another RE Associate or with any Unitholder;
- (b) be interested in any contract or transaction with the RE (as trustee of the Trust or in another capacity), another RE Associate or with any Unitholder and retain for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) act in the capacity as trustee, responsible entity, custodian or in any other capacity in relation to any other managed investment scheme or trust.

¹⁶ See Pt 5C.7

Particulars

Constitution of the Avestra Credit Fund dated 31 January 2014, a copy of which is available for inspection on reasonable notice.

43. On 31 January 2014, AAM issued an information memorandum to market investment in the Avestra Credit Fund to wholesale investors, in which it summarised the benefit of investing in the Avestra Credit Fund in the following terms:

The managers have access to wide range of lending opportunities in niche markets with limited participation by competitors. The managers are experienced in determining responsible lending practices, risk assessment, securitization of assets and assessment of applicants generally.

Particulars

Information memorandum for the Avestra Credit Fund dated 31 January 2014, a copy of which is available for inspection on reasonable notice.

G.2 The Canton Fund

44. The Canton Fund was a trust:

44.1 established on or around 10 January 2012, by its Constitution, being a deed executed by its initial trustee, Gleneagle Asset Management Ltd;

44.2 that was terminated with effect from 30 April 2014; and

44.3 of which AAM was the trustee at all relevant times from around mid-2012 until its termination.

45. On 22 May 2013, AAM issued a product disclosure statement for the Canton Fund, in which it disclosed that the Canton Fund would invest across a range of assets including Malaysian IPOs, Australian listed securities, Hong Kong equities, fixed interest securities, managed investment schemes, hybrid securities, derivatives and cash.

Particulars

PDS for Canton Mackenzie Fund, dated 22 May 2013. A copy of the PDS is available for inspection on reasonable notice.

G.3 The Worberg Global Fund

46. The Worberg Global Fund was a trust:

46.1 established in around March 2012 by the Constitution of the Worberg Global Fund, being an undated deed executed by Dempsey and Rowles as directors of AAM;

46.2 that was terminated with effect from 31 August 2014; and

46.3 of which AAM was the trustee at all relevant times until its termination.

47. The Constitution of the Worberg Global Fund has at all relevant times included provisions identical to those excerpted from the Constitution of the Avestra Credit Fund in paragraph 42 above.

Particulars

Clauses 18.1 and 17.7 of the Constitution of Worberg Global Fund, a copy of which is available for inspection on reasonable notice.

48. On 1 July 2013, AAM issued an information memorandum for the Worberg Global Fund, which disclosed that the Worberg Global Fund would invest in assets both:

48.1 in developed markets, for which Bridge Global Securities would act as fund manager; and

48.2 in emerging markets, for which Avestra Global Limited would act as fund manager.

Particulars

Information memorandum for the Worberg Global Fund, dated 1 July 2013. A copy of the information memorandum is available for inspection on reasonable notice.

G.4 The Safecrest Fund

49. The Safecrest Fund was a trust:
 - 49.1 established by its Constitution, being a deed poll made by AAM on or around 11 April 2013;
 - 49.2 that was terminated on 30 April 2014; and
 - 49.3 of which AAML was the trustee at all relevant time until its termination.

H. The offshore schemes

H.1 The Bridge Global CMC Fund

50. The Bridge Global CMC Fund is a managed fund:
 - 50.1 which was established as a segregated portfolio in the Cayman Islands in April 2014;
 - 50.2 of which Bridge Global SPC is the operator;
 - 50.3 of which BGAM was, at all relevant times, the investment manager;
 - 50.4 in respect of which AAM provided investment advice to BGAM; and
 - 50.5 the initial investment into which was made on around 30 April 2014, by way of a direct transfer of the investments formerly held by the Canton Fund.
51. In March 2014, BGAM issued a confidential offering memorandum for investments in the Bridge Global Absolute Return Fund SPC, which warned that:

THE SHARES OF THE FUND ARE SPECULATIVE AND INVOLVE A HIGH DEGREE OF RISK. THE SHARES ARE AVAILABLE SOLELY TO INSTITUTIONS OR SOPHISTICATED HIGH NET WORTH INDIVIDUALS WHO ARE WILLING AND ABLE TO BEAR THE ECONOMIC RISKS OF THIS INVESTMENT AND WHO MEET ALL THE OTHER QUALIFICATIONS SET FOR HEREIN AND UNDER APPLICABLE LAW AND REGULATION. RISKS INCLUDE THE POSSIBILITY OF A TOTAL LOSS OF A SHAREHOLDER'S CAPITAL IN THE FUND.

H.2 The Hanhong High-Yield Fund

52. The Hanhong High-Yield Fund is a managed fund:

52.1 which was established as a segregated portfolio in the Cayman Islands in around August 2014;

52.2 of which Hanhong SPC is the operator;

52.3 of which Hanhong (Management) Cayman Ltd (**Hanhong Management**) was the investment manager; and

52.4 the initial investments into which, made on around 8 September 2014, included *in specie* transfers of certain Malaysian shares and equity derivatives formerly held by each of the AG Funds.

53. In August 2014, Hanhong Management issued a confidential offering memorandum for investments in the Hanhong (Cayman) SPC Limited, which warned that:

THE SHARES OF THE FUND ARE SPECULATIVE AND INVOLVE A HIGH DEGREE OF RISK. THE SHARES ARE AVAILABLE SOLELY TO INSTITUTIONS OR SOPHISTICATED HIGH NET WORTH INDIVIDUALS WHO ARE WILLING AND ABLE TO BEAR THE ECONOMIC RISKS OF THIS INVESTMENT AND WHO MEET ALL THE OTHER QUALIFICATIONS SET FOR HEREIN AND UNDER APPLICABLE LAW AND REGULATION. RISKS INCLUDE THE POSSIBILITY OF A TOTAL LOSS OF A SHAREHOLDER'S CAPITAL IN THE FUND.

II. AAM'S TAKEOVER OF AG FINANCIAL AND CROSS-INVESTMENT OF THE AG SCHEMES IN AAM'S WHOLESALE SCHEMES

A. Facts

54. At all relevant times until around 2 May 2014, the Advantage Fund held a substantial unitholding in the Worberg Global Fund.
55. In around March 2013, Rowles and Dempsey together considered and began to implement a plan that AAM should acquire a substantial shareholding in AG Financial, in order that AAM and its shareholders would realise commercial benefits from:
- 55.1 combining the existing funds management and financial advisory businesses carried on by AAM and Avestra Capital with the fund management and stockbroking businesses carried on by AG Financial's subsidiaries, AGF Funds Management (then Excelsa Funds Management Pty Ltd) and AG Stockbroking (then Excelsa Equities Ltd);
 - 55.2 obtaining a "back-door" listing on the Australian Securities Exchange; and
 - 55.3 access to the client database of the Excelsa group.
56. On 20 and 21 March 2013, in off-market transactions with Peter Spann, the former CEO of AG Financial:
- 56.1 AAM purchased 4.4 million shares in AG Financial for the Canton Fund;
 - 56.2 AAM purchased 2.0 million shares in AG Financial for the Worberg Global Fund;
 - 56.3 AAM purchased 230,000 shares in AG Financial for the Advantage Fund;
 - 56.4 Bridge Global Securities purchased 300,000 shares in AG Financial as principal;
 - 56.5 Dempsey purchased 600,000 shares in AG Financial for his family superannuation fund; and
 - 56.6 Rowles purchased 200,000 shares in AG Financial for his family superannuation fund.

57. As a consequence of the purchases referred to in paragraphs 56.1 to 56.3 above, AAM's voting power in AG Financial increased from zero to 22.17%.
58. On 20 March 2013:
- 58.1 all of the directors of AG Financial and AGF Funds Management resigned; and
- 58.2 Yosse Golberg, Delan Pagliaccio, Craig Burbury and John Margerison were appointed as the new directors of AG Financial and AGF Funds Management.
59. On 1 April 2013, AGF Funds Management entered into investment management agreements with Bridge Global Securities, in respect of each of the AG Schemes, by which AGF Funds Management:
- 59.1 appointed Bridge Global Securities as investment sub-manager for each Fund;
- 59.2 delegated AGF Funds Management's investment and management responsibilities for each Fund to Bridge Global Securities; and
- 59.3 entitled Bridge Global Securities to a management fee of 2% per annum, and a performance fee of 20% per annum (based on exceeding the RBA cash rate + 3%).

Particulars

Investment Management Agreement – Accelerator Fund, dated 1 April 2013

Investment Management Agreement – Emergent Fund, dated 1 April 2013

Investment Management Agreement – Generator Fund, dated 1 April 2013

Investment Management Agreement – Maximiser Fund, dated 1 April 2013

A copy of each agreement is available for inspection on reasonable notice.

60. Following Bridge Global Securities' appointment as investment sub-manager of each of the AG Schemes, the previous practice of AGF Funds Management providing regular monthly investment reports to members of the Schemes was discontinued from around May 2013.

Particulars

Samples of the "monthly snapshot" reports formerly provided to members of the AG Schemes are available for inspection on reasonable notice.

61. On 3 April 2013:
- 61.1 a meeting of AAM's compliance committee was held;
 - 61.2 Dempsey attended the meeting and provided a verbal report to the committee on behalf of the directors of AAM; and
 - 61.3 Dempsey did not report on any of the matters referred to in paragraphs 55 to 59 above to the compliance committee; and
 - 61.4 Dempsey advised that there were no key business and operational matters requiring the attention of the committee.

Particulars

Minutes of the meeting, signed by Nirmal Hansra on 25 September 2013. A copy of the minutes may be inspected on reasonable notice.

62. On 4 April 2013, AG Financial relocated its registered office and principal place of business to Level 2, 2 Miami Key, Broadbeach Waters, being premises one floor above AAM's own registered office and principal place of business.
63. On 5 April 2013, AAM gave notices under s 671B(1) of the Corporations Act (**substantial shareholder notices**) to ASX Limited, the market operator of the Australian Stock Exchange (**ASX**), disclosing that:
- 63.1 on 20 March 2013, the Canton Fund had acquired 14.27% of the voting power of AG Financial; and

- 63.2 on 21 March 2013, the Worberg Global Fund had acquired 6.93% of the voting power of AG Financial (together the **5 April notices**).

Particulars

Form 603 for Canton Mackenzie Fund dated 21 March 2013 and Form 603 for Worberg Global Fund dated 22 March 2013. Copies of the forms may be inspected on reasonable notice.

64. Neither of the 5 April notices disclosed that AAM had acquired a substantial holding in AG Financial.

65. On or around 24 April 2013, AG Financial entered into conditional agreements, *inter alia*:

65.1 to acquire the whole shareholding of Avestra Capital, in return for the issue of 100 million shares in AG Financial; and

65.2 to acquire 99.6% shareholding of AAM, in exchange for the issue of 150 million shares in AG Financial;

with the intention of expanding the existing business lines of, and delivering significantly increased earnings to, AG Financial.

66. Immediately prior to 1 May 2013, and at all relevant times thereafter, each of:

66.1 the Advantage Fund; and

66.2 the Worberg Global Fund,

held a substantial proportion of its investments (both directly and indirectly) in Malaysian shares and equity derivatives, including companies listed on both the main board and ACE market of Bursa Malaysia.

67. On 1 May 2013, Bridge Global Securities, as agent of Fundhost, invested:

67.1 \$600,000 of the scheme property of the Emergent Fund into the Advantage Fund;

67.2 \$616,560 of the scheme property of the Emergent Fund into the Worberg Global Fund; and

67.3 \$1.6 million of the scheme property of the Maximiser Fund into the Advantage Fund; and

- 67.4 \$1.64 million of the scheme property of the Maximiser Fund into the Worberg Global Fund.
68. On 1 May 2013, Mark Bennett of Fundhost, the responsible entity of the Emergent and Maximiser Funds, contacted Delan Pagliaccio of AGF Funds Management:
- 68.1 complaining about investments having been made from those schemes to related party funds without disclosure to investors; and
- 68.2 indicated that Fundhost proposed to redeem the units bought in the Worberg Global Fund.

Particulars

Email from Bennett to Pagliaccio at 4:41 pm on 1 May 2013. A copy of the email may be inspected on request.

69. On 5 May 2013, Rowles sent an email in response to Bennett, in which he asserted that:
- 69.1 Fundhost, as responsible entity, was not responsible for questioning investments that are within mandate;
- 69.2 Fundhost had acted outside its role by querying the investments made by the Emergent and Maximiser Funds into funds of which AAM was responsible entity or trustee; and
- 69.3 requested an appointment with Bennett to discuss replacing Fundhost with AAM as responsible entity of 3 funds.

Particulars

Email from Rowles to Bennett at 2:24 pm on 5 May 2013. A copy of the email may be inspected on request.

70. On 17 May 2013:
- 70.1 Rowles sent an email to Paul Dortkamp and Mark Bennett of Fundhost, stating:
- As you are aware Avestra Asset is currently working with the board of Excela Limited and its subsidiaries with a view to restructuring its managed investment schemes and other business operations for the benefit of units holder[s] in the Excela funds, shareholders and investors. ...

We note that you are the responsible entity for the Excela branded registered funds known as Accelerator, Maximiser, Generator and Emergent.

To achieve the desired outcomes of the board of Excela, we propose that you resign as responsible entity from each of the above funds and that Avestra Asset Management Limited be appointed. ...

70.2 Rowles sent a further email to Bennett:

- (a) alleging that Fundhost had committed serious breaches of its duties as RE, trustee and administrator; and
- (b) threatening to remove Fundhost as RE of the AG Schemes, and to sue it for damages, if it declined to respond to his earlier proposal.

Particulars

Email from Rowles to Dortkamp and Bennett at 11:44 am and from Rowles to Bennett at 3:22 pm on 17 May 2013. A copy of the emails may be inspected on request.

71. In or after May 2013, the following entry was made in AAM's conflict of interest register:

Date of Conflict: May 2013

Conflict: Advantage and Worberg Funds accepted investments from Excela Maximiser and Emergent Funds. (fund to fund) Advantage and Worberg hold shares in [AG Financial], this is an indirect investment for Maximiser and Emergent and could be seen as a potential conflict of interest. The shares were held prior to the investment.

Conflict rating: Medium
(Low/Medium/High)

Action Taken to Resolve Conflict of Interest:

The Managers are aware of the indirect investment, consideration has been given to the % of the investment in relation to the portfolio and given those %s, do not see this as detrimental or in contravention of any investment mandate. However this will be monitored on an ongoing basis.

Disclosure and Monitoring.

Has the conflict been Resolved: Ongoing

Reviewed by: Paul Rowles/Clay Dempsey

72. Beyond recording that entry in its conflict of interest register, AAM took no further action to resolve or disclose that conflict of interest, notwithstanding:
- 72.1 the further investments of scheme property of the Emergent and Maximiser Funds into the Advantage and Worberg Global Funds, as referred to in paragraphs 78.2 and 78.3 below; and
 - 72.2 the further purchases of shares in AG Financial made by the Advantage and Worberg Global Funds, as referred to in paragraphs 74, 81.1 81.3, and 83.2 below.
73. On or around 22 May 2013, AG Stockbroking wrote to members of the AG Schemes, inviting members to submit requests for meetings of those schemes to consider the removal of Fundhost, and the appointment of AAM, as the responsible entity of those schemes.
74. On or around 30 May 2013, AAM acquired 4.2 million shares in AG Financial for and on behalf of the Advantage Fund, by a placement of issued shares, at \$0.02 per share.
75. As a consequence of that placement, AAM's voting power in AG Financial increased from 22.17% to 31.82%.
76. AAM did not lodge a substantial shareholder notice in connection with that placement, in the name of AAM or any other party, with the ASX.
77. On 21 June 2013:
- 77.1 a meeting of AAM's compliance committee was held;
 - 77.2 Dempsey attended the meeting and provided a verbal report to the committee on behalf of the directors of AAM; and
 - 77.3 Dempsey did not report on any of the matters referred to in paragraphs 55-59, 63, 64 or 65-76 above to the compliance committee;
 - 77.4 Dempsey advised that there were no key business and operational matters requiring the attention of the committee; and

- 77.5 the committee noted the potential conflict of interest in regard to the registered schemes investing in the unregistered schemes as a matter to be discussed at the next meeting.

Particulars

Minutes of the meeting, signed by Nirmal Hansra on 21 June 2013.
A copy of the minutes may be inspected on reasonable notice.

78. Between 1 and 2 July 2013, Bridge Global Securities invested:
- 78.1 \$300,000 of the scheme property of the Generator Fund into the Safecrest Fund; and
 - 78.2 \$400,000 of the scheme property of the Maximiser Fund into the Advantage Fund; and
 - 78.3 \$383,520 of the scheme property of the Maximiser Fund into the Worberg Global Fund.
79. On 3 July 2013, AAM purchased 500,000 shares in AG Financial in on-market transactions, on behalf of the Safecrest Fund.
80. On 4 July 2013, AAM purchased 500,000 shares in AG Financial in on-market transactions, on behalf of the Safecrest Fund.
81. On or around 12 July 2013, pursuant to a rights issue at an issue price of \$0.02 per share:
- 81.1 AAM acquired 16.7 million shares in AG Financial for and on behalf of the Advantage Fund;
 - 81.2 AAM acquired 17.76 million shares in AG Financial on behalf of the Canton Fund;
 - 81.3 AAM acquired 8.5 million shares in AG Financial for and on behalf of the Worberg Global Fund; and
 - 81.4 Bridge Global Securities acquired 1.25 million shares in AG Financial as principal.

82. On 12 July 2013, Dempsey was appointed a director of:

82.1 AG Financial, replacing Craig Burbury;

82.2 AGF Funds Management; and

82.3 AG Stockbroking.

83. On or around 19 July 2013, pursuant to a shortfall allocation under the rights issue, at an issue price of \$0.02 per share:

83.1 AAM acquired 21 million shares in AG Financial for and on behalf of the Canton Fund;

83.2 AAM acquired 9 million shares in AG Financial for and on behalf of the Worberg Global Fund;

83.3 AAM acquired 7.5 million shares in AG Financial on behalf of the Safecrest Fund;

83.4 Dempsey acquired 1 million shares in AG Financial for his family superannuation fund;

83.5 Rowles acquired 500,000 shares in AG Financial personally;

83.6 Rowles acquired 500,000 shares in AG Financial for his family superannuation fund;

83.7 Prowler Holdings acquired 1 million shares in AG Financial; and

83.8 PRHL Capital acquired 1 million shares in AG Financial.

84. At meetings held on 24 July 2013, members of the:

84.1 Accelerator Fund;

84.2 Emergent Fund; and

84.3 Maximiser Fund,

resolved to remove Fundhost, and to appoint AAM, as responsible entity of those schemes.

85. Immediately prior to 1 August 2013, and at all relevant times thereafter, the Canton Fund held a substantial proportion of its investments (both directly and indirectly) in Malaysian equities, including companies listed on both the main board and ACE market of Bursa Malaysia.
86. On 1 August 2013, Bridge Global Securities invested approximately \$380,000 out of the scheme property of the Maximiser Fund into the Canton Fund.
87. On 1 August 2013, AAM purchased 500,000 shares in AG Financial in an off-market transaction, on behalf of the Safecrest Fund.
88. On 2 August 2013, Bridge Global Securities invested \$125,000 out of the scheme property of the Generator Fund into the Safecrest Fund.
89. By reason of the purchases referred to at paragraphs 79, 80, 81.1-81.3, 83.1-83.3 and 87 above (among others), Avestra's voting power in AG Financial increased from 31.82% to 56.28%.

Particulars

A full listing of AAM's purchases of shares in AG Financial is set out in Annexure 1 to this Statement of Claim.

90. On 5 August 2013:
 - 90.1 a meeting of the board of directors of AAM was held and attended by Rowles, Dempsey and Alikhan;
 - 90.2 at that meeting, the directors resolved to approve a proposed allotment of 750,000 shares in AAM to AG Financial.

Particulars

Minutes of the meeting, signed by Dempsey and dated 5 August 2013. A copy of the minutes may be inspected on reasonable notice.

91. On 6 August 2013, AAM gave substantial shareholder notices to the ASX, disclosing that, on 19 July 2013:
 - 91.1 the Canton Fund had increased its voting power in AG Financial from 14.27% to 26.22%;
 - 91.2 the Worberg Global Fund had increased its voting power in AG Financial from 6.93% to 13.06%;

91.3 the Advantage Fund had acquired 9.65% of the voting power of AG Financial;
and

91.4 the Safecrest Fund had acquired 5.20% of the voting power of AG Financial
(together, the **6 August notices**).

Particulars

Form 604 for Canton Mackenzie Fund dated 5 August 2013; Form 604 for Worberg Global Fund dated 5 August 2013; Form 603 for Avestra Advantage Fund dated 5 August 2013; Form 603 for Safecrest Capital Fund dated 5 August 2013. Copies of the forms may be inspected on reasonable notice.

92. None of the 6 August notices disclosed that AAM had acquired, or increased, a substantial holding in AG Financial.

93. In or after September 2013, the following entry was recorded in AAM's conflict of interest register:

Date of Conflict: Sept 2013

Conflict: Safecrest fund has accepted investments from Excelsa Generator Fund. (Fund to Fund) Safecrest fund holds shares in EXA, this is an indirect investment in EXA shares and could be seen as a potential conflict of interest.

Conflict rating: [Blank]
(Low/Medium/High)

Action Taken to Resolve Conflict of Interest:

The Managers are aware of the indirect investment, consideration has been given to the % of the investment in relation to the portfolio and given those %s, do not see this as detrimental or in contravention of any investment mandate. However this will be monitored on an ongoing basis.

Disclosure and Monitoring.

Has the conflict been Resolved: Ongoing

Reviewed by: Paul Rowles/Clay Dempsey

94. Beyond recording that entry in its conflict of interest register, AAM took no further action to resolve or disclose that conflict of interest.

95. At a meeting held on 12 September 2013, members of the Generator Fund resolved to remove Fundhost, and to appoint AAM, as RE of the Generator Fund.
96. On 25 September 2013:
- 96.1 a meeting of AAM's compliance committee was held;
 - 96.2 Dempsey attended the meeting and provided a verbal report to the committee on behalf of the directors of AAM;
 - 96.3 Dempsey reported that:
 - (a) AAM was in the process of varying its AFS licence to add the AG Schemes, for which Fundhost had previously acted as the responsible entity; and
 - (b) the AG Schemes would enter into new investment management agreements and would have revised mandates;
 - 96.4 Dempsey did not otherwise report on any of the matters referred to in paragraphs 55-59, 63, 64, 65-76, 78-92 or 95 above to the compliance committee;
 - 96.5 Dempsey advised that there were no key business and operational matters requiring the attention of the committee; and
 - 96.6 the committee noted the following matter to be followed up at the next meeting:

The item raised in the previous compliance meeting relating to the potential conflicts of Interest in regards to the registered schemes. This would include a review of the fee arrangements and brokerage for the various funds to identify any potential conflicts of interest. In addition the Excelsa Funds for which AAM would be acting as responsible entity had investments in Excelsa being a listed company and also acting as the investment manager for these funds.

Particulars

Minutes of the meeting, signed by Nirmal Hansra on 12 December 2013. A copy of the minutes may be inspected on reasonable notice.

97. On 26 September 2013:

97.1 Talitha Jones of Fundhost sent an email to Dempsey, Rowles, Pagliaccio and Shaun Cartwright of AG Financial complaining about the fund manager's failure to provide monthly investor reports and compliance reports, and noting that Fundhost had received complaints from investors about the failure to provide fund performance updates;

Particulars

Email headed "Investor reporting and compliance plan reporting breach follow up – still no improvement" sent at 12:02 pm.

97.2 Rowles responded to that email by alleging multiple compliance breaches by Fundhost; and

97.3 in subsequent correspondence, Rowles wrote: "compliance reporting and many other functions which you have Neglected are done by RE not managers".

Particulars

Emails sent by Rowles at 12:31 and 1:50 pm on 26 September 2013. A copy of the email correspondence may be inspected on reasonable notice.

98. On 1 October 2013, AG Financial relocated its principal place of business to Level 1, 2 Miami Key, Broadbeach Waters, Queensland being the same premises as AAM's principal place of business and registered office.

99. On 28 November 2013, representatives of AAM, including Dempsey, attended a meeting with representatives of ASIC, in which ASIC notified AAM that ASIC considered that AAM had contravened the Corporations Act by exceeding 20% control of AG Financial, and by failing to lodge substantial shareholder notices correctly.

100. On or around 6 December 2013, AG Financial changed its name from Excela Ltd to AG Financial Ltd, and adopted a company logo similar to AAM's company logo.

Particulars



101. On 12 December 2013:

- 101.1 a meeting of AAM's compliance committee was held;
- 101.2 Dempsey attended the meeting and provided a verbal report to the committee on behalf of the directors of AAM;
- 101.3 Dempsey reported that AAM was in discussions with ASIC in relation to penalties and an enforceable undertaking for contraventions of the takeover prohibition and substantial shareholder notice provisions of the Corporations Act;
- 101.4 Dempsey advised the committee that AAM had undertaken its own enquiries prior to being contacted by ASIC, and had not regarded it as a breach at this stage, and therefore had not previously reported the matter to the compliance committee;
- 101.5 the committee noted that any significant incidents which arose needed to be notified to the committee immediately when identified and should not be delayed by the time taken to investigate the matter, including whether a breach had occurred or the timing of the next committee meeting; and
- 101.6 the committee did not consider the conflict of interest arising from investment by the registered schemes in AAM's unregistered schemes, which had been held over from the 21 June and 25 September 2013 meetings.

Particulars

Minutes of the meeting, signed by Nirmal Hansra on 13 March 2014.
A copy of the minutes may be inspected on reasonable notice.

102. At all times from the first investment into the Safecrest Fund on 1 July 2013 until 31 December 2013, the Safecrest Fund:

- 102.1 had only one unitholder, namely the Generator Fund; and
- 102.2 invested in only a single asset, namely shares of AG Financial.

103. As a consequence of the:

- 103.1 investments of scheme property of the Emergent and Maximiser Funds into the Advantage Fund referred to in paragraphs 67.1, 67.3 and 78.2 above;

103.2 investments of scheme property of the Emergent and Maximiser Funds into the Worberg Global Fund referred to in paragraphs 67.2, 67.4 and 78.3 above; and

103.3 investment of scheme property of the Maximiser Funds into the Canton Fund referred to in paragraph 86 above,

each of the Emergent and Maximiser Funds became exposed indirectly to Malaysian shares and equity derivatives, including companies listed on both the main board and ACE market of Bursa Malaysia.

Particulars

ASIC refers to paragraphs 66 and 85 above.

104. On 30 January 2014, pursuant to the resolutions referred to in paragraphs 84 and 95 above, AAM:

104.1 succeeded Fundhost as RE of each of the AG Schemes; and

104.2 became entitled to management fees (of up to 4% per annum) and application and withdrawal fees, pursuant to clause 15 of the Constitution of each of the AG Schemes.

105. Following ASIC's investigation into AAM's acquisition of a controlling interest in AG Financial, between February and September 2014, AAM divested its shareholdings in AG Financial held through the Advantage, Canton and Worberg Global Funds as follows:

105.1 on or around 21 February 2014:

(a) AAM transferred 21.1 million shares from the Advantage Fund to the Canton Fund, as an *in specie* distribution upon the partial redemption of the Canton Fund's investment in the Advantage Fund; and

(b) AAM transferred 34.5 million shares from the Canton Fund to China Thrive Investments Ltd, as an *in specie* distribution upon the partial redemption of Nobel Elite Ltd's investment in the Canton Fund;

105.2 on or around 24 February 2014, AAM transferred 29.3 million shares from the Canton Fund to Infinito Capital Ltd, as an *in specie* distribution upon the partial redemption of Infinito Capital Ltd's investment in the Canton Fund; and

105.3 on or around 3 September 2014, AAM transferred 22.6 million shares from the Worberg Global Fund to Bridge Global SPC, as operator of the Bridge Global CMC Fund, as an *in specie* distribution upon the partial redemption of the Bridge Global CMC Fund's investment in the Worberg Global Fund.

106. Infinito Capital Ltd is a company incorporated in the British Virgin Islands:

106.1 of which Kenneth Vun, a long-standing acquaintance of Rowles, is a director; and

106.2 which held 61% of the issued units in the Bridge Global CMC Fund as at 22 January 2015 (shortly prior to the last redemptions of the Accelerator and Maximiser Fund out of the Bridge Global CMC Fund, as described in paragraphs 350 and 351 below).

107. AAM divested its shareholding in AG Financial through the off-market transactions described in paragraph 105 above, rather than by on-market transactions, because the market for shares in AG Financial was illiquid.

Particulars

ASIC relies on the admission by Rowles to the stated effect made at his section 19 examination on 30 June 2015.

B. Contraventions by AAM

B.1 Direct use of scheme property of the Advantage Fund to acquire shares in AG Financial

a) Unauthorised related party transaction: s 208 (as modified)

108. Each of the purchases by AAM of shares in AG Financial, on behalf of the Advantage Fund, as referred to in paragraphs 56.3, 74 and 81.1 above, involved the giving of a financial benefit:

108.1 by AAM, which was the responsible entity of the Advantage Fund;

108.2 out of the scheme property of the Advantage Fund; and

108.3 to:

- (a) AAM itself; and

Particulars of financial benefit to AAM

Each of those share purchases contributed to AAM:

- (i) acquiring control over, and obtaining a majority shareholding in, AG Financial; and
- (ii) becoming appointed as RE of the AG Schemes, for reward.

ASIC refers to paragraphs 55, 58-59, 71, 82, 84, 95, 100 and 104 above.

- (b) further, in respect of the acquisition referred to in paragraph 56.3, to Bridge Global Securities.

Particulars of financial benefit to Bridge Global Securities

That share purchase contributed to Bridge Global Securities being appointed as fund sub-manager of the AG Schemes, for reward.

ASIC refers to paragraphs 55 and 58-59 above.

- (c) further, in respect of the acquisitions referred to in paragraphs 74 and 81.1 above, to AG Financial.

Particulars of financial benefit to AG Financial

Those share purchases involved the raising of share capital by AG Financial by the issue of shares to AAM on behalf of the Advantage Fund.

109. At all relevant times, Bridge Global Securities was:

- 109.1 an agent of AAM; and

Particulars of agency

ASIC refers to paragraph 9.4 above.

109.2 further or alternatively, an entity that AAM controlled.

Particulars of AAM's control of Bridge Global Securities

At all relevant times:

- (a) Rowles and Dempsey were directors of both AAM and Bridge Global Securities: ASIC refers to paragraphs 10.1, 10.3, 14.1 and 14.4 above; and
- (b) Bridge Global Securities was owned by CCSM Holdings and PRHL Capital, in equal holdings: ASIC refers to paragraphs 9.2(b), 13 and 16 above.

110. At all relevant times from 21 March 2013, AG Financial was a related party of AAM.

Particulars of AAM's control of AG Financial

AAM's control over AG Financial may be inferred from:

- (a) AAM having at least 22% of the voting power in AG Financial at all relevant times from 21 March 2013: ASIC refers to paragraphs 57, 75 and 89 above; and
- (b) AGF Funds Management having entered into investment management agreements for the AG Schemes with Bridge Global Securities within 10 days after AAM's initial purchase of shares in AG Financial, in circumstances where AGF Funds Management was a wholly-owned subsidiary of, and had common directors with, AG Financial.

111. The giving of each of those financial benefits was not the subject of an approval of the members of the Advantage Fund obtained in accordance with ss 217-227 of the Corporations Act.

112. By reason of the matters referred to in paragraphs 108 to 111 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC):

112.1 between 20 and 21 March 2013, by the off-market purchase from Peter Spann referred to in paragraph 56.3 above; and

112.2 on or around 30 May 2013, by the placement referred to in paragraph 74 above; and

112.3 on or around 12 July 2013, by the issue of shares pursuant to the rights issue referred to in paragraph 81.1 above.

b) Failure to give priority to interests of scheme members: s 601FC(1)(c)

113. In making each of the purchases of shares in AG Financial on behalf of the Advantage Fund referred to in paragraphs 56.3, 74 and 81.1 above, AAM:

113.1 was exercising its powers as responsible entity of the Advantage Fund;

113.2 failed to act in the best interests of the members of the Advantage Fund, and, in circumstances where there was a conflict between the interests of the members of the Advantage Fund and AAM's own interests, failed to give priority to the members' interests.

Particulars

- (a) The conflict of interest arose in that AAM's interests in making the purchases for and on behalf of the Advantage Fund included its interest in seeking to realise the commercial benefits of a merger of the businesses of the Avestra and AG Financial groups, which was in conflict with the members' interest, namely to obtain a sound and professionally-selected investment for the Fund, with a view to realising the investment objective disclosed in the Fund's PDS.
- (b) AG Financial made losses of \$3.2 million in the year to 30 June 2013.
- (c) At all relevant times, AG Financial's continued viability as a going concern was in doubt.
- (d) In electing to make those purchases out of the scheme property of the Advantage Fund in those circumstances, AAM did not give priority to the members' interests ahead of its own commercial objectives, and did not act in the best interests of members: ASIC refers to paragraphs 55 and 68 above.

114. By reason of the matters referred to in paragraph 113 above, AAM contravened s 601FC(1)(c) of the Corporations Act:

114.1 between 20 and 21 March 2013, by the off-market purchase from Peter Spann referred to in paragraph 56.3 above;

114.2 on 30 May 2013, by the placement referred to in paragraph 74 above; and

114.3 on or around 12 July 2013, by the issue of shares pursuant to the rights issue referred to in paragraph 81.1 above.

B.2 Indirect use of scheme property of the Advantage Fund to acquire shares in AG Financial: s 208 (as modified)

115. Each of the purchases by AAM of shares in AG Financial, on behalf of the Worberg Global Fund referred to in paragraphs 56.2, 81.3 and 83.2 above, involved the giving of a financial benefit:

115.1 by AAM, which was the responsible entity of the Advantage Fund;

115.2 indirectly out of, or in a way that could endanger, the scheme property of the Advantage Fund; and

Particulars of indirect use of scheme property

At all relevant times, the Advantage Fund held substantial unitholdings in the Worberg Global Fund.

115.3 to:

(a) AAM itself;

Particulars of financial benefit to AAM

ASIC repeats the particulars to paragraph 108.3(a) above.

(b) further, in respect of the acquisitions referred to in paragraphs 81.3 and 83.2 above, to AG Financial.

Particulars of financial benefit to AG Financial

Those share purchases involved the raising of share capital by AG Financial by the issue of shares to AAM on behalf of the Worberg Global Fund.

116. At all relevant times after 21 March 2013, AG Financial was an entity that AAM controlled.

Particulars of AAM's control of AG Financial

ASIC:

(a) repeats the particulars to paragraph 110 above; and

(b) refers to Dempsey's appointment as a director of AG Financial on 12 July 2013, referred to in paragraph 82 above.

117. The giving of each of those financial benefits was not the subject of an approval of the members of the Advantage Fund obtained in accordance with ss 217-227 of the Corporations Act.

118. By reason of the matters referred to in paragraphs 115 to 117 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC):

118.1 on 20 or 21 March 2013, by the off-market purchase from Peter Spann referred to in paragraph 56.2 above;

118.2 on or around 12 July 2013, by the acquisition pursuant to the rights issue referred to in paragraph 81.3 above; and

118.3 on or around 19 July 2013, by the acquisition pursuant to the shortfall allocation referred to in paragraph 83.2 above.

B.3 Use of scheme and trust property of the Advantage, Worberg Global, Canton and Safecrest Funds to acquire shares in AG Financial: s 912A(1)(a)

119. In making each of the purchases of shares in AG Financial on behalf of the Advantage, Canton and Worberg Global Funds referred to in paragraphs 56.1-56.3, 74, 81.1-81.3 and 83.1-83.3 above, AAM:

119.1 was engaging in the provision of financial services covered by its AFS licence; and

119.2 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

(a) AG Financial made losses of \$3.2 million in the year to 30 June 2013.

(b) At all relevant times, AG Financial's continued viability as a going concern was in doubt.

(c) AAM's purchases of shares in AG Financial using the scheme and trust property of the Advantage, Canton, Worberg Global and Safecrest Funds were made in order to further AAM's own commercial objective of realising a merger between the businesses of the Avestra and Excelsa groups, and thus involved a conflict between AAM's own interests and the interests of members of the Funds.

- (d) AAM had:
 - (i) itself recognised that the indirect investment of scheme property of the Emergent and Maximiser Funds in shares in AG Financial was at least a potential conflict of interest, and
 - (ii) recorded its intention to resolve the conflict by “disclosure and monitoring”: ASIC refers to paragraph 71 above.
- (e) To ensure that it provided those services efficiently, honestly and fairly, it was necessary for AAM:
 - (i) to disclose those purchases of shares to members of those Funds;
 - (ii) to obtain member approval or informed consent prior to making those purchases;
 - (iii) alternatively, not to make the purchases and to invest the scheme or trust property in investments that did not give rise to a conflict of interest.

120. Further, in:

120.1 operating the Safecrest Fund between 1 July and 31 December 2013; and

120.2 making each of the purchases of shares in AG Financial on behalf of the Safecrest Fund, as referred to in paragraphs 79, 80, 83.3 and 87 above,

AAM:

120.3 was engaging in the provision of financial services covered by its AFS licence; and

120.4 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

Between 1 July and 31 December 2013, AAM operated the Safecrest Fund:

- (a) solely as a conduit to enable the indirect investment of scheme property of the Generator Fund in shares of AG Financial, the parent company of its fund manager, AGF Funds Management; and
- (b) in a way that concealed the true destination of that investment in the books and records of the Safecrest Fund,

in circumstances where AAM:

- (c) had itself recognised that those purchases at least potentially involved a conflict of interest; and
- (d) had recorded its intention to resolve the conflict by “disclosure and monitoring”.

ASIC refers to paragraphs 88 and 102 above.

121. By reason of the matters referred to in paragraphs 119 and 120 above, AAM contravened s 912A(1)(a) of the Corporations Act:

- 121.1 between 20 and 21 March 2013, in connection with the off-market purchases from Peter Spann for and on behalf of the Canton Fund, the Worberg Global Fund and the Advantage Fund, as referred to in paragraphs 56.1 to 56.3 above;
- 121.2 on or around 30 May 2013, in connection with the placement for and on behalf of the Advantage Fund, as referred to in paragraph 74 above;
- 121.3 on 3 July 2013, in connection with the on-market purchase for and on behalf of the Safecrest Fund, as referred to in paragraph 79 above;
- 121.4 on 4 July 2013, in connection with the on-market purchase for and on behalf of the Safecrest Fund, as referred to in paragraph 80 above;
- 121.5 on or around 12 July 2013, in connection with the rights issue for and on behalf of the Advantage, Canton and Worberg Global Funds, as referred to at paragraphs 81.1 to 81.3 above;
- 121.6 on or around 19 July 2013, in connection with the shortfall allocation for and on behalf of the Canton, Worberg Global and Safecrest Funds, as referred to at paragraphs 83.1 to 83.3 above;
- 121.7 on 1 August 2013, in connection with the off-market purchase for and on behalf of the Safecrest Fund, as referred to in paragraph 87 above;
- 121.8 between 1 July and 31 December 2013, by its operation of the Safecrest Fund, as referred to in paragraph 120.1 above.

B.4 Takeover and substantial shareholder notice contraventions: ss 606 and 671B

122. By reason of the increase in AAM's voting power in AG Financial from zero to above 20% referred to in paragraph 57 above, AAM contravened s 606(1) of the Corporations Act between 20 and 21 March 2013.
123. By reason of the matters referred to in paragraphs 57, 63 and 64 above:
- 123.1 the 5 April notices did not give the information required by s 671B(3) of the Corporations Act, and were not given within 2 business days of AAM becoming aware of the information; and
- 123.2 AAM contravened s 671B(1) of the Corporations Act between 26 March and 5 April 2013.
124. By reason of the increase in AAM's voting power in AG Financial above 20% referred to in paragraph 75 above, AAM contravened s 606(1) of the Corporations Act on 30 May 2013.
125. By reason of the failure to lodge a substantial shareholding notice referred to in paragraph 76 above, AAM contravened s 671B(1) of the Corporations Act on or around 3 June 2013.
126. By reason of the increase in AAM's voting power in AG Financial above 20% referred to in paragraph 89 above, AAM contravened s 606(1) of the Corporations Act between 24 June and 2 August 2013.
127. By reason of the matters referred to in paragraphs 89 to 92 above:
- 127.1 the 6 August notices did not give the information required by s 671B(3) of the Corporations Act, and were not given within 2 business days of AAM becoming aware of the information; and
- 127.2 AAM contravened s 671B(1) of the Corporations Act between 6 July and 6 August 2013.

128. On 16 December 2014, AAM was convicted of offences under ss 606(1) and 671B(1) of the Corporations Act in respect of the contraventions alleged at paragraphs 122 to 127 above.

Particulars

Convictions recorded on charges 1-6 in case number E14033700 in the Magistrates' Court of Victoria at Melbourne.

C. Contraventions by Bridge Global Securities

C.1 Cross-investment of scheme property of the Emergent and Maximiser Funds into the Advantage Fund: s 208 (as modified)

129. Each of the investments by the Emergent and Maximiser Funds into the Advantage Fund, as referred to in paragraphs 67.1, 67.3 and 78.2 above, involved the giving of a financial benefit:

- 129.1 by Bridge Global Securities, as agent of Fundhost, which was the responsible entity of the Emergent and Maximiser Funds;

Particulars of agency

Pursuant to BGS's appointment as investment sub-manager of the Emergent and Maximiser Funds, BGS was able to make investments out of the scheme property of those funds on behalf of Fundhost as the responsible entity for, and legal owner of the scheme property of, those funds.

ASIC refers to paragraph 59 above and the particulars thereto.

- 129.2 out of the scheme property of the Emergent and Maximiser Funds; and

- 129.3 to AAM, in its capacity as responsible entity of the Advantage Fund.

Particulars of financial benefit

Each investment involved the payment of funds to AAM in its capacity as responsible entity of the Advantage Fund.

130. At all relevant times, AAM was a related party of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 109.2 above.

131. The giving of each of those financial benefits was not the subject of an approval of the members of the Emergent or Maximiser Funds (as applicable) obtained in accordance with ss 217-227 of the Corporations Act.
132. By reason of the matters referred to in paragraphs 129 to 131 above, Bridge Global Securities contravened s 208(1) of the Corporations Act (as modified by s 601LC):
- 132.1 on 1 May 2013, by the investment of scheme property of the Emergent Fund referred to in paragraph 67.1 above;
- 132.2 on 1 May 2013, by the investment of scheme property of the Maximiser Fund referred to in paragraph 67.3 above; and
- 132.3 between 1 and 2 July 2013, by the investment of scheme property of the Maximiser Fund referred to in paragraph 78.2 above.
133. Each of Rowles and Dempsey failed to take reasonable steps to prevent each of Bridge Global Securities' contraventions of s 208(1) of the Corporations Act (as modified by s 601LC):
- 133.1 by the investment of scheme property of the Emergent Fund on 1 May 2013, referred to in paragraph 132.1 above;
- 133.2 by the investment of scheme property of the Maximiser Fund on 1 May 2013, referred to in paragraph 132.2 above; and
- 133.3 by the investment of scheme property of the Maximiser Fund between 1 and 2 July 2013, referred to in paragraph 132.3 above.

Particulars

Rowles and Dempsey should reasonably each have ensured that Bridge Global Securities obtained the approval of members of the Emergent or Maximiser Fund (as applicable) in accordance with ss 217-227 of the Corporations Act.

C.2 Cross-investment of scheme property of the Maximiser Fund into the Canton Fund: s 208 (as modified)

134. The investment by the Maximiser Fund into the Canton Fund referred to at paragraph 86 above involved the giving of a financial benefit:

134.1 by Bridge Global Securities, as agent of Fundhost, which was the responsible entity of the Maximiser Fund;

Particulars of agency

ASIC repeats the particulars to paragraph 129.1 above.

134.2 out of the scheme property of the Maximiser Fund; and

134.3 to AAM, in its capacity as trustee of the Canton Fund.

Particulars of financial benefit

The investment involved the payment of funds to AAM in its capacity as trustee of the Canton Fund.

135. At all relevant times, AAM was a related party of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 109.2 above.

136. The giving of that financial benefit was not the subject of an approval of the members of the Maximiser Fund obtained in accordance with ss 217-227 of the Corporations Act.

137. By reason of the matters referred to in paragraphs 134 to 136 above, Bridge Global Securities contravened s 208(1) of the Corporations Act (as modified by s 601LC) on 1 August 2013, by the investment of scheme property of the Maximiser Fund referred to in paragraph 86 above.

138. Each of Rowles and Dempsey failed to take reasonable steps to prevent Bridge Global Securities' contravention of s 208(1) of the Corporations Act (as modified by s 601LC) on 1 August 2013, as alleged in paragraph 137 above.

Particulars

Rowles and Dempsey should reasonably each have ensured that Bridge Global Securities obtained the approval of members of the Maximiser Fund in accordance with ss 217-227 of the Corporations Act.

C.3 Cross-investment of scheme property of the Emergent and Maximiser Funds into the Worberg Global Fund: s 208 (as modified)

139. Each of the investments by the Emergent and Maximiser Funds into the Worberg Global Fund, as referred to in paragraphs 67.2, 67.4 and 78.3 above involved the giving of a financial benefit:

139.1 by BGS, as agent of Fundhost, which was the responsible entity of the Emergent and Maximiser Funds;

Particulars of agency

ASIC repeats the particulars to paragraph 129.1 above.

139.2 out of the scheme property of the Emergent and Maximiser Funds; and

139.3 to AAM, in its capacity as trustee of the Worberg Global Fund.

Particulars of financial benefit

Each investment involved the payment of funds to AAM in its capacity as trustee of the Worberg Global Fund.

140. At all relevant times, AAM was a related party of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 109.2 above.

141. The giving of each of those financial benefits was not the subject of an approval of the members of the Emergent and Maximiser Funds (as applicable) obtained in accordance with ss 217-227 of the Corporations Act.

142. By reason of the matters referred to in paragraphs 139 to 141 above, Bridge Global Securities contravened s 208(1) of the Corporations Act (as modified by s 601LC):

142.1 on 1 May 2013, by the investment of scheme property of the Emergent Fund referred to in paragraph 67.2 above;

142.2 on 1 May 2013, by the investment of scheme property of the Maximiser Fund referred to in paragraph 67.4 above; and

142.3 between 1 and 2 July 2013, by the investment of scheme property of the Maximiser Fund referred to in paragraph 78.3 above.

143. Each of Rowles and Dempsey failed to take reasonable steps to prevent each of Bridge Global Securities' contraventions of s 208(1) of the Corporations Act (as modified by s 601LC):

143.1 on 1 May 2013, by the investment of scheme property of the Emergent Fund referred to in paragraph 142.1 above;

143.2 on 1 May 2013, by the investment of scheme property of the Maximiser Fund referred to in paragraph 142.2 above; and

143.3 between 1 and 2 July 2013, by the investment of scheme property of the Maximiser Fund referred to in paragraph 142.3 above.

Particulars

ASIC repeats the particulars to paragraph 133 above.

C.4 Cross-investment of scheme property of the Generator Fund into the Safecrest Fund: s 208 (as modified)

144. Each of the investments by the Generator Fund into the Safecrest Fund, as referred to in paragraphs 78.1 and 88 above involved the giving of a financial benefit:

144.1 by Bridge Global Securities, as agent of Fundhost, which was the responsible entity of the Generator Fund;

Particulars of agency

ASIC repeats the particulars to paragraph 129.1 above.

144.2 out of the scheme property of the Generator Fund; and

144.3 to AAM, in its capacity as trustee of the Safecrest Fund.

Particulars of financial benefit

Each investment involved the payment of funds to AAM in its capacity as trustee of the Safecrest Fund.

145. At all relevant times, AAM was a related party of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 109.2 above.

146. The giving of each of those financial benefits was not the subject of an approval of the members of the Generator Fund obtained in accordance with ss 217-227 of the Corporations Act.
147. By reason of the matters referred to in paragraphs 144 to 146 above, Bridge Global Securities contravened s 208(1) of the Corporations Act (as modified by s 601LC):
- 147.1 between 1 and 2 July 2013, by the investment of scheme property of the Generator Fund referred to in paragraph 78.1 above; and
 - 147.2 on 2 August 2013, by the investment of scheme property of the Generator Fund referred to in paragraph 88 above.
148. Each of Rowles and Dempsey failed to take reasonable steps to prevent each of Bridge Global Securities' contraventions of s 208(1) of the Corporations Act (as modified by s 601LC):
- 148.1 between 1 and 2 July 2013, by the investment of scheme property of the Generator Fund referred to in paragraph 147.1 above; and
 - 148.2 on 2 August 2013, by the investment of scheme property of the Generator Fund referred to in paragraph 147.2 above.

Particulars

Rowles and Dempsey should reasonably each have ensured that Bridge Global Securities obtained the approval of members of the Maximiser Fund in accordance with ss 217-227 of the Corporations Act.

D. Contraventions by Rowles

D.1 Direct and indirect use of scheme property of the Advantage Fund to acquire shares in AG Financial: ss 601FC, 601FD

149. Rowles authorised, procured, or was otherwise concerned in or party to, each of the following purchases of shares in AG Financial by AAM for and on behalf of the Advantage Fund:
- 149.1 the off-market purchase from Peter Spann on 20 or 21 March 2013 referred to in paragraph 56.3 above;
 - 149.2 the placement on or around 30 May 2013 referred to in paragraph 74 above; and

- 149.3 the rights issue on or around 12 July 2013 referred to in paragraph 81.1 above.

Particulars

ASIC refers to paragraph 11.1(a) above. Further:

- (a) as to the off-market purchase from Peter Spann on 20 or 21 March 2013, ASIC refers to paragraphs 55 and 56.6 above; and
- (b) as to the rights issue on or around 12 July 2013, ASIC refers to paragraphs 83.5-83.8 above.

150. Further, Rowles authorised, procured, or was otherwise concerned in or party to, each of the following purchases of shares in AG Financial by AAM for and on behalf of the Worberg Global Fund:

- 150.1 the off-market purchase from Peter Spann on 20 or 21 March 2013 referred to in paragraph 56.2 above;
- 150.2 the rights issue on or around 12 July 2013, referred to in paragraph 81.3 above; and
- 150.3 by the shortfall allocation on or around 19 July 2013, referred to in paragraph 83.2 above.

Particulars

ASIC repeats the particulars to paragraph 149 above.

151. In authorising, procuring or otherwise being concerned in or party to each of the purchases by AAM for and on behalf of the Advantage Fund referred to in paragraphs 149.1 to 149.3 above, Rowles:

- 151.1 failed to act in the best interests of the members of the Advantage Fund and, in circumstances where there was a conflict between the interests of the members of the Advantage Fund and AAM's own interests, failed to give priority to the members' interests;

Particulars

ASIC repeats the particulars to paragraph 113.2 above.

151.2 alternatively, made improper use of his position as an officer to gain an advantage for AAM.

Particulars

ASIC repeats the particulars to paragraph 113.2 above.

152. By reason of the matters referred to in paragraphs 149 and 151 above, Rowles contravened s 601FD(1)(c), and/or s 601FD(1)(e), of the Corporations Act:

152.1 on 20 or 21 March 2013, in connection with the off-market purchase from Peter Spann referred to in paragraphs 56.2 and 56.3 above;

152.2 on or around 30 May 2013, in connection with the placement referred to in paragraph 74 above; and

152.3 on or around 12 July 2013, in connection with acquisitions pursuant to the rights issue referred to in paragraph 81.1 above.

153. Further or alternatively, at the time of each of the purchases referred to in paragraphs 149 and 150 above, Rowles knew:

153.1 of the making of each purchase;

153.2 that each purchase involved a payment:

(a) by AAM, being the responsible entity of the Advantage Fund;

(b) of money out of the Advantage Fund or the Worberg Global Fund (as applicable);

(c) to AG Financial, in the case of the purchases referred to in paragraphs 149.2, 149.3, 150.2 and 150.3 above;

(d) that would confer a benefit on:

(i) AAM, in each case; and

(ii) Bridge Global Securities, in the case of the purchase referred to in paragraph 149.1 above;

153.3 that AAM controlled AG Financial from 21 March 2013;

153.4 that he and Dempsey were the only two directors of Bridge Global Securities;

- 153.5 in respect of each of the purchases made by AAM as trustee of the Worberg Global Fund, referred to in paragraphs 149.1-149.3 above, that the Advantage Fund held substantial unitholdings in the Worberg Global Fund; and
- 153.6 that AAM made each of those purchases in furtherance of AAM's own interest in realising the commercial benefits of a merger of the Avestra and AG Financial groups.

Particulars

Rowles' knowledge of those matters is to be inferred from:

- (a) the matters referred to in paragraphs 9.2(b), 9.3(a)-(c), 9.4, 10.3(a), 11.1(a), 11.2, 55, 56.6, 68, 69, 70.1, 71 and 83.5-83.8 above;
- (b) Rowles having signed the substantial shareholder notices referred to in paragraph 63 above, on 21 and 22 March 2013; and
- (c) Rowles having signed each of the investment management agreements referred to in paragraph 59 above, on behalf of Bridge Global Securities.

154. By reason of the matters referred to in paragraphs 149, 150 and 153 above, Rowles was involved in AAM's contraventions of s 208(1), and/or AAM's contraventions of s 601FC(1)(c) of the Corporations Act:

154.1 on 20 or 21 March 2013, alleged in paragraphs 112.1, 114.1 and 118.1 above;

154.2 on or around 30 May 2013, alleged in paragraphs 112.2 and 114.2 above;

154.3 on or around 12 July 2013, alleged in paragraphs 112.3, 114.3 and 118.2 above; and

154.4 on or around 19 July 2013, alleged in paragraph 118.3 above,

and thereby contravened s 209(2) (as modified by s 601LA) and/or s 601FC(5) of the Corporations Act on each occasion.

155. In the further alternative, in relation to each of AAM's contraventions of s 208(1), s 601FC(1)(c), and/or s 912A(1)(a) of the Corporations Act:

155.1 on 20 or 21 March 2013, alleged in paragraphs 112.1, 114.1 and 121.1 above;

155.2 on or around 30 May 2013, alleged in paragraphs 112.2, 114.2 and 121.2 above;

- 155.3 on 3 July 2013, alleged in paragraph 121.3 above;
- 155.4 on 4 July 2013, alleged in paragraph 121.4 above;
- 155.5 on or around 12 July 2013, alleged in paragraphs 112.3, 114.3, 118.2 and 121.5 above;
- 155.6 on or around 19 July 2013, alleged in paragraphs 118.3 and 121.6 above;
- 155.7 on 1 August 2013, alleged in paragraph 121.7 above; and
- 155.8 between 1 July and 31 December 2013, alleged in paragraph 121.8 above,

Rowles:

- 155.9 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position;
 - 155.10 alternatively, failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM complied with s 208(1) (as modified by s 601LC) and/or s 601FC(1)(c) of the Corporations Act,
- and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) obtained approval of the members of the Advantage Fund in accordance with ss 217-227 of the Corporations Act;
- (b) alternatively, disclosed to members of the Advantage, Canton and Worberg Global Funds that AAM proposed to use scheme or trust property of those funds to pursue the commercial benefits for AAM that it hoped to realise from obtaining a majority interest in AG Financial, and explained to the fund members that the proposed acquisition of shares in AG Financial involved a conflict or potential conflict between AAM's own interests and their interests as fund members; and
- (c) alternatively, did not make the purchases out of scheme or trust property of the Advantage, Canton and Worberg Global Funds.

D.2 Investment of scheme property of the Emergent, Generator and Maximiser Funds into the Advantage, Canton, Worberg Global and Safecrest Funds: s 209 (as modified)

a) Cross-investments into the Advantage Fund

156. Rowles authorised, procured, or was otherwise concerned in or party to, each of the following investments of scheme property of the Emergent and Maximiser Funds into the Advantage Fund:

- 156.1 the investment of scheme property of the Emergent Fund on 1 May 2013 referred to in paragraph 67.1 above;
- 156.2 the investment of scheme property of the Maximiser Fund on 1 May 2013 referred to in paragraph 67.3 above; and
- 156.3 the investment of scheme property of the Maximiser Fund between 1 and 2 July 2013 referred to in paragraph 78.2 above.

Particulars

ASIC refers to paragraph 11.3 above.

157. At the time of each investment, Rowles knew:

- 157.1 of the making of the investment;
- 157.2 that the investment involved a payment:
 - (a) by Bridge Global Securities, as agent for Fundhost;
 - (b) out of the scheme property of the Emergent or Maximiser Fund (as applicable);
 - (c) to AAM, in its capacity as responsible entity of the Advantage Fund; and
- 157.3 that he and Dempsey were the only two directors of Bridge Global Securities.

Particulars

Rowles' knowledge of those matters is to be inferred from:

- (a) the matters referred to in paragraphs 9.2(b), 9.3(a)-(c), 9.4, 9.5, 10.3(a), 11.1, 11.2, 11.3, 55, 56.6, 70.1 and 71 above; and

- (b) Rowles having signed each of the investment management agreements referred to in paragraph 59 above, on behalf of Bridge Global Securities.

158. By reason of the matters referred to in paragraphs 156 and 157 above, Rowles was involved in Bridge Global Securities' contraventions of s 208(1) of the Corporations Act:

158.1 on 1 May 2013, as alleged in paragraph 132.1 above;

158.2 on 1 May 2013, as alleged in paragraph 132.2 above; and

158.3 between 1 and 2 July 2013, as alleged in paragraph 132.3 above,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

b) *Cross-investment into the Canton Fund*

159. Rowles authorised, procured, or was otherwise concerned in or party to, the investment of scheme property of the Maximiser Fund into the Canton Fund on 1 August 2013 referred to in paragraph 86 above.

Particulars

ASIC refers to paragraph 11.3 above.

160. At the time of each investment, Rowles knew:

160.1 of the making of the investment;

160.2 that the investment involved a payment:

(a) by Bridge Global Securities, as agent for Fundhost;

(b) out of the scheme property of the Maximiser Fund;

(c) to AAM, in its capacity as trustee of the Canton Fund; and

160.3 that he and Dempsey were the only two directors of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 157 above.

161. By reason of the matters referred to in paragraphs 159 and 160 above, Rowles was involved in Bridge Global Securities' contravention of s 208(1) of the Corporations Act

(as modified by s 601LC) alleged in paragraph 137 above, and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on 1 August 2013.

c) *Cross-investments into the Worberg Global Fund*

162. Rowles authorised, procured, or was otherwise concerned in or party to, each of the following investments of scheme property of the Emergent and Maximiser Funds into the Worberg Global Fund:

162.1 the investment of scheme property of the Emergent Fund on 1 May 2013 referred to in paragraph 67.2 above;

162.2 the investment of scheme property of the Maximiser Fund on 1 May 2013 referred to in paragraph 67.4 above; and

162.3 by the investment of scheme property of the Maximiser Fund between 1 and 2 July 2013 referred to in paragraph 78.3 above.

Particulars

ASIC refers to paragraph 11.3 above.

163. At the time of each investment, Rowles knew:

163.1 of the making of the investment;

163.2 that the investment involved a payment:

(a) by Bridge Global Securities, as agent for Fundhost;

(b) out of the scheme property of the Emergent or Maximiser Fund (as applicable);

(c) to AAM, in its capacity as trustee of the Worberg Global Fund; and

163.3 that he and Dempsey were the only two directors of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 157 above.

164. By reason of the matters referred to in paragraphs 162 and 163 above, Rowles was involved in Bridge Global Securities' contraventions of s 208(1) of the Corporations Act (as modified by s 601LC):

164.1 on 1 May 2013, as alleged in paragraph 142.1 above;

164.2 on 1 May 2013, as alleged in paragraph 142.2 above; and

164.3 between 1 and 2 July 2013, as alleged in paragraph 142.3 above,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

d) Cross-investments into the Safecrest Fund

165. Rowles authorised, procured, or was otherwise concerned in or party to, each of the following investments of scheme property of the Generator Fund into the Safecrest Fund:

165.1 the investment of scheme property of the Generator Fund between 1 and 2 July 2013 referred to in paragraph 78.1 above; and

165.2 the investment of scheme property of the Generator Fund on 2 August 2013 referred to in paragraph 88 above.

Particulars

ASIC refers to paragraph 11.3 above.

166. At the time of each investment, Rowles knew:

166.1 of the making of the investment;

166.2 that the investment involved a payment:

(a) by Bridge Global Securities, as agent for Fundhost;

(b) out of the scheme property of the Generator Fund;

(c) to AAM, in its capacity as trustee of the Safecrest Fund;

166.3 that he and Dempsey were the only two directors of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 157 above.

167. By reason of the matters referred to in paragraphs 165 and 166 above, Rowles was involved in Bridge Global Securities' contraventions of s 208(1) of the Corporations Act (as modified by s 601LC):

167.1 between 1 and 2 July 2013, as alleged in paragraph 147.1 above;

167.2 on 2 August 2013, as alleged in paragraph 147.2 above,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

D.3 Substantial shareholder notice contraventions:

a) Making or authorising misleading statements to ASIC: s 1308(2), (4)

168. Each of the 5 April notices referred to in paragraph 63 above omitted a matter without which it was misleading in a material respect, in that it omitted to disclose the voting power in AG Financial obtained by AAM as a consequence of the share purchases on 20 and 21 March 2013 referred to in paragraphs 56.1 to 56.3 above.

Particulars

ASIC refers to paragraph 64 above.

169. Rowles made, or authorised the making of, the statements contained in the 5 April notices.

Particulars

Each of the 5 April notices was signed by Rowles.

170. By reason of the matters referred to in paragraphs 168 and 169 above, Rowles made, or authorised the making of, statements in a document submitted to ASIC, omitting a matter or thing:

170.1 without which the document was to Rowles's knowledge misleading in a material respect;

Particulars

- (a) Rowles knew that, as a consequence of the share purchases on 20 and 21 March 2013, AAM held more than 20% of the voting shares of AG Financial through the Advantage, Canton and Worberg Global Funds.
- (b) Rowles's knowledge is to be inferred from:
 - (i) the matters referred to in paragraphs 55 and 56.6 above; and
 - (ii) Rowles having signed the substantial shareholder notices referred to in paragraph 63 above, on 21 and 22 March 2013.

170.2 alternatively, without having taken reasonable steps to ensure that the document did not omit any matter or thing without which the document would be misleading in a material respect.

Particulars

Before completing, signing and/or submitting the 5 April notices, Rowles should reasonably have sought advice whether AAM's interest in the voting power of AG Financial was required to be disclosed.

171. Accordingly, Rowles contravened s 1308(2), alternatively s 1308(4), of the Corporations Act on or around 5 April 2013.

b) Lack of care and diligence: s 601FD(1)(b), (1)(f)(i)

172. Further or alternatively, in relation to AAM's contraventions of s 606(1) or s 671B(1) of the Corporations Act:

172.1 on 20 and 21 March 2013, as alleged at paragraph 122 above;

172.2 between 26 March and 5 April 2013, as alleged at paragraph 123 above;

172.3 on 30 May 2013, as alleged at paragraph 124 above;

172.4 on or around 3 June 2013, as alleged at paragraph 125 above;

172.5 between 24 June and 2 August 2013, as alleged at paragraph 126 above; and

172.6 between 6 July and 6 August 2013, as alleged at paragraph 127 above,

Rowles:

172.7 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position;

172.8 alternatively, failed to take all steps that a reasonable person would take, if they were in Rowles' position, to ensure that AAM complied with s 606(1) and/or s 671B(1) of the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) disclosed its relevant interests in the voting power of AG Financial in the substantial shareholder notices that it filed in relation to the purchases on behalf of the Advantage, Canton, Worberg Global and Safecrest Funds; and
- (b) complied with its obligations to file substantial shareholder notices within 2 business days after the relevant acquisitions.

D.4 Breaches of director's duties: s 180(1)

a) As director of AAM

173. Rowles:

173.1 authorised, procured or was concerned in or party to;

173.2 further or alternatively, failed to take reasonable steps to prevent AAM from engaging in,

the conduct upon which ASIC alleges that AAM committed the contraventions alleged in paragraphs 112.1-112.3, 114.1-114.3, 118.1-118.3, 121.1-121.8, 122, 123.2, 124, 125, 126 and 127.2 above.

Particulars

- (i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 149, 150 and 169 above.
- (ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 155, 170.2 and 172 above.

174. AAM's commission of those contraventions, alternatively its engagement in that conduct, caused actual damage to AAM, in that ASIC obtained orders:

174.1 for the appointment of provisional liquidators to AAM; and

174.2 for AAM to be wound up on the just and equitable ground,

by reference to those alleged contraventions and/or that conduct.

175. Further, as a consequence of the contraventions committed by AAM, it was reasonably foreseeable that AAM may become liable:

175.1 to compensate members of the Advantage Fund and/or any of the AG Schemes under s 1317H of the Corporations Act;

175.2 further or alternatively, in tort to members of any of the registered or unregistered schemes of which AAM was responsible entity or trustee.

176. By reason of the matters referred to in paragraphs 173 to 175 above, between 20 March 2013 and 31 December 2013, Rowles:

176.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in AAM's circumstances and occupied the office held by Rowles, and had the same responsibilities within the corporation as Rowles; and

176.2 thereby contravened s 180(1) of the Corporations Act.

b) As director of Bridge Global Securities

177. Rowles:

177.1 authorised, procured or was concerned in or party to;

177.2 further or alternatively, failed to take reasonable steps to prevent Bridge Global Securities from engaging in,

the conduct upon which ASIC alleges that Bridge Global Securities committed the contraventions alleged in paragraphs 132.1-132.3, 137, 142.1-142.3 and 147.1-147.2 above.

Particulars

- (i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 156, 159, 162 and 165 above.
- (ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 133, 138, 143 and 148 above.

178. At all relevant times, Bridge Global Securities owed a duty of care in tort to members of each fund for which it was appointed or acted as investment manager or fund manager.

179. As a consequence of the contraventions and/or the conduct referred to in paragraph 177 above:

179.1 Bridge Global Securities breached the duties of care that it owed to members of each of the Accelerator, Canton, Worberg Global and Safecrest Funds and each of the AG Schemes (as applicable); and

179.2 it was reasonably foreseeable that Bridge Global Securities would become liable in tort to the members of each fund.

180. By reason of the matters referred to in paragraphs 177 to 179 above, between 1 May 2013 and 2 August 2013, Rowles:

180.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in Bridge Global Securities' circumstances and occupied the office held by Rowles, and had the same responsibilities within the corporation as Rowles; and

180.2 thereby contravened s 180(1) of the Corporations Act.

E. Contraventions by Dempsey

E.1 Direct and indirect use of scheme property of the Advantage Fund to acquire shares in AG Financial: ss 601FC, 601FD

181. Dempsey authorised, procured, or was otherwise concerned in or party to, each of the following purchases of shares in AG Financial by AAM for and on behalf of the Advantage Fund:

- 181.1 the off-market purchase from Peter Spann on 20 or 21 March 2013 referred to in paragraph 56.3 above;
- 181.2 the placement on or around 30 May 2013 referred to in paragraph 74 above; and
- 181.3 the rights issue on or around 12 July 2013 referred to in paragraph 81.1 above.

Particulars

ASIC refers to paragraph 15 above. Further:

- (a) as to the off-market purchase from Peter Spann on 20 or 21 March 2013, ASIC refers to paragraphs 55 and 56.5 above; and
- (b) as to the rights issue on or around 12 July 2013, ASIC refers to paragraphs 82 and 83.4 above.

182. Further, Dempsey authorised, procured, or was otherwise concerned in or party to, each of the following purchases of shares in AG Financial by AAM for and on behalf of the Worberg Global Fund:

- 182.1 the off-market purchase from Peter Spann on 20 or 21 March 2013 referred to in paragraph 56.2 above;
- 182.2 the rights issue on or around 12 July 2013, referred to in paragraph 81.3 above;
- 182.3 by the shortfall allocation on or around 19 July 2013, referred to in paragraph 83.2 above.

Particulars

ASIC repeats the particulars to paragraph 181 above.

183. In authorising, procuring or otherwise being concerned in or party to each of the purchases by AAM for and on behalf of the Advantage Fund referred to in paragraphs 181.1 to 181.3 above, Dempsey:

183.1 failed to act in the best interests of the members of the Advantage Fund and, in circumstances where there was a conflict between the interests of the members of the Advantage Fund and AAM's own interests, failed to give priority to the members' interests;

Particulars

ASIC repeats the particulars to paragraph 113.2 above.

183.2 alternatively, made improper use of his position as an officer to gain an advantage for AAM.

Particulars

ASIC repeats the particulars to paragraph 113.2 above.

184. By reason of the matters referred to in paragraphs 181 and 183 above, Dempsey contravened s 601FD(1)(c), and/or s 601FD(1)(e), of the Corporations Act:

184.1 on 20 or 21 March 2013, in connection with the off-market purchases from Peter Spann referred to in paragraphs 56.2 and 56.3 above;

184.2 on or around 30 May 2013, in connection with the placement referred to in paragraph 74 above; and

184.3 on or around 12 July 2013, in connection with acquisitions pursuant to the rights issue referred to in paragraph 81.1 above.

185. Further or alternatively, at the time of each of the purchases referred to in paragraphs 181 and 182 above, Dempsey knew:

185.1 of the making of each purchase;

185.2 that each purchase involved the payment:

(a) by AAM, being the responsible entity of the Advantage Fund;

(b) of money out of the Advantage Fund or the Worberg Global Fund (as applicable);

(c) to AG Financial, in the case of the purchases referred to in paragraphs 181.2, 181.3, 182.2 and 182.3 above;

(d) that would confer a benefit on:

(i) AAM, in each case; and

(ii) Bridge Global Securities, in the case of the purchases referred to in paragraph 181.1 and 182.1 above;

185.3 that AAM controlled AG Financial from 21 March 2013;

185.4 that he and Rowles were the only two directors of Bridge Global Securities;

185.5 in respect of each of the purchases made by AAM as trustee of the Worberg Global Fund, referred to in paragraphs 182.1-182.3 above, Dempsey knew that the Advantage Fund held substantial unitholdings in the Worberg Global Fund; and

185.6 that AAM made each of those purchases in furtherance of AAM's own interest in realising the commercial benefits of a merger of the Avestra and AG Financial groups.

Particulars

Dempsey's knowledge of those matters is to be inferred from:

(a) the matters referred to in paragraphs 9.2(b), 9.3(a)-(c), 9.4, 14.4, 15.1, 15.2, 15.3, 55, 56.5, 71, 77.5, 82 and 83.4 above; and

(b) Dempsey having been a recipient of the emails referred to in paragraph 70 above.

186. By reason of the referred matters referred to in paragraphs 181, 182 and 185 above, Dempsey was involved in AAM's contraventions of s 208(1), and/or s 601FC(1)(c), of the Corporations Act:

186.1 on 20 or 21 March 2013, alleged in paragraphs 112.1, 114.1 and 118.1 above;

186.2 on or around 30 May 2013, alleged in paragraphs 112.2 and 114.2 above;

186.3 on or around 12 July 2013, alleged in paragraphs 112.3, 114.3 and 118.2 above; and

186.4 on or around 19 July 2013, alleged in paragraph 118.3 above,

and thereby contravened s 209(2) (as modified by s 601LA) and/or s 601FC(5) of the Corporations Act on each occasion.

187. In the further alternative, in relation to each of AAM's contraventions of s 208(1), and/or s 601FC(1)(c), and/or s 912A(1)(a) of the Corporations Act:

187.1 on 20 or 21 March 2013, alleged in paragraphs 112.1, 114.1 and 121.1 above;

187.2 on or around 30 May 2013, alleged in paragraphs 112.2, 114.2 and 121.2 above;

187.3 on 3 July 2013, alleged in paragraph 121.3 above;

187.4 on 4 July 2013, alleged in paragraph 121.4 above;

187.5 on or around 12 July 2013, alleged in paragraphs 112.3, 114.3, 118.2 and 121.5 above;

187.6 on or around 19 July 2013, alleged in paragraphs 118.3 and 121.6 above;

187.7 on 1 August 2013, alleged in paragraph 121.7 above; and

187.8 between 1 July and 31 December 2013, alleged in paragraph 121.8 above,

Dempsey:

187.9 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;

187.10 alternatively, failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM complied with section 208(1) (as modified by s 601LC) and/or 601FC(1)(c) of the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

(a) obtained approval of the members of the Advantage Fund in accordance with ss 217-227 of the Corporations Act;

(b) alternatively, disclosed to members of the Advantage, Canton and Worberg Global Funds that AAM proposed to use scheme or trust

property of those funds to pursue the commercial benefits for AAM that it hoped to realise from obtaining a majority interest in AG Financial, and explained to the fund members that the proposed acquisition of shares in AG Financial involved a conflict or potential conflict between AAM's own interests and their interests as fund members; and

- (c) alternatively, did not make the purchases out of scheme or trust property of the Advantage, Canton and Worberg Global Funds.

E.2 Investment of scheme property of the Emergent, Generator and Maximiser Funds into the Advantage, Canton, Worberg Global and Safecrest Funds: s 209 (as modified)

a) Cross-investments into the Advantage Fund

188. Dempsey authorised, procured, or was otherwise concerned in or party to, each of the following investments of scheme property of the Emergent and Maximiser Funds into the Advantage Fund:

188.1 the investment of scheme property of the Emergent Fund on 1 May 2013 referred to in paragraph 67.1 above;

188.2 the investment of scheme property of the Maximiser Fund on 1 May 2013 referred to in paragraph 67.3 above; and

188.3 the investment of scheme property of the Maximiser Fund between 1 and 2 July 2013 referred to in paragraph 78.2 above.

Particulars

ASIC refers to paragraph 15 above.

189. At the time of each investment, Dempsey knew:

189.1 of the making of the investment;

189.2 that the investment involved a payment:

(a) by Bridge Global Securities, as agent for Fundhost;

(b) of money out of the Emergent or Maximiser Fund (as applicable);

(c) to AAM, in its capacity as responsible entity of the Advantage Fund;

189.3 that he and Rowles were the only two directors of Bridge Global Securities.

Particulars

Dempsey's knowledge of those matters is to be inferred from the matters referred to in paragraphs 9.2(b), 9.3(a)-(c), 9.4, 14.4, 15.1, 15.2, 15.3, 55, 71, and 77.5 above.

190. By reason of the matters referred to in paragraphs 188 to 189 above, Dempsey was involved in Bridge Global Securities' contraventions of s 208(1) of the Corporations Act:

190.1 on 1 May 2013, as alleged in paragraph 132.1 above;

190.2 on 1 May 2013, as alleged in paragraph 132.2 above; and

190.3 between 1 and 2 July 2013, as alleged in paragraph 132.3 above,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

b) *Cross-investment into the Canton Fund*

191. Dempsey authorised, procured, or was otherwise concerned in or party to, the investment of scheme property of the Maximiser Fund into the Canton Fund on 1 August 2013 referred to in paragraph 86 above.

Particulars

ASIC refers to paragraph 15 above.

192. At the time of each investment, Dempsey knew:

192.1 of the making of the investment;

192.2 that the investment involved a payment:

(a) by Bridge Global Securities, as agent for Fundhost;

(b) of money out of the Maximiser Fund;

(c) to AAM, in its capacity as trustee of the Canton Fund;

192.3 that he and Rowles were the only two directors of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 189 above.

193. By reason of the matters referred to in paragraphs 191 to 192 above, Dempsey was involved in Bridge Global Securities' contravention of s 208(1) of the Corporations Act (as modified by s 601LC) on 1 August 2013 alleged in paragraph 137 above, and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA).

c) *Cross-investments into the Worberg Global Fund*

194. Dempsey authorised, procured, or was otherwise concerned in or party to, each of the following investments of scheme property of the Emergent and Maximiser Funds into the Worberg Global Fund:

194.1 the investment of scheme property of the Emergent Fund on 1 May 2013 referred to in paragraph 67.2 above;

194.2 the investment of scheme property of the Maximiser Fund on 1 May 2013 referred to in paragraph 67.4 above; and

194.3 by the investment of scheme property of the Maximiser Fund between 1 and 2 July 2013 referred to in paragraph 78.3 above.

Particulars

ASIC refers to paragraph 15 above.

195. At the time of each investment, Dempsey knew:

195.1 of the making of the investment;

195.2 that the investment involved a payment:

(a) by Bridge Global Securities, as agent for Fundhost;

(b) of money out of the Emergent or Maximiser Fund (as applicable);

(c) to AAM, in its capacity as trustee of the Worberg Global Fund;

195.3 that he and Rowles were the only two directors of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 189 above.

196. By reason of the matters referred to in paragraphs 194 to 195 above, Dempsey was involved in Bridge Global Securities' contraventions of s 208(1) of the Corporations Act (as modified by s 601LC):

196.1 on 1 May 2013, as alleged in paragraph 142.1 above;

196.2 on 1 May 2013, as alleged in paragraph 142.2 above; and

196.3 between 1 and 2 July 2013, as alleged in paragraph 142.3 above,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

d) *Cross-investments into the Safecrest Fund*

197. Dempsey authorised, procured, or was otherwise concerned in or party to, each of the following investments of scheme property of the Generator Fund into the Safecrest Fund:

197.1 the investment of scheme property of the Generator Fund between 1 and 2 July 2013 referred to in paragraph 78.1 above; and

197.2 the investment of scheme property of the Generator Fund on 2 August 2013 referred to in paragraph 88 above.

Particulars

ASIC refers to paragraph 15 above.

198. At the time of each investment, Dempsey knew:

198.1 of the making of the investment;

198.2 that the investment involved a payment:

(a) by Bridge Global Securities, as agent for Fundhost;

(b) of money out of the Generator Fund;

(c) to AAM, in its capacity as trustee of the Safecrest Fund;

198.3 that he and Rowles were the only two directors of Bridge Global Securities.

Particulars

ASIC repeats the particulars to paragraph 189 above.

199. By reason of the matters referred to in paragraphs 197 to 198 above, Dempsey was involved in Bridge Global Securities' contraventions of s 208(1) of the Corporations Act (as modified by s 601LC):

199.1 between 1 and 2 July 2013, as alleged in paragraph 147.1 above; and

199.2 on 2 August 2013, as alleged in paragraph 147.2 above,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

E.3 Substantial shareholder notice contraventions:

a) Making or authorising misleading statements to ASIC: s 1308

200. Each of the 6 August notices referred to in paragraph 91 above omitted a matter without which it was misleading in a material respect, in that it omitted to disclose the voting power in AG Financial obtained by AAM as a consequence of the share acquisitions referred to in paragraphs 79, 80, 81.1-81.3, 83.1-83.3 and 87 above.

Particulars

ASIC refers to paragraph 92 above.

201. Dempsey made, or authorised the making of, the statements contained in the 6 August notices.

Particulars

Each of the 6 August notices was signed by Dempsey.

202. By reason of the matters referred to in paragraphs 200 to 201 above, Dempsey made, or authorised the making of, statements in a document submitted to ASIC, omitting a matter or thing:

202.1 without which the document was to Dempsey's knowledge misleading in a material respect;

Particulars

Dempsey knew that AAM held more than 20% of the voting shares of AG Financial through the Advantage, Canton, Worberg Global and Safecrest Funds.

Dempsey's knowledge is to be inferred from Dempsey having signed the 6 August notices referred to in paragraph 91 above.

- 202.2 alternatively, without having taken reasonable steps to ensure that the document did not omit any matter or thing without which the document would be misleading in a material respect.

Particulars

Before completing, signing and/or submitting the 6 August notices, Dempsey should reasonably have sought advice whether AAM's interest in the voting power of AG Financial was required to be disclosed.

203. Accordingly, Dempsey contravened s 1308(2), alternatively s 1308(4), of the Corporations Act on or around 6 August 2013.

b) Lack of care and diligence: s 601FD(1)(b), (1)(f)(i)

204. Further, or alternatively, in relation to AAM's contraventions of s 606(1) or s 671B(1) of the Corporations Act:

- 204.1 on 20 and 21 March 2013, as alleged at paragraph 122 above;
- 204.2 between 26 March and 5 April 2013, as alleged at paragraph 123 above;
- 204.3 on 30 May 2013, as alleged at paragraph 124 above;
- 204.4 on or around 3 June 2013, as alleged at paragraph 125 above;
- 204.5 between 24 June and 2 August 2013, as alleged at paragraph 126 above; and
- 204.6 between 6 July and 6 August 2013, as alleged at paragraph 127 above,

Dempsey:

- 204.7 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;

204.8 alternatively, failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM complied with s 606(1) and/or s 671B(1) of the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

- (a) disclosed its relevant interests in the voting power of AAM in the substantial shareholder notices that it filed in relation to the purchases on behalf of the Advantage, Canton, Worberg Global and Safecrest Funds; and
- (b) complied with its obligations to file substantial shareholder notices within 2 business days after the relevant acquisitions.

E.4 Breaches of director's duties: s 180(1)

a) As director of AAM

205. Dempsey:

205.1 authorised, procured or was concerned in or party to;

205.2 further or alternatively, failed to take reasonable steps to prevent AAM from engaging in,

the conduct upon which ASIC alleges that AAM committed the contraventions alleged in paragraphs 112.1-112.3, 114.1-114.3, 118.1-118.3, 121.1-121.8, 122, 123.2, 124, 125, 126, and 127.2 above.

Particulars

- (i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 181, 182, 188 and 201 above.
- (ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 187, 202.2 and 204 above.

206. AAM's commission of those contraventions, alternatively its engagement in that conduct, caused actual damage to AAM, in that ASIC obtained orders:

206.1 for the appointment of provisional liquidators to AAM; and

206.2 for AAM to be wound up on the just and equitable ground,
by reference to those alleged contraventions and/or that conduct.

207. Further, as a consequence of the contraventions committed by AAM, it was reasonably foreseeable that AAM may become liable:

207.1 to compensate members of the Advantage Fund and/or any of the AG Schemes under s 1317H of the Corporations Act;

207.2 further or alternatively, in tort to members of any of the registered or unregistered schemes of which AAM was responsible entity or trustee.

208. By reason of the matters referred to in paragraphs 205 to 207 above, between 20 March 2013 and 31 December 2013, Dempsey:

208.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in AAM's circumstances and occupied the office held by Dempsey, and had the same responsibilities within the corporation as Dempsey; and

208.2 thereby contravened s 180(1) of the Corporations Act.

b) As director of Bridge Global Securities

209. Dempsey:

209.1 authorised, procured or was concerned in or party to;

209.2 further or alternatively, failed to take reasonable steps to prevent Bridge Global Securities from engaging in,

the conduct upon which ASIC alleges that Bridge Global Securities committed the contraventions alleged in paragraphs 132.1-132.3, 137, 142.1-142.3 and 147.1-147.2 above.

Particulars

- (i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 188, 191, 194 and 197 above.
- (ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 133, 138, 143 and 148 above.

210. At all relevant times, Bridge Global Securities owed a duty of care in tort to members of each fund for which it was appointed or acted as investment manager or fund manager.
211. As a consequence of the contraventions and/or the conduct referred to in paragraph 209 above:
- 211.1 Bridge Global Securities breached the duties of care that it owed to members of each of the Accelerator, Canton, Worberg Global and Safecrest Funds and each of the AG Schemes (as applicable); and
- 211.2 it was reasonably foreseeable that Bridge Global Securities would become liable in tort to the members of each fund.
212. By reason of the matters referred to in paragraphs 209 to 211 above, between 1 May 2013 and 2 August 2013, Dempsey:
- 212.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in Bridge Global Securities' circumstances and occupied the office held by Dempsey, and had the same responsibilities within the corporation as Dempsey; and
- 212.2 thereby contravened s 180(1) of the Corporations Act.

III. THE AVESTRA CREDIT FUND

A. Facts

A.1 *The loans to AAM*

213. Between 19 and 21 February 2014, cash investments into the Avestra Credit Fund were made from:

213.1 the Worberg Global Fund, in the amount of \$250,000; and

213.2 the Canton Fund, in the amount of \$200,000.

214. At all times between 19 and 21 February 2014:

214.1 scheme property of the Advantage, Emergent, Maximiser and Canton Funds was invested in the Worberg Global Fund; and

214.2 scheme property of the Maximiser Fund was invested in the Canton Fund.

215. On 27 February 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an loan agreement to lend \$100,000 to AAM in its personal capacity (the **1st AAM loan agreement**) without security.

Particulars

Loan agreement dated 27 February 2014, between AAM and AAM as trustee of the Avestra Credit Fund. A copy of the agreement is available for inspection on reasonable notice.

216. The funds lent to AAM under the 1st AAM loan agreement were drawn down by AAM on 27 February 2014.

217. On 3 March 2014, a further cash investment into the Avestra Credit Fund was made from the Worberg Global Fund, in the amount of \$675,000.

218. On 3 March 2014:

218.1 scheme property of the Advantage, Emergent, Maximiser and Canton Funds was invested in the Worberg Global Fund; and

218.2 scheme property of the Maximiser Fund was invested in the Canton Fund.

219. On 4 March 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an agreement to lend \$645,000 to AAM in its personal capacity (the **2nd AAM loan agreement**) without security.

Particulars

Loan agreement dated 4 March 2014, between AAM and AAM as trustee of the Avestra Credit Fund. A copy of the agreement is available for inspection on reasonable notice.

220. The funds lent to AAM under the 2nd AAM loan agreement were drawn down by AAM on 4 March 2014.
221. AAM loaned money to itself from the Avestra Credit Fund under the 1st and 2nd AAM loan agreements in order to fund the purchase of commercial properties, in circumstances where AAM had been unable to obtain sufficient loan finance from its bank.

Particulars

ASIC refers to paragraph 223 below.

222. AAM's board of directors considered and approved the 1st and 2nd AAM loan agreements.
223. On 14 March 2015, Dempsey attended a meeting of AAM's compliance committee, in which the committee was informed that AAM had purchased two commercial properties costing \$1.3 million in total, and that the purchases had been funded in part by credit provided by the Avestra Credit Fund.

Particulars

ASIC relies on unsigned minutes of the meeting provided to it by AAM. A copy of the minutes may be inspected on reasonable notice.

A.2 The loans to AG Financial

224. On or around 7 February 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an agreement to lend \$250,000 to AG Financial (the **1st AG Financial loan agreement**) without security.

Particulars

No copy of the 1st AG Financial loan agreement was produced to ASIC by AAM or is otherwise in ASIC's possession. ASIC relies on the records of the

loan in the general ledger for the Avestra Credit Fund, a copy of which may be inspected on reasonable notice.

225. The funds lent to AG Financial under the 1st AG Financial loan agreement were drawn down by AG Financial between 20 and 25 February 2014.

226. On 28 March 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an agreement to lend \$85,000 to AG Financial (the **2nd AG Financial loan agreement**) without security.

Particulars

Loan agreement dated 28 March 2014, between AG Financial and AAM as trustee of the Avestra Credit Fund. A copy of the agreement is available for inspection on reasonable notice.

227. The funds lent to AG Financial under the 2nd AG Financial loan agreement were drawn down by AG Financial on 28 March 2014.

228. On 24 April 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an agreement to lend \$90,000 to AG Financial (the **3rd AG Financial loan agreement**) without security.

Particulars

Loan agreement dated 24 April 2014, between AG Financial and AAM as trustee of the Avestra Credit Fund. A copy of the agreement is available for inspection on reasonable notice.

229. The funds lent to AG Financial under the 3rd AG Financial loan agreement were drawn down by AG Financial on 24 April 2014.

230. On 2 May 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an agreement to lend \$20,000 to AG Financial (the **4th AG Financial loan agreement**) without security.

Particulars

Loan agreement dated 2 May 2014, between AG Financial and AAM as trustee of the Avestra Credit Fund. A copy of the agreement is available for inspection on reasonable notice.

231. The funds lent to AG Financial under the 4th AG Financial loan agreement were drawn down by AG Financial on 2 May 2014.

232. On 1 June 2014, cash investments into the Avestra Credit Fund:
- 232.1 of approximately \$360,000 was made from the Canton Fund
 - 232.2 of approximately \$3.0 million was made from the Worberg Global Fund;
 - 232.3 of approximately \$540,000 was made from the Bridge Global CMC Fund; and
 - 232.4 of \$801,000 was made from the Accelerator Fund (the **1st Accelerator cash investment**).
233. As at 1 June 2014:
- 233.1 scheme property of the Maximiser Scheme was invested in the Bridge Global CMC Fund; and
 - 233.2 property of the Bridge Global CMC Fund was invested in the Worberg Global Fund.
234. On 2 June 2014:
- 234.1 the units in the Avestra Credit Fund that had been issued to the Accelerator Fund pursuant to the 1st Accelerator cash investment were transferred to the Bridge Global CMC Fund, in exchange for the Accelerator Fund being issued units in the Bridge Global CMC Fund with a book value of approximately A\$746,000; and
 - 234.2 all of the units in the Avestra Credit Fund that had been issued to the Canton Fund pursuant to the cash investments referred to at paragraphs 213.2 and 232.1 above were transferred to the Bridge Global CMC Fund.
235. On 26 June 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an agreement to lend \$100,000 to AG Financial (the **5th AG Financial loan agreement**) without security.

Particulars

Loan agreement dated 26 June 2014, between AG Financial and AAM as trustee of the Avestra Credit Fund. A copy of the agreement is available for inspection on reasonable notice.

236. The funds lent to AG Financial under the 5th AG Financial loan agreement were drawn down by AG Financial on 26 June 2014.

237. AAM's board of directors considered and approved each of the 1st, 2nd, 3rd, 4th and 5th AG Financial loan agreements.

A.3 The loan to Zenith City Investments Ltd

238. Zenith City Investments Ltd (**Zenith**), is a company:

238.1 incorporated in the Republic of Seychelles;

238.2 of which Eddie Chai Woon Chet (**Chai**) is a director.

239. Chai was a business acquaintance of Rowles, whom Rowles had first met through business contacts in Malaysia in around 2010 or 2011.

240. On or around 6 May 2014, AAM, in its capacity as trustee of the Avestra Credit Fund, entered into an agreement to lend US\$6,000,000 to Zenith (the **Zenith loan agreement**).

Particulars

Loan agreement dated 2014, between Zenith and AAM. A copy of the agreement is available for inspection on reasonable notice.

241. The Zenith loan agreement:

241.1 comprised approximately 75% of all of the loan investments made by the Avestra Credit Fund;

241.2 provided for interest at 8% per annum, payable in advance;

241.3 was repayable 12 months after the drawdown date, or by such other date as agreed in writing;

241.4 purported to provide security by way of a fixed and floating charge, relating only to the advanced loan funds and resulting cash and assets;

241.5 did not include any restriction on dealing with, or custody mechanism in respect of, the charged property; and

241.6 was expressed to be subject to the exclusive jurisdiction of the courts of Queensland.

242. Before it was signed, the Zenith loan agreement:
- 242.1 was not submitted to, or considered by, AAM's board of directors; and
 - 242.2 was instead discussed informally between Rowles and Dempsey.
243. Before the Zenith loan agreement was signed and funds were advanced under the agreement, none of Rowles, Dempsey or any other representative of AAM:
- 243.1 ascertained what assets Zenith proposed to acquire with the loan proceeds; or
 - 243.2 carried out due diligence in respect of the proposed loan to Zenith, adequately or at all.
244. Zenith drew down approximately US\$5.4 million under the Zenith loan agreement between 6 May and 3 June 2014.
245. As at 14 May 2015, the loan to Zenith remained unpaid.
246. Between 30 June 2015 and 27 October 2015, AAM assigned the Zenith loan agreement to Bridge Global SPC as operator of the Bridge Global CMC Fund, as an in specie redemption of certain units held by the Bridge Global CMC Fund in the Avestra Credit Fund.

A.4 Investments of scheme property of the Accelerator Fund into the Avestra Credit Fund: round-robin transactions

247. On 1 July 2014:
- 247.1 a further cash investment of \$240,000 was made from the Accelerator Fund into the Avestra Credit Fund (the **2nd Accelerator cash investment**);
 - 247.2 the units in the Avestra Credit Fund that had been issued to the Accelerator Fund pursuant to the 2nd Accelerator cash investment were transferred to the Bridge Global CMC Fund, in exchange for the Accelerator Fund being issued units in the Bridge Global CMC Fund with a book value of approximately A\$240,000.

248. The ledger of securities transactions for the Accelerator Fund:

248.1 records the Accelerator Fund as having acquired:

(a) units to the value of US\$745,879.50 in the Bridge Global CMC Fund on 1 June 2014; and

(b) units to the value of US\$227,816.65 in the Bridge Global CMC Fund on 31 July 2014; and

248.2 does not record the Accelerator Fund as having acquired units in the Avestra Credit Fund at any time.

249. The effects of each of the 1st and 2nd Accelerator cash investments and subsequent transfers of unitholdings referred to in paragraphs 232.4, 234.1 and 247 above were that:

249.1 scheme property of the Accelerator Fund was directly invested into the Avestra Credit Fund to provide cash for that fund;

249.2 upon the Accelerator Fund ceasing to hold units in the Avestra Credit Fund, it did not receive a cash redemption, but instead newly-issued units in the Bridge Global CMC Fund; and

249.3 the fact that scheme property of the Accelerator Fund had been invested in the Avestra Credit Fund was disguised by the failure to record that investment in the records of the Accelerator Fund.

A.5 Failure to disclose information regarding the Avestra Credit Fund in response to ASIC notice

250. On 27 November 2014, ASIC served a direction under s 912C(1) of the Corporations Act addressed to Rowles, requiring AAM to provide certain specified information in relation to the Canton Fund, the Worberg Global Fund, the Safecrest Fund, the FCAP Emerging Markets Fund and any other unregistered managed investment schemes operated by AAM.

Particulars

The s 912C direction is available for inspection upon reasonable notice.

251. On 8 December 2014, AAM responded to the s 912C direction by letter authored by Dempsey, in which AAM:

251.1 provided the requested information in relation to, inter alia, the Canton Fund, the Worberg Global Fund and the Safecrest Fund; and

251.2 provided no information in relation to, and did not refer to, the Avestra Credit Fund.

Particulars

AAM's letter to ASIC of 8 December 2014 is available for inspection upon reasonable notice.

252. AAM's response to ASIC on 8 December 2014 was misleading in a material respect, in that it omitted to provide any of the requested information regarding the Avestra Credit Fund.

B. Contraventions by AAM

B.1 The AAM loans

a) *Unauthorised related party transactions: s 208 (as modified)*

253. The advancement of funds under each of the 1st and 2nd AAM loan agreements, as referred to in paragraphs 213 to 222 above, involved the giving of a financial benefit:

253.1 by AAM, which was the responsible entity of the Advantage, Emergent and Maximiser Funds;

253.2 that:

(a) was given indirectly out of the scheme property of the Advantage, Emergent and Maximiser Funds, which had invested in the Avestra Credit Fund via the Worberg Global and Canton Funds; or

(b) further or alternatively, could endanger the scheme property of the Advantage, Emergent and Maximiser Funds; and

Particulars of financial benefit and relation to scheme property

(i) The financial benefit was the advance of the loaned funds.

- (ii) The funds loaned from the Avestra Credit Fund had been invested into the Avestra Credit Fund by the Worberg Global and Canton Funds. When those investments were made, scheme property of the Advantage, Emergent, Maximiser Funds was invested in the Worberg Global and Canton Funds: see paragraphs 214 and 218 above.

253.3 to AAM itself.

254. The giving of each of those financial benefits was not the subject of an approval of the members of any of the Advantage, Emergent or Maximiser Funds obtained in accordance with ss 217-227 of the Corporations Act.

255. By reason of the matters referred to in paragraphs 253 and 254 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC):

255.1 on 27 February 2014, in connection with the 1st AAM loan agreement; and

255.2 on 4 March 2014, in connection with the 2nd AAM loan agreement.

b) Failure to provide financial services efficiently, fairly and honestly: s 912A(1)(a)

256. Further, in entering into, and lending funds under, each of the 1st and 2nd AAM loan agreements as referred to in paragraphs 213 to 222 above, AAM:

256.1 was engaging in the provision of financial services covered by its AFS licence; and

256.2 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

- (a) AAM's recourse to borrowing from the Avestra Credit Fund resulted from its inability to raise adequate funds to enter into property purchases that it sought to pursue for its own commercial interests.
- (b) AAM's decision as trustee to lend moneys from the Avestra Credit Fund to itself involved a conflict of interest, and was not made in the best interests of unitholders in the Avestra Credit Fund.
- (c) AAM's decision as trustee to lend moneys from the Avestra Credit Fund to itself was not disclosed to or approved by unitholders in the Avestra Credit Fund adequately or at all.
- (d) In lending funds to itself without taking security on behalf of the Avestra Credit Fund, AAM further failed to act with reasonable care and diligence in the best interests of members of the Avestra Credit Fund.

- (e) AAM's decision as trustee to lend moneys to itself from the Avestra Credit Fund was inconsistent with the benefit of investing in the Avestra Credit Fund that was promoted in the information memorandum for the Avestra Credit Fund: ASIC refers to paragraph 43 above.

257. Accordingly, AAM contravened s 912A(1)(a) of the Corporations Act:

257.1 on 27 February 2014, in connection with the 1st AAM loan agreement; and

257.2 on 4 March 2014, in connection with the 2nd AAM loan agreement.

B.2 The AG Financial loans

a) Unauthorised related party transactions: s 208 (as modified)

258. The advancement of funds under each of the 1st, 2nd, 3rd and 4th AG Financial loan agreements involved the giving of a financial benefit:

258.1 by AAM, which was the responsible entity of the Advantage, Emergent and Maximiser Funds;

258.2 that:

- (a) was given indirectly out of the scheme property of the Advantage, Emergent and Maximiser Funds, which had invested in the Avestra Credit Fund via the Worberg Global and Canton Funds; or
- (b) further or alternatively, could endanger the scheme property of the Advantage, Emergent and Maximiser Funds; and

Particulars of financial benefit and relation to scheme property

- (i) The financial benefit was the advance to AG Financial of the loaned funds.
- (ii) The funds loaned from the Avestra Credit Fund had been invested into the Avestra Credit Fund by the Worberg Global and Canton Funds. When those investments were made, scheme property of the Advantage, Emergent and Maximiser Funds was invested in the Worberg Global and Canton Funds: see paragraphs 214 and 218 above.

258.3 to AG Financial.

259. At all relevant times between 7 February and 26 June 2014, AG Financial was:

259.1 an entity that AAM controlled;

Particulars of AAM's control of AG Financial

- (a) At all times between 7 August 2013 and 21 February 2014, AAM held at least 55% of the voting shares of AG Financial: ASIC refers to paragraphs 89 and 105 above.
- (b) At all times from 21 February 2014 until 3 September 2014, AAM held approximately 18% of the voting shares of AG Financial: ASIC refers to paragraph 105 above.
- (c) At all relevant times from 7 August 2013, Dempsey was a director of both AAM and AG Financial: ASIC refers to paragraphs 14.1 and 14.7 above.
- (d) At all relevant times from November 2013, AG Financial shared a common registered office and principal place of business with AAM: ASIC refers to paragraph 19.3 above.

259.2 further or alternatively:

- (a) AGF Funds Management was an agent of, or person engaged by, AAM in its role as responsible entity of the Emergent and Maximiser Funds;

Particulars of agency

ASIC refers to paragraphs 29.2(a), 32.2(a), 35.2(a), 38.2(a) and 59 above. AGF Funds Management became AAM's agent upon AAM succeeding Fundhost as responsible entity of the AG Schemes, pursuant to ss 601FS and 601FT of the Corporations Act.

- (b) AG Financial controlled AGF Funds Management; and

Particulars of AG Financial's control of AGF Funds Management

At all relevant times:

- (i) AG Financial was the sole shareholder for AGF Funds Management: ASIC refers to paragraph 20.2 above; and
 - (ii) Dempsey, Goldberg and Pagliaccio were directors of AG Financial and the only directors of AGF Funds Management: ASIC refers to paragraphs 20.4, 58.2 and 82 above.
- (c) accordingly, AG Financial was a related party of an agent of, or person engaged by, the responsible entity, within the meaning of s 208(1)(c)(ii), as read with s 208(1)(a)(iii) (as modified by s 601LC).

260. The giving of financial benefits pursuant to each of the 1st, 2nd, 3rd and 4th AG Financial loan agreements was not the subject of an approval of the members of any of the Advantage, Emergent or Maximiser Funds obtained in accordance with ss 217-227 of the Corporations Act.

261. By reason of the matters referred to in paragraphs 258 to 260 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC):

261.1 between 20 and 25 February 2014, in connection with the 1st AG Financial loan agreement;

261.2 on 28 March 2014, in connection with the 2nd AG Financial loan agreement;

261.3 on 24 April 2014, in connection with the 3rd AG Financial loan agreement; and

261.4 on 2 May 2014, in connection with the 4th AG Financial loan agreement.

262. The advancement of funds under the 5th AG Financial loan agreement involved the giving of a financial benefit:

262.1 by AAM, which was the responsible entity of the Advantage, Accelerator, Emergent and Maximiser Funds;

262.2 that:

(a) was given indirectly out of the scheme property of:

(i) the Advantage, Emergent and Maximiser Funds, which had invested in the Avestra Credit Fund via the Worberg Global and Canton Funds; and

(ii) the Accelerator Fund, which after 2 June 2014 was invested in the Avestra Credit Fund via the Bridge Global CMC Fund; or

(b) further or alternatively, could endanger the scheme property of the Advantage, Accelerator, Emergent and Maximiser Funds; and

Particulars of financial benefit and relation to scheme property

(i) The financial benefit was the advance to AG Financial of the loaned funds.

(ii) The funds loaned from the Avestra Credit Fund had been invested by the Bridge Global CMC Fund. When those investments were

made, scheme property of the Accelerator, Generator and Maximiser Funds was invested in the Bridge Global CMC Fund: ASIC refers to paragraphs 232-234 above.

- (iii) Further, the 5th AG Financial loan was advanced after the 1st Accelerator cash investment had been made into the Avestra Credit Fund: ASIC refers to paragraphs 232.4 and 234.1 above.

262.3 to AG Financial.

263. On 26 June 2014, AG Financial was:

263.1 an entity that AAM controlled;

263.2 further or alternatively, was a related party of an agent of, or person engaged by AAM.

Particulars

ASIC refers to and repeats paragraph 259 above and the particulars thereto.

264. The giving of financial benefits pursuant to the 5th AG Financial loan agreement was not the subject of an approval of the members of any of the Accelerator, Generator or Maximiser Funds obtained in accordance with ss 217-227 of the Corporations Act.

265. By reason of the matters referred to in paragraphs 262 to 264 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC) on 26 June 2014, in connection with the 5th AG Financial loan agreement.

b) Failure to provide financial services efficiently, fairly and honestly: s 912A(1)(a)

266. Further, in entering into, and lending funds under, each of the 1st, 2nd, 3rd, 4th and 5th AG Financial loan agreements as referred to in paragraphs 224 to 237 above, AAM:

266.1 was engaging in the provision of financial services covered by its AFS licence; and

266.2 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

- (a) When each of the loans was provided to AG Financial, its continued viability as a going concern was in doubt, in that:

- (i) AG Financial made losses of \$3.2 million in the year to 30 June 2013 and \$1.1 million in the year to 30 June 2014.
 - (ii) AG Financial's board of directors acknowledged material uncertainty as to AG Financial's ability to continue as a going concern as at 30 June 2014.
- (b) AAM made the loans from the Avestra Credit Fund to provide it with working capital.
 - (c) AAM's decision as trustee to lend moneys from the Avestra Credit Fund to AG Financial was not made in the best interests of unitholders in the Avestra Credit Fund.
 - (d) AAM's decision as trustee to lend moneys from the Avestra Credit Fund to AG Financial was not disclosed to or approved by unitholders in the Avestra Credit Fund adequately or at all.
 - (e) AAM's decision as trustee to lend moneys from the Avestra Credit Fund to AG Financial was inconsistent with the benefit of investing in the Avestra Credit Fund that was promoted in the information memorandum for the Avestra Credit Fund: ASIC refers to paragraph 43 above.
 - (f) In lending funds to AG Financial without taking security on behalf of the Avestra Credit Fund, AAM further failed to act with reasonable care and diligence in the best interests of members

267. By reason of the matters referred to in paragraph 266 above, AAM contravened s 912A(1)(a) of the Corporations Act:

- 267.1 between 20 and 25 February 2014, in connection with the 1st AG Financial loan agreement;
- 267.2 on 28 March 2014, in connection with the 2nd AG Financial loan agreement;
- 267.3 on 24 April 2014, in connection with the 3rd AG Financial loan agreement;
- 267.4 on 2 May 2014, in connection with the 4th AG Financial loan agreement; and
- 267.5 on 26 June 2014, in connection with the 5th AG Financial loan agreement.

B.3 The Zenith loan: s 912A(1)(a)

268. In entering into, and lending funds under the Zenith loan agreement as referred to in paragraphs 238 to 243 above, AAM:

- 268.1 was engaging in the provision of financial services covered by its AFS licence; and

268.2 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

- (a) The Zenith loan agreement resulted in approximately 75% of the trust property of the Avestra Credit Fund being lent to a single borrower.
- (b) AAM did not take any, or any reasonable, steps to ascertain what assets Zenith proposed to acquire or carry out due diligence in respect of the proposed loan.
- (c) AAM did not obtain security that would readily be realisable over the charged assets of Zenith, in the absence of any:
 - (i) requirement for Zenith to identify to AAM the assets obtained by Zenith with the loan funds that thereby formed part of the charged assets;
 - (ii) restriction on Zenith dealing with the charged assets; or
 - (iii) custody mechanism in respect of the charged assets.

269. Accordingly, AAM contravened s 912A(1)(a) of the Corporations Act on or around 6 May 2014, in connection with the Zenith loan agreement.

B.4 Investments of scheme property of the Accelerator Fund into the Avestra Credit Fund

a) Unauthorised related party transactions: s 208 (as modified)

270. The making of each of the 1st and 2nd Accelerator cash investments to the Avestra Credit Fund, as referred to in paragraphs 232.4 and 247.1 above, involved the giving of a financial benefit:

270.1 by AAM, which was the responsible entity of the Accelerator Fund;

270.2 out of the scheme property of the Accelerator Fund; and

270.3 to AAM, in its capacity as trustee of the Avestra Credit Fund.

Particulars of financial benefit

The financial benefit was the investment of cash into the Avestra Credit Fund.

271. The giving of each of those financial benefits was not the subject of an approval of the members of the Accelerator Fund obtained in accordance with ss 217-227 of the Corporations Act.

272. By reason of the matters referred to in paragraphs 270 and 271 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC):

272.1 on or around 2 June 2014, in connection with the 1st Accelerator cash investment; and

272.2 on 1 July 2014, in connection with the 2nd Accelerator cash investment.

b) Failure to act in best interests of members, and to comply with Constitution: s 601FC(1)(c), (m)

273. In:

273.1 making the 1st Accelerator cash investment and then transferring its unitholding in the Avestra Credit Fund to the Bridge Global CMC Fund, as referred to in paragraphs 232.4 and 234.1 above; and

273.2 making the 2nd Accelerator cash investment and then transferring its unitholding in the Avestra Credit Fund to the Bridge Global CMC Fund, as referred to in paragraph 247 above,

AAM:

273.3 was exercising its powers as responsible entity of the Accelerator Fund;

273.4 failed to act in the best interests of the members of the Accelerator Fund;

Particulars

(a) By transferring the units acquired by the Accelerator Fund to the Worberg Global Fund immediately after the making of each of the 1st and 2nd Accelerator cash investments, AAM disguised the fact that scheme property of a registered scheme had been invested into the Avestra Credit Fund.

(b) The effect of the 1st and 2nd Accelerator cash investments was to provide cash from the Accelerator Fund to fund the activities of the Avestra Credit Fund.

(c) AAM did not carry out those transactions in good faith in the interests of the members of the Accelerator Fund.

- (d) Before the 1st Accelerator cash investment was made, the Avestra Credit Fund had already entered into the 1st and 2nd AAM loan agreements, the 1st to 4th AG Financial loan agreements and the Zenith loan agreement.
- (e) The cash invested by the 1st Accelerator cash investment was used to fund drawdowns under the Zenith loan agreement and the 5th AG Financial loan agreement.
- (f) Before the 2nd Accelerator cash investment was made, the Avestra Credit Fund had further entered into the 5th AG Financial loan agreement.

273.5 further or alternatively, failed to carry out or comply with a duty conferred on AAM by the Constitution of the Accelerator Fund.

Particulars

- (a) Clause 11.1 of the Constitution requires the manager to keep the registers, books and records which the Corporations Act requires.
- (b) Section 286(1)(a) of the Corporations Act requires AAM to keep written financial records that correctly record and explain its transactions.
- (c) By failing to record the Accelerator Fund's investments in the Avestra Credit Fund, in the manner described in paragraph 248 above, AAM failed to keep the records required by s 286(1)(a) of the Corporations Act and cl 11.1 of the Constitution.

274. By reason of the matters referred to in paragraph 273 above, AAM contravened s 601FC(1)(c), and/or s 601FC(1)(m), of the Corporations Act:

274.1 on or around 2 June 2014, in connection with the 1st Accelerator cash investment; and

274.2 on 1 July 2014, in connection with the 2nd Accelerator cash investment.

C. Contraventions by Rowles

C.1 The AAM loans: s 209 (as modified), s 601FD

275. Rowles authorised, procured, or was otherwise concerned in, or party to:

275.1 the 1st AAM loan agreement; and

275.2 the 2nd AAM loan agreement.

Particulars

Rowles signed each of the 1st and 2nd AAM loan agreements as a director of AAM, in its capacity as lending trustee. Further, ASIC refers to paragraph 222 above.

276. When each loan agreement was entered into, Rowles knew:

- 276.1 of the making of the loan agreement;
- 276.2 that the Advantage, Emergent and Maximiser Funds had invested indirectly in the Avestra Credit Fund;
- 276.3 that the making of each loan would involve the payment:
 - (a) by AAM, as trustee of the Avestra Credit Fund;
 - (b) out of trust property of the Avestra Credit Fund; and
 - (c) to AAM, in its personal capacity.

Particulars

Rowles' knowledge of those matters is to be inferred from:

- (i) the matters referred to in paragraphs 11.3 and 222 above; and
- (ii) Rowles having signed each of the 1st and 2nd AAM loan agreements.

277. By reason of the matters referred to in paragraphs 275 to 276 above, Rowles was involved in AAM's contraventions of s 208(1) of the Corporations Act alleged in paragraph 255 above:

277.1 on 27 February 2014, in connection with the 1st AAM loan; and

277.2 on 4 March 2014, in connection with the 2nd AAM loan,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

278. Further or alternatively, in respect of each of AAM's contraventions of s 208(1) and/or s 912A(1)(a) of the Corporations Act, as alleged in paragraphs 255 and 257 above:

278.1 on 27 February 2014, in connection with the 1st AAM loan; and

278.2 on 4 March 2014, in connection with the 2nd AAM loan,

Rowles:

278.3 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position;

278.4 alternatively, failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM did not contravene the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) did not lend itself money out of property of which it was trustee;
- (b) alternatively, disclosed to the members of the Avestra Credit Fund that AAM proposed to lend itself money out of the trust property of the Fund on an unsecured basis;
- (c) explained to the members of the Avestra Credit Fund that the proposed borrowing involved a conflict of interest between AAM's interest in seeking to obtain finance for its own commercial investment, and the Fund members' own interests as investors; and
- (d) obtained informed consent of the members of the Avestra Credit Fund to the proposed loans; and
- (e) obtained the approval of the members of each of the Advantage, Emergent and Maximiser Funds in accordance with ss 217-227 of the Corporations Act.

C.2 The AG Financial loans: s 209 (as modified), s 601FD

279. Rowles authorised, procured, or was otherwise concerned in, or party to:

279.1 the 1st AG Financial loan agreement;

279.2 the 2nd AG Financial loan agreement;

279.3 the 3rd AG Financial loan agreement;

279.4 the 4th AG Financial loan agreement; and

279.5 the 5th AG Financial loan agreement.

Particulars

Rowles signed each of the 2nd, 3rd and 4th AAM loan agreements as a director of AAM. Further, ASIC refers to paragraph 237 above.

280. When each loan agreement was entered into, Rowles knew:

280.1 of the making of the loan agreement;

280.2 that the Advantage, Emergent and Maximiser Funds had invested indirectly in the Avestra Credit Fund;

280.3 in respect of the 5th AG Financial loan agreement, Rowles knew that the Accelerator Fund had made a cash investment into the Avestra Credit Fund, and that its unitholding was then transferred to the Bridge Global CMC Fund in exchange for the Accelerator Fund units in the Bridge Global CMC Fund;

280.4 that the making of each loan would involve the payment:

(a) by AAM, as trustee of the Avestra Credit Fund;

(b) of money out of the Avestra Credit Fund;

(c) to AG Financial; and

280.5 that AAM controlled AG Financial, alternatively that it had controlled AG Financial during the preceding 6 months.

Particulars

Rowles' knowledge of those matters is to be inferred from:

(a) the matters referred to in paragraphs 11.3, 55.1, 70.1 and 237 above;

(b) the matters referred to in paragraph (a) of the particulars to paragraph 285 below; and

(c) Rowles having signed each of the 1st, 2nd, 3rd and 4th AAM loan agreements.

281. By reason of the matters referred to in paragraphs 279 to 280 above, Rowles was involved in AAM's contraventions of s 208(1) of the Corporations Act alleged in paragraphs 261 and 265 above:

281.1 between 20 and 25 February 2014, in connection with the 1st AG Financial loan agreement;

281.2 on 28 March 2014, in connection with the 2nd AG Financial loan agreement;

281.3 on 24 April 2014, in connection with the 3rd AG Financial loan agreement;

281.4 on 2 May 2014, in connection with the 4th AG Financial loan agreement; and

281.5 on 26 June 2014, in connection with the 5th AG Financial loan agreement,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

282. Further or alternatively, in respect of each of AAM's contraventions of s 208(1) and/or s 912A(1)(a) of the Corporations Act, as alleged in paragraphs 261, 265 and 267 above:

282.1 between 20 and 25 February 2014, in connection with the 1st AG Financial loan agreement;

282.2 on 28 March 2014, in connection with the 2nd AG Financial loan agreement;

282.3 on 24 April 2014, in connection with the 3rd AG Financial loan agreement;

282.4 on 2 May 2014, in connection with the 4th AG Financial loan agreement; and

282.5 on 26 June 2014, in connection with the 5th AG Financial loan agreement,

Rowles:

282.6 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position; and/or

282.7 failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM did not contravene the Corporations Act,

and thereby contravened s 601FD(1)(b), and/or s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) disclosed to the members of the Avestra Credit Fund that AAM proposed to lend money to AG Financial out of the trust property of the Fund on an unsecured basis;
- (b) explained to the members of the Avestra Credit Fund that AAM was, or had recently been, a majority shareholder in AG Financial;
- (c) disclosed to the members of the Avestra Credit Fund that AG Financial had recorded a substantial loss in the year to 30 June 2013 and was likely to record a further loss in the year to 30 June 2014;
- (d) explained to the members of the Avestra Credit Fund that the proposed borrowing involved a conflict of interest between AAM's interest in providing financial assistance to AG Financial, and the Fund members' own interests as investors;
- (e) obtained informed consent of the members of the Fund to the proposed loans; and
- (f) obtained the approval of the members of each of the Advantage, Accelerator, Emergent and Maximiser Funds (as applicable) in accordance with ss 217-227 of the Corporations Act.

C.3 The Zenith loan: s 601FD

283. In respect of AAM's contravention of s 912A(1)(a) of the Corporations Act on or around 6 May 2014, as alleged at paragraph 269 above, in connection with the Zenith loan agreement, Rowles:

- 283.1 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position; and/or
- 283.2 alternatively, failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM did not contravene the Corporations Act.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) did not lend 75% of the trust property of the Avestra Credit Fund to a single borrower;

- (b) carried out adequate due diligence to ascertain Zenith's proposed use of the loan funds;
- (c) obtained readily realisable security over assets of Zenith to at least the equivalent value of the loan.

284. Accordingly, Rowles contravened s 601FD(1)(b), and/or s 601FD(1)(f)(i), of the Corporations Act on or around 6 May 2014.

C.4 Investment of scheme property of the Accelerator Fund into the Avestra Credit Fund: s 209 (as modified), s 601FC, s 601FD

285. Rowles authorised, procured, or was otherwise concerned in or party to the making of each of the 1st and 2nd Accelerator cash investments.

Particulars

- (a) On or around 1 June 2014, Rowles and Dempsey signed:
 - (i) an application form for the 1st Accelerator cash investment; and
 - (ii) a transfer form for the transfer of all units held by the Accelerator Fund into the Avestra Credit Fund.
- (b) On or around 1 July 2014, Rowles and Dempsey signed:
 - (i) an application form for the 2nd Accelerator cash investment; and
 - (ii) a transfer form for the transfer of all units held by the Accelerator Fund in the Avestra Credit Fund.

Copies of the forms are available for inspection on reasonable notice.

286. In authorising, procuring or otherwise being concerned in or party to each of the 1st and 2nd Accelerator cash investments, Rowles:

286.1 failed to act in the best interests of the members of the Accelerator Fund;

Particulars

ASIC repeats the particulars to paragraph 273.4 above.

286.2 further or alternatively, failed to take all reasonable steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM complied with section 286(1) of the Corporations Act and cl 11.1 of the Constitution of the Accelerator Fund.

Particulars

A reasonable person in Rowles's position would have ensured that AAM maintained accurate records of all of the Accelerator Fund's investments, including its investments in the Avestra Credit Fund.

287. By reason of the matters referred to in paragraphs 285 to 286 above, Rowles contravened s 601FD(1)(c), and/or s 601FD(1)(f)(i), of the Corporations Act:

287.1 on or around 2 June 2014, in connection with the 1st Accelerator cash investment; and

287.2 on 1 July 2014, in connection with the 2nd Accelerator cash investment.

288. Further or alternatively, at the time of each of the 1st and 2nd Accelerator cash investments, Rowles knew:

288.1 of the making of the investment;

288.2 that the investment involved the payment:

(a) by AAM, as responsible entity of the Accelerator Fund;

(b) of money out of the Accelerator Fund;

(c) to AAM in its capacity as trustee of the Avestra Credit Fund;

288.3 that AAM had not obtained approval of the members of the Accelerator Fund for the investment in accordance with ss 217-227 of the Corporations Act.

Particulars

Rowles' knowledge of those matters is to be inferred from the matters referred to in:

(a) paragraph 11.3 above; and

(b) the particulars to paragraph 285 above.

289. By reason of the matters referred to in paragraphs 285 and 288 above, Rowles was involved in AAM's contraventions of s 208(1) (as modified by s 601LC), s 601FC(1)(c), and/or 601FC(1)(m), of the Corporations Act:

289.1 on or around 2 June 2014, in connection with the 1st Accelerator cash investment, alleged in paragraphs 272.1 and 274.1 above; and

289.2 on 1 July 2014, in connection with the 2nd Accelerator cash investment, alleged in paragraphs 272.2 and 274.2 above.

and thereby contravened s 209(2) (as modified by s 601LA) and/or s 601FC(5) of the Corporations Act on each occasion.

C.5 Breaches of director's duties: s 180(1)

290. Rowles:

290.1 authorised, procured or was concerned in or party to;

290.2 further or alternatively, failed to take reasonable steps to prevent AAM from engaging in,

the conduct upon which ASIC alleges that AAM committed the contraventions alleged in paragraphs 255.1-255.2, 257.1-257.2, 261.1-261.4, 265, 267.1-267.5, 269, 272.1-272.2 and 274.1-274.2 above.

Particulars

- (i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 275, 279 and 285 above.
- (ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 278, 282, 283 and 286.2 above.

291. AAM's commission of those contraventions, alternatively its engagement in that conduct, caused actual damage to AAM, in that ASIC obtained orders:

291.1 for the appointment of provisional liquidators to AAM; and

291.2 for AAM to be wound up on the just and equitable ground,

by reference to those alleged contraventions and/or that conduct.

292. Further, as a consequence of the contraventions committed by AAM, it was reasonably foreseeable that AAM may become liable:

292.1 to compensate members of the Advantage Fund and/or any of the AG Schemes under s 1317H of the Corporations Act;

292.2 further or alternatively, in tort to members of any of the registered or unregistered schemes of which AAM was responsible entity or trustee.

293. By reason of the matters referred to in paragraphs 290 to 292 above, between 20 February 2014 and 1 July 2014, Rowles:

293.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in AAM's circumstances and occupied the office held by Rowles, and had the same responsibilities within the corporation as Rowles; and

293.2 thereby contravened s 180(1) of the Corporations Act.

D. Contraventions by Dempsey

D.1 The AAM loans: s 209 (as modified), s 601FD

294. Dempsey authorised, procured, or was otherwise concerned in, or party to:

294.1 the 1st AAM loan agreement; and

294.2 the 2nd AAM loan agreement.

Particulars

Dempsey signed each of the 1st and 2nd AAM loan agreements as a director of AAM, both in its capacity as lending trustee and as borrower. Further, ASIC refers to paragraph 222 above.

295. When each loan agreement was entered into, Dempsey knew:

295.1 of the making of the loan agreement;

295.2 that the Advantage, Emergent and Maximiser Funds had invested indirectly in the Avestra Credit Fund;

295.3 that the making of each loan would involve the payment:

(a) by AAM, as trustee of the Avestra Credit Fund;

(b) out of trust property of the Avestra Credit Fund; and

(c) to AAM, in its personal capacity.

Particulars

Dempsey's knowledge of those matters is to be inferred from:

- (d) the matters referred to in paragraphs 15.3 and 222 above; and
- (e) Dempsey having signed each of the 1st and 2nd AAM loan agreements.

296. By reason of the matters referred to in paragraphs 294 to 295 above, Dempsey was involved in AAM's contraventions of s 208(1) of the Corporations Act alleged in paragraph 255 above:

296.1 on 27 February 2014, in connection with the 1st AAM loan; and

296.2 on 4 March 2014, in connection with the 2nd AAM loan,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

297. Further or alternatively, in respect of each of AAM's contraventions of s 208(1) and/or s 912A(1)(a) of the Corporations Act, as alleged in paragraphs 255 and 257 above:

297.1 on 27 February 2014, in connection with the 1st AAM loan; and

297.2 on 4 March 2014, in connection with the 2nd AAM loan,

Dempsey:

297.3 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;

297.4 alternatively, failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM did not contravene the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

- (a) did not lend itself money out of property of which it was trustee;

- (b) alternatively, disclosed to the members of the Avestra Credit Fund that AAM proposed to lend itself money out of the trust property of the Fund on an unsecured basis;
- (c) explained to the members of the Avestra Credit Fund that the proposed borrowing involved a conflict of interest between AAM's interest in seeking to obtain finance for its own commercial investment, and the Fund members' own interests as investors;
- (d) obtained informed consent of the members of the Fund to the proposed loans; and
- (e) obtained the approval of the members of each of the Advantage, Emergent and Maximiser Funds in accordance with ss 217-227 of the Corporations Act.

D.2 The AG Financial loans: s 209 (as modified), s 601FD

298. Dempsey authorised, procured, or was otherwise concerned in, or party to:

- 298.1 the 1st AG Financial loan agreement;
- 298.2 the 2nd AG Financial loan agreement;
- 298.3 the 3rd AG Financial loan agreement;
- 298.4 the 4th AG Financial loan agreement; and
- 298.5 the 5th AG Financial loan agreement.

Particulars

Dempsey signed each of the 2nd, 3rd, 4th and 5th AAM loan agreements as a director of AAM. Further, ASIC refers to paragraph 237 above.

299. When each loan agreement was entered into, Dempsey knew:

- 299.1 of the making of the loan agreement;
- 299.2 that the Advantage, Emergent and Maximiser Funds had invested indirectly in the Avestra Credit Fund;
- 299.3 in respect of the 5th AG Financial loan agreement, that the Accelerator Fund had made a cash investment into the Avestra Credit Fund, and that its unitholding was then transferred to the Bridge Global CMC Fund in exchange for the Accelerator Fund units in the Bridge Global CMC Fund;

299.4 that the making of each loan would involve the payment:

- (a) by AAM, as trustee of the Avestra Credit Fund;
- (b) of money out of the Avestra Credit Fund;
- (c) to AG Financial; and

299.5 that AAM controlled AG Financial, alternatively that it had controlled AG Financial during the preceding 6 months.

Particulars

Dempsey's knowledge of those matters is to be inferred from:

- (a) the matters referred to in paragraphs 15.3, 55.1, 82.1 and 237 above;
- (b) the matters referred to in paragraph (a) of the particulars to paragraph 285 above; and
- (c) Dempsey having signed each of the 1st, 2nd, 3rd 4th and 5th AAM loan agreements.

300. By reason of the matters referred to in paragraphs 298 to 299 above, Dempsey was involved in AAM's contraventions of s 208(1) of the Corporations Act alleged in paragraphs 261 and 265 above:

300.1 between 20 and 25 February 2014, in connection with the 1st AG Financial loan agreement;

300.2 on 28 March 2014, in connection with the 2nd AG Financial loan agreement;

300.3 on 24 April 2014, in connection with the 3rd AG Financial loan agreement;

300.4 on 2 May 2014, in connection with the 4th AG Financial loan agreement; and

300.5 on 26 June 2014, in connection with the 5th AG Financial loan agreement,

and thereby contravened s 209(2) of the Corporations Act (as modified by s 601LA) on each occasion.

301. Further or alternatively, in respect of each of AAM's contraventions of s 208(1) and/or s 912A(1)(a) of the Corporations Act, as alleged in paragraphs 261, 265 and 267 above:

301.1 between 20 and 25 February 2014, in connection with the 1st AG Financial loan agreement;

301.2 on 28 March 2014, in connection with the 2nd AG Financial loan agreement;

301.3 on 24 April 2014, in connection with the 3rd AG Financial loan agreement;

301.4 on 2 May 2014, in connection with the 4th AG Financial loan agreement; and

301.5 on 26 June 2014, in connection with the 5th AG Financial loan agreement,

Dempsey:

301.6 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;

301.7 alternatively, failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM did not contravene the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

- (a) disclosed to the members of the Avestra Credit Fund that AAM proposed to lend money to AG Financial out of the trust property of the Fund on an unsecured basis;
- (b) explained to the members of the Avestra Credit Fund that AAM was, or had recently been, a majority shareholder in AG Financial;
- (c) disclosed to the members of the Avestra Credit Fund that AG Financial had recorded a substantial loss in the year to 30 June 2013 and was likely to record a further loss in the year to 30 June 2014;
- (d) explained to the members of the Avestra Credit Fund that the proposed borrowing involved a conflict of interest between AAM's interest in providing financial assistance to AG Financial, and the Fund members' own interests as investors;

- (e) obtained informed consent of the members of the Fund to the proposed loans; and
- (f) obtained the approval of the members of each of the Advantage, Accelerator, Emergent and Maximiser Funds (as applicable) in accordance with ss 217-227 of the Corporations Act.

D.3 The Zenith loan: s 601FD

302. In respect of AAM's contravention of s 912A(1)(a) of the Corporations Act on or around 6 May 2014, as alleged at paragraph 269 above, in connection with the Zenith loan agreement, Dempsey:

- 302.1 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;
- 302.2 alternatively, failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM did not contravene the Corporations Act.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

- (a) did not lend 75% of the trust property of the Avestra Credit Fund to a single borrower;
- (b) carried out adequate due diligence to ascertain Zenith's proposed use of the loan funds;
- (c) obtained readily realisable security over assets of Zenith to at least the equivalent value of the loan.

303. Accordingly, Dempsey contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on or around 6 May 2014.

D.4 Investment of scheme property of the Accelerator Fund into the Avestra Credit Fund: s 209 (as modified), s 601FC, s 601FD

304. Dempsey authorised, procured, or was otherwise concerned in or party to the making of each of the 1st and 2nd Accelerator cash investments.

Particulars

ASIC repeats the particulars to paragraph 285 above.

305. In authorising, procuring or otherwise being concerned in or party to each of the 1st and 2nd Accelerator cash investments, Dempsey:

305.1 failed to act in the best interests of the members of the Accelerator Fund;

Particulars

ASIC repeats the particulars to paragraph 273.4 above.

305.2 further or alternatively, failed to take all reasonable steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM complied with section 286(1) of the Corporations Act and cl 11.1 of the Constitution of the Accelerator Fund.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM maintained accurate records of all of the Accelerator Fund's investments, including its investments in the Avestra Credit Fund.

306. By reason of the matters referred to in paragraphs 304 to 305 above, Dempsey contravened s 601FD(1)(c), and/or s 601FD(1)(f)(i), of the Corporations Act:

306.1 on or around 2 June 2014, in connection with the 1st Accelerator cash investment; and

306.2 on 1 July 2014, in connection with the 2nd Accelerator cash investment.

307. Further or alternatively, at the time of each of the 1st and 2nd Accelerator cash investments, Dempsey knew:

307.1 of the making of the investment;

307.2 that the investment involved the payment:

- (a) by AAM, as responsible entity of the Accelerator Fund;
- (b) of money out of the Accelerator Fund;
- (c) to AAM in its capacity as trustee of the Avestra Credit Fund; and

307.3 that AAM had not obtained approval of the members of the Accelerator Fund for the investment in accordance with ss 217-227 of the Corporations Act.

Particulars

Dempsey's knowledge of those matters is to be inferred from the matters referred to in:

- (a) paragraph 15.3 above; and
- (b) the particulars to paragraph 285 above.

308. By reason of the matters referred to in paragraphs 304 and 307 above, Dempsey was involved in AAM's contraventions of s 208(1) (as modified by s 601LC), s 601FC(1)(c) and/or 601FC(1)(m), of the Corporations Act:

308.1 on or around 2 June 2014, in connection with the 1st Accelerator cash investment, alleged in paragraphs 272.1 and 274.1 above; and

308.2 on 1 July 2014, in connection with the 2nd Accelerator cash investment, alleged in paragraphs 272.2 and 274.2 above,

and thereby contravened s 209(2) (as modified by s 601LA) and/or s 601FC(5) of the Corporations Act on each occasion.

D.5 Failure to disclose information regarding the Avestra Credit Fund in response to ASIC notice: s 1308

309. Dempsey made, or authorised the making of, the statements contained in AAM's response of 8 December 2014, referred to in paragraph 251 above.

Particulars

Dempsey signed AAM's response to ASIC on 8 December 2014.

310. In the circumstances, Dempsey made, or authorised the making of, statements in a document submitted to ASIC, omitting a matter or thing without which the document was, to Dempsey's knowledge, misleading in a material respect.

Particulars

- (a) ASIC refers to paragraph 252 above.
- (b) Dempsey knew that the Avestra Credit Fund was an unregistered managed investment scheme that AAM operated.
- (c) Dempsey's knowledge is to be inferred from his having signed the Constitution of the Avestra Credit Fund on 31 January 2014.

311. Accordingly, Dempsey contravened s 1308(2) of the Corporations Act on 8 December 2014.

D.6 Breaches of director's duties: s 180(1)

312. Dempsey:

312.1 authorised, procured or was concerned in or party to;

312.2 further or alternatively, failed to take reasonable steps to prevent AAM from engaging in,

the conduct upon which ASIC alleges that AAM committed the contraventions alleged in paragraphs 255.1-255.2, 257.1-257.2, 261.1-261.4, 265, 267.1-267.5, 269, 272.1-272.2, and 274.1-274.2 above.

Particulars

- (i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 294, 298, 304, and 309 above.
- (ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 297, 301, 302 and 305.2 above.

313. AAM's commission of those contraventions, alternatively its engagement in that conduct, caused actual damage to AAM, in that ASIC obtained orders:

313.1 for the appointment of provisional liquidators to AAM; and

313.2 for AAM to be wound up on the just and equitable ground,

by reference to those alleged contraventions and/or that conduct.

314. Further, as a consequence of the contraventions committed by AAM, it was reasonably foreseeable that AAM may become liable:

314.1 to compensate members of the Advantage Fund and/or any of the AG Schemes under s 1317H of the Corporations Act;

314.2 further or alternatively, in tort to members of any of the registered or unregistered schemes of which AAM was responsible entity or trustee.

315. By reason of the matters referred to in paragraphs 312 to 314 above, between 20 February 2014 and 1 July 2014, Dempsey:

315.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in AAM's circumstances and occupied the office held by Dempsey, and had the same responsibilities within the corporation as Dempsey; and

315.2 thereby contravened s 180(1) of the Corporations Act.

IV. INTER-FUND TRANSFERS AND OFFSHORING OF THE CANTON AND WORBERG GLOBAL FUNDS

A. Facts

A.1 *Failure to provide monthly investor reports for the AG Schemes*

316. From 30 January 2014, when it was appointed as responsible entity for each of the AG Schemes, AAM did not provide regular investment reports to members, as had been the practice prior to Bridge Global Securities' appointment as fund manager in April 2013.

Particulars

ASIC refers to paragraph 60 above.

A.2 *7 February 2014 notice regarding updates to fund mandates for the AG Schemes*

317. On 7 February 2014, shortly after AAM's appointment as responsible entity of each of the AG Schemes on 30 January 2014, AGF Funds Management wrote to the members of each of the AG Schemes:

317.1 to announce that AAM had been appointed responsible entity of the schemes;

317.2 indicating that a replacement PDS would be issued for each of the AG Schemes by 3 March 2014; and

317.3 notifying the following updates to the existing fund mandates:

Accelerator: One of the biggest changes to the Accelerator Fund will be the change to monthly unit pricing and processing of deposits and redemptions. This will all take place on the last day of the month and is fully explained in the new PDS (Product Disclosure Statement). The AG Accelerator Fund aims to pay a 1% income distribution per month by investing across a range of Global Equity Markets both Long and Short, Exchange Traded Funds, Fixed Interest Securities, Managed Investment Schemes, Derivatives and Cash. Derivatives will be actively utilised in the risk management process and as an alternate to buying and selling a physical security.

Maximiser: The AG Maximiser Fund aims to deliver an absolute return by investing across a range of Global Equity Markets both Long and Short, Exchange Traded Funds, Fixed Interest Securities, Managed Investment Schemes, Derivatives and Cash. Derivatives will be actively utilised in the

risk management process and as an alternate to buying and selling a physical security.

Emergent: The AG Emergent Fund aims to provide growth over the medium to long term with the opportunity to receive income by investing across a range of Global Equity Markets both Long and Short, Exchange Traded Funds, Fixed Interest Securities, Managed Investment Schemes, Derivatives and Cash. Derivatives will be actively utilised in the risk management process and as an alternate to buying and selling a physical security.

Generator: The AG Accelerator Fund aims to deliver a regular level of income in excess of the benchmark by investing across a range of Global Equity Markets both Long and Short, Exchange Traded Funds, Fixed Interest Securities, Managed Investment Schemes, Derivatives and Cash. Derivatives will be actively utilised in the risk management process and as an alternate to buying and selling a physical security.

Particulars

Letter from AGF Funds Management to members dated 7 February 2014. A copy of a specimen letter may be inspected on reasonable notice.

318. AAM:

318.1 issued a replacement PDS for the Accelerator Fund on 7 October 2014; and

318.2 did not issue a replacement PDS for any of the Emergent, Generator and Maximiser Funds at any time after 7 February 2014.

A.3 Exposure of the AG Schemes to Malaysian stocks on or around 28 February 2014

319. As at 28 February 2014:

319.1 the Emergent Fund held investments worth A\$2.6 million, invested:

(a) approximately 32% in the Worberg Global Fund;

(b) approximately 30% in the Advantage Fund; and

(c) approximately 37% in cash; and

319.2 the Maximiser Fund held investments worth A\$7.3 million, invested:

(a) approximately 39% in the Worberg Global Fund;

- (b) approximately 36% in the Advantage Fund;
- (c) approximately 13% in the Accelerator Fund; and
- (d) approximately 7% in the Canton Fund.

320. As at 28 February 2014, the Advantage Fund held investments worth approximately \$10.3 million, invested approximately 98% in the Worberg Global Fund.

321. As at 17 March 2014, the Worberg Global Fund held investments worth approximately US\$20.5 million, invested approximately 75% in Malaysian shares and equity derivatives, including companies listed both on the main board and the ACE market of Bursa Malaysia.

322. As at 28 February 2014, the Canton Fund held investments worth approximately \$25.6 million, invested:

322.1 approximately 44% in the Worberg Global Fund;

322.2 approximately 20% in the Advantage Fund; and

322.3 approximately 32% directly in Malaysian shares and equity derivatives, including companies listed both on the main board and the ACE market of Bursa Malaysia.

323. By reason of the matters referred to in paragraphs 319 to 322 above, on or around 28 February 2014:

323.1 the Emergent Fund had direct and indirect holdings of Malaysian stocks and equity derivatives comprising approximately 45% of its total investment portfolio; and

323.2 the Maximiser Fund had direct and indirect holdings of Malaysian stocks and equity derivatives comprising approximately 61% of its total investment portfolio.

324. On 7 March 2014, ASIC issued a notice to AAM under s 912C of the Corporations Act, requiring it to provide information regarding the Canton, Worberg Global, Safecrest and Advantage Funds, including the investment objective of, the investors in, and the investments held by, each fund.

Particulars

A copy of the notice may be inspected on reasonable notice.

A.4 Offshoring of the Canton Fund to the Bridge Global CMC Fund

325. On 3 March 2014, AAM entered into an Investment Advisory Agreement with BGAM, under which BGAM:

- 325.1 engaged AAM to provide investment advisory services with respect to the assets of Bridge Global SPC; and
- 325.2 agreed to pay AAM an investment advisory fee of US\$300,000 per annum.

Particulars

Investment Advisory Agreement in relation to Bridge Global Absolute Return SPC, signed by Rowles on behalf of AAM. A copy of the agreement may be inspected on reasonable notice.

326. Between 30 April 2014 and 1 June 2014, AAM closed the Canton Fund, by:
- 326.1 redeeming all of the units held by investors in the Canton Fund, in exchange for units to the corresponding value in the Bridge Global CMC Fund that were issued to those investors by Bridge Global SPC, as operator of that fund; and
- 326.2 transferring the investments held by the Canton Fund directly to the Bridge Global CMC Fund.
327. The units in the Canton Fund that were redeemed in exchange for units in the Bridge Global CMC Fund included units with a book value of approximately US\$490,000 owned by AAM as responsible entity of the Maximiser Fund.
328. On 2 June 2014, AAM invested:
- 328.1 US\$745,879.50 out of the scheme property of the Accelerator Fund; and
- 328.2 US\$207,527.59 out of the scheme property of the Generator Fund;

into the Bridge Global CMC Fund.

329. On 19 June 2014:

329.1 a meeting of AAM's compliance committee was held;

329.2 Dempsey attended the meeting and provided a verbal report to the committee on behalf of the directors of AAM;

329.3 Dempsey informed the committee that AAM had entered into the investment advisory agreement with BGAM referred to at paragraph 325 above;

329.4 Dempsey did not inform the committee that:

(a) the Canton Fund had been reconstituted offshore as the Bridge Global CMC Fund, as referred to in paragraph 326 above; or

(b) that BGAM and Bridge Global SPC were related parties of AAM; and

329.5 Dempsey advised the committee that there were no other key business and operational matters requiring the attention of the committee.

Particulars

ASIC relies on unsigned minutes of the meeting provided to it by AAM. A copy of the minutes may be inspected on reasonable notice.

330. On 1 July 2014, AAM invested US\$227,816.66 out of the scheme property of the Accelerator Fund into the Bridge Global CMC Fund.

331. On 1 October 2014, AAM invested:

331.1 US\$73,477.99 out of the scheme property of the Emergent Fund;

331.2 US\$317,529.89 out of the scheme property of the Maximiser Fund,

into the Bridge Global CMC Fund.

332. At all times between 30 April and 1 October 2014, the Bridge Global CMC Fund held, directly and/or indirectly through the Advantage and Worberg Global Funds, a substantial weighting of Malaysian shares and equity derivatives, including companies listed both on the main board and the ACE market of Bursa Malaysia.

333. As a consequence of the investments referred to in paragraphs 328, 330 and 331 above:

333.1 the Accelerator, Emergent and Generator Funds became exposed indirectly to; and

333.2 the Maximiser Fund increased its indirect exposure to,

Malaysian shares and equity derivatives held by the Bridge Global CMC Fund.

A.5 Closure of the Worberg Global Fund and establishment offshore of, and investment in, the Hanhong High-Yield Fund

334. On or around 3 March 2014, AAM made cash redemptions from the Worberg Global Fund:

334.1 in respect of units in the Worberg Global Fund that it held as principal, for US\$250,000 cash; and

334.2 in respect of units owned by AG Financial for approximately US\$240,000 cash.

335. On or around 1 April 2014, AAM made cash redemptions from the Worberg Global Fund:

335.1 in respect of units that it held on behalf of the Advantage Fund, for US\$160,000 cash; and

335.2 in respect of units that AAM held as principal, for approximately US\$477,000 cash.

336. On or around 1 April 2014, AAM redeemed all of the units in the Worberg Global Fund that it held on behalf of the Emergent Fund, in consideration for an *in specie* distribution of Malaysian shares and equity derivatives with a book value of approximately US\$848,000.

337. On or around 1 April and 2 May 2014, AAM redeemed all of the units in the Worberg Global Fund that it held on behalf of the Maximiser Fund, in consideration for *in specie* distributions of Malaysian shares and equity derivatives:

337.1 with a book value of approximately US\$848,000 on or around 1 April 2014; and

- 337.2 with a book value of approximately US\$1.93 million on or around 2 May 2014.
338. On or around 2 May 2014, AAM redeemed all of the units in the Worberg Global Fund that it held on behalf of the Advantage Fund, in consideration for *in specie* distributions of Malaysian shares and equity derivatives with a book value of approximately US\$8.84 million.
339. On or around 1 July 2014, AAM redeemed all of the units in the Advantage Fund that it held on behalf of:
- 339.1 the Maximiser Fund, in consideration for an *in specie* distribution of Malaysian shares and equity derivatives with a book value of approximately US\$2.8 million; and
- 339.2 the Emergent Fund, in consideration for an *in specie* distribution of Malaysian shares and equity derivatives with a book value of approximately US\$850,000.
340. As a result of the redemptions referred to in paragraphs 336 to 339 above, between 1 April and 1 July 2014:
- 340.1 the Emergent Fund received *in specie* transfers of Malaysian shares and equity derivatives with an approximate book value of US\$1.6 million; and
- 340.2 the Maximiser Fund received *in specie* transfers of Malaysian shares and equity derivatives with an approximate book value of US\$5.5 million.
341. AAM redeemed units in the Worberg Global Fund held by Bridge Global SPC on behalf of the Bridge Global CMC Fund, in consideration for:
- 341.1 an *in specie* distribution of shares in AG Financial with a book value of approximately US\$837,000, on or around 2 June 2014;
- 341.2 an *in specie* distribution of units in the Avestra Credit Fund held by the Worberg Global Fund, with a book value of approximately US\$4.92 million, on or around 1 July 2014; and
- 341.3 an *in specie* distribution of shares in AG Financial, and other Malaysian, Australian and UK-listed shares and equity derivatives, with a book value of approximately US\$5.46 million, on or around 1 September 2014.

342. On or around 8 September 2014, the Emergent and Maximiser Funds subscribed for initial units in the Hanhong High-Yield Fund, by making *in specie* contributions of Malaysian shares and equity derivatives with a book value of:

342.1 approximately US\$1.9 million, in the case of the Emergent Fund; and

342.2 approximately US\$5.6 million, in the case of the Maximiser Fund.

343. Further, on 8 September 2014, the Accelerator and Generator Funds subscribed for initial units in the Hanhong High-Yield Fund by investing approximately:

343.1 US\$616,000 in cash, in the case of the Accelerator Fund; and

343.2 US\$155,000, in the case of the Generator Fund.

344. As a consequence of the investments referred to in paragraph 343 above, the Accelerator and Generator Funds became exposed indirectly to Malaysian shares and equity derivatives held by the Hanhong High-Yield Fund.

A.6 Redemption of the AG Schemes from the offshore schemes

345. By the s 912C direction served on 27 November 2014, ASIC required AAM to provide a spreadsheet of the investments of each of the registered managed investment schemes of which it was responsible entity, including the four AG Schemes.

346. On 8 December 2014, AAM provided information in response to the s 912C direction, which disclosed the investments of the Advantage Fund and the AG Schemes in the Bridge Global CMC and Hanhong High-Yield Funds.

Particulars

ASIC repeats the particulars to paragraph 251 above.

347. On 10 December 2014, ASIC served a further s 912C direction on AAM, requiring AAM to provide information regarding the Bridge Global CMC and Hanhong High-Yield Funds, including the jurisdiction where those funds are registered or established, the operators and investment managers of each fund, and the investments held by each fund.

Particulars

The s 912C direction is available for inspection upon reasonable notice.

348. On 12 December 2014, AAM responded to the 10 December direction, denying that AAM had access to the information requested by ASIC as to the investments held by the Bridge Global CMC and Hanhong High-Yield Funds.

Particulars

AAM's response of 12 December 2014 is available for inspection on reasonable notice.

349. That response was incorrect, insofar as it concerned the Bridge Global CMC Fund.

Particulars

On 10 September 2014, Chris Tyrrell of AAM had emailed a copy of the Bridge Global CMC Fund's asset portfolio as at 30 June 2014 to the auditors of the AG Schemes. A copy of that email and the attached portfolio summary is available for inspection on reasonable notice.

a) Redemptions from the Bridge Global CMC Fund

350. The investment of the Maximiser Fund in the Bridge Global CMC Fund was redeemed:

350.1 in part, by cash distribution of US\$35,000 paid on or around 31 October 2014; and

350.2 as to the remainder, by *in specie* distribution of Malaysian shares and equity derivatives, at AAM's request, with a book value of approximately US\$688,000 (approximately A\$850,000) made on or around 23 January 2015.

Particulars

A copy of AAM's request for *in specie* distribution, made on 23 January 2015, is available for inspection on reasonable notice.

351. The investment of the Accelerator Fund in the Bridge Global CMC Fund was redeemed:

351.1 in part, by cash distribution of US\$126,000 paid on or around 4 November 2014; and

351.2 as to the remainder, by *in specie* distribution of Malaysian shares and equity derivatives, at AAM's request, with a book value of approximately US\$819,000 (approximately A\$1.0 million) made on or around 23 January 2015.

Particulars

A copy of AAM's request for *in specie* distribution, made on 23 January 2015, is available for inspection on reasonable notice.

352. On or around 4 November 2014, the investments of the Emergent and Generator Funds in the Bridge Global CMC Fund were redeemed by cash distributions of:

352.1 approximately US\$62,000 paid to the Emergent Fund; and

352.2 approximately US\$226,000 paid to the Generator Fund.

b) Redemptions from the Hanhong High-Yield Fund

353. The investment of the Maximiser Fund in the Hanhong High-Yield Fund was redeemed:

353.1 in part, by cash distributions of:

(a) approximately US\$44,000 paid on or around 1 November 2014;

(b) US\$225,000 paid on or around 24 November 2014; and

(c) US\$33,000 paid on or around 1 December 2014; and

353.2 as to the remainder, by *in specie* distributions of Malaysian shares and equity derivatives, at AAM's request:

(a) to a book value of approximately US\$4.6 million (approximately A\$5.6 million) made on or around 17 December 2014; and

(b) to a book value of approximately US\$449,000 (approximately A\$580,000) made on or around 1 February 2015.

Particulars

Copies of AAM's request for *in specie* distribution, made on 17 December 2014 and 22 January 2015, are available for inspection on reasonable notice.

354. The investment of the Emergent Fund in the Hanhong High-Yield Fund was redeemed:

354.1 in part, by a cash distribution of US\$246,000 paid on or around 24 November 2014; and

354.2 as to the remainder, by *in specie* distributions of Malaysian shares and equity derivatives, at AAM's request, to a book value of approximately US\$1.6 million (approximately A\$1.9 million) made on or around 17 December 2014.

Particulars

A copy of AAM's request for *in specie* distribution, made on 17 December 2014, is available for inspection on reasonable notice.

355. On or around 24 November 2014, the investments of the Accelerator and Generator Funds in the Bridge Global CMC Fund were redeemed by cash distributions of:

355.1 approximately US\$610,000 paid to the Accelerator Fund; and

355.2 approximately US\$153,000 paid to the Generator Fund.

356. As a result of the redemptions referred to in paragraphs 350.2, 351.2, 353.2 and 354.2 above:

356.1 the Accelerator Fund received *in specie* transfers of Malaysian shares and equity derivatives with an approximate book value of A\$1.0 million on around 23 January 2015 (representing approximately 50% of the Fund's net asset value at that time);

356.2 the Emergent Fund received *in specie* transfers of Malaysian shares and equity derivatives with an approximate book value of A\$1.9 million on around 17 December 2014 (representing approximately 80% of the Fund's net asset value at that time); and

356.3 the Maximiser Fund directly held investments in Malaysian shares and equity derivatives with an approximate book value of A\$7.0 million between 17 December 2014 and 1 February 2015 (representing approximately 87% of the Fund's net asset value as at 31 January 2015).

B. Contraventions by AAM

B.1 Failure to provide monthly investor reports for the AG Schemes

357. In acting as the responsible entity of each of the AG Schemes from 30 January 2014, AAM:

357.1 was engaging in the provision of financial services covered by its AFS licence; and

357.2 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

AAM failed to provide regular investment reports to members, as had been the practice prior to Bridge Global Securities' appointment as fund manager in April 2013. ASIC refers to paragraphs 60 and 316 above.

358. By reason of the matters referred to in paragraph 357 above, AAM contravened s 912A(1)(a) of the Corporations Act from 30 January 2014.

B.2 Non-disclosure, or inadequate disclosure, of change of investment mandate of the Accelerator, Generator and Maximiser Funds: s 1017B

359. At all relevant times, interests in each of the Accelerator, Generator and Maximiser Funds were financial products within the meaning of s 763A of the Corporations Act.

360. At all relevant times from 30 January 2014, AAM was the issuer of interests in each of the Accelerator, Generator and Maximiser Funds within the meaning of s 761E(4) of the Corporations Act.

Particulars

ASIC refers to paragraph 104 above.

361. The change to the investment mandates of each of the Accelerator, Generator and Maximiser Funds notified by AGF Funds Management on 7 February 2014, as referred to in paragraph 317.3 above, was a material change to a matter that would have been required by section 1013D(1) of the Corporations Act, to be specified in a PDS for each of the funds.

362. Alternatively, the substantial exposure to Malaysian shares and equity derivatives to which the Accelerator, Generator and Maximiser Funds became subject between 1 May 2013 and 1 February 2015, as referred to in paragraphs 103, 323.2, 333, 344 and 356 above, was a material change to a matter that would have been required by section 1013D(1) of the Corporations Act, to be specified in a PDS for each of the funds.

Particulars to paragraphs 361 and 362

- (a) A PDS must include such information as a retail client would reasonably require for the purpose of deciding whether or not to acquire a financial product about, *inter alia*:
 - (i) any significant risks associated with holding the product; and
 - (ii) any other significant characteristics or features of the product.
- (b) In investing indirectly, and later directly, in Malaysian shares and equity derivatives to the eventual extent referred to in paragraph 356 above, the Accelerator and Maximiser Funds carried a significantly greater investment risk for fund members than had those funds continued to invest in accordance with their original investment mandates, as referred to in paragraphs 31, 37 and 40 above.

363. Accordingly, AAM was obliged to notify members of each of the Accelerator, Generator and Maximiser Funds who acquired their interest in any scheme as a retail client of that material change, pursuant to s 1017B(1).

364. AAM did not give notice of the material changes to those members of each of the Accelerator, Generator and Maximiser Funds, either:

364.1 on or around 7 February 2014; or

Particulars

ASIC refers to paragraph 317 above. The notification was given by AGF Funds Management.

364.2 before, or as soon as practicable after:

- (a) 1 May 2013, when the Maximiser Fund first became materially exposed to investments in Malaysian shares and equity derivatives; and
- (b) 2 June 2014, when the Accelerator and Generator Funds first became materially exposed to investments in Malaysian shares and equity derivatives.

Particulars

ASIC refers to paragraphs 66, 67, 103, 322, 326, 328 and 333 above.

365. By reason of the matters referred to in paragraphs 359 to 364 above, AAM contravened s 1017B(1) of the Corporations Act:

365.1 from 30 January 2014, in respect of the Maximiser Fund; and

365.2 from no later than 2 September 2014, in respect of each of the Accelerator and Generator Funds.

366. Further or alternatively, if the notification of 7 February 2014 was given by AAM, the notice did not give members of the Accelerator, Generator and Maximiser Funds the information that was reasonably necessary for them to understand the nature and effect of the change to each Fund's investment mandate.

Particulars

- (a) ASIC repeats paragraph (a) of the particulars to paragraph 361 above.
- (b) The notification of 7 February 2014 would not have conveyed, to the ordinary retail investor:
 - (i) that the Accelerator, Generator and Maximiser Funds would invest in Malaysian shares and equity derivatives to the eventual extent referred to in paragraph 356 above; or
 - (ii) that any change to the Funds' investment mandate or strategy would materially increase the investment risk to which members of those Funds would be exposed.

367. Accordingly, in the alternative to paragraph 365 above, AAM contravened s 1017B(1) of the Corporations Act on or around 7 February 2014, in respect of the notice given to members of each of the Accelerator, Generator and Maximiser Funds.

B.3 Offshoring of the Canton Fund as the Bridge Global CMC Fund

a) Transfer of scheme property of the Maximiser Fund to the Bridge Global CMC Fund: s 208 (as modified)

368. The transfer of investments held by the Canton Fund directly to the Bridge Global CMC Fund, and the redemption of units held by investors in the Canton Fund, in exchange for units in the Bridge Global CMC Fund, as referred to in paragraphs 326 and 327 above, involved the giving of a financial benefit:

368.1 by AAM, which was the responsible entity of the Maximiser Fund;

368.2 directly out of, alternatively indirectly out of and in a way that could endanger, the scheme property of the Maximiser Fund; and

368.3 to Bridge Global SPC, as operator of the Bridge Global CMC Fund.

Particulars of financial benefit

The financial benefit was the transfer of investments to the Bridge Global Fund, in exchange for the issue of units in the Bridge Global CMC Fund to the former unitholders in the Canton Fund, including AAM in its capacity as responsible entity of the Maximiser Fund.

369. At all relevant times, Bridge Global SPC was an entity that AAM controlled.

Particulars of AAM's control of Bridge Global SPC

At all relevant times:

- (a) Rowles and Dixon were directors of both AAM and the sole directors of Bridge Global SPC; and
- (b) AAM had a 40% shareholding in BGAM, which was the sole shareholder of Bridge Global SPC.

370. The giving of each of those financial benefits was not the subject of an approval of the members of the Maximiser Fund obtained in accordance with ss 217-227 of the Corporations Act.

371. By reason of the matters referred to in paragraphs 368 to 370 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC) between 30 April and 1 June 2014.

b) *Cross-investments of scheme property of the AG Schemes to the Bridge Global CMC Fund: s 208 (as modified)*

372. The investment of scheme property of each of the AG Schemes into the Bridge Global CMC Fund, as referred to in paragraphs 328, 330 and 331 above, involved the giving of a financial benefit:

372.1 by AAM, which was the responsible entity of each of the AG Schemes;

372.2 directly out of the scheme property of the relevant AG Scheme; and

372.3 to Bridge Global SPC, as operator of the Bridge Global CMC Fund.

Particulars of financial benefit

The financial benefit was the making of cash investments in the Bridge Global Fund.

373. At all relevant times, Bridge Global SPC was an entity that AAM controlled.

Particulars

ASIC repeats the particulars to paragraph 369 above.

374. The giving of each of those financial benefits was not the subject of an approval of the members of the relevant AG Scheme obtained in accordance with ss 217-227 of the Corporations Act.

375. By reason of the matters referred to in paragraphs 372 to 373 above, AAM contravened s 208(1) of the Corporations Act (as modified by s 601LC):

375.1 on 2 June 2014, in connection with the investments out of the scheme property of the Accelerator and Generator Funds referred to in paragraph 328 above;

375.2 on 1 July 2014, in connection with the investments out of the scheme property of the Accelerator Fund referred to in paragraph 330 above; and

375.3 on 1 October 2014, in connection with the investments out of the scheme property of the Emergent and Maximiser Funds referred to in paragraph 331 above.

c) *Cross-investments of scheme property of the AG Schemes into the Bridge Global CMC Fund: s 601FC(1)(b), s 912A(1)(a)*

376. In:

376.1 transferring investments held by the Canton Fund directly to the Bridge Global CMC Fund, and in redeeming units held by the Maximiser Fund in the Canton Fund, in exchange for units in the Bridge Global CMC Fund, as referred to in paragraphs 326 and 327 above; and

376.2 making the investments of scheme property of each of the AG Schemes into the Bridge Global CMC Fund, as referred to in paragraphs 328, 330 and 331 above,

AAM:

376.3 was exercising its powers as responsible entity of the relevant AG Scheme; and

376.4 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in AAM's position.

Particulars

- (a) The transfer and making of those investments had the effect of exposing each of the AG Schemes to the Malaysian shares and equity derivatives held by the Bridge Global CMC Fund: ASIC refers to paragraph 333 above.
- (b) Further, the eventual redemption of those investments left the Accelerator, Emergent and Maximiser Funds with a very high proportion of their scheme property directly invested in Malaysian shares and equity derivatives, including companies listed on the second-board ACE market of Bursa Malaysia: ASIC refers to paragraph 356 above.
- (c) AAM did not give adequate notification to members of the Accelerator, Generator and Maximiser Funds that the investment risk for each of those funds had materially increased as a consequence of those funds having become materially exposed to investments in Malaysian shares and equity derivatives, including companies listed on the ACE market: ASIC refers to paragraphs 361-367 above.

377. Further or alternatively, in:

377.1 transferring investments held by the Canton Fund directly to the Bridge Global CMC Fund, and in redeeming units held by the Maximiser Fund in the Canton Fund, in exchange for units in the Bridge Global CMC Fund, as referred to in paragraphs 326 and 327 above; and

377.2 making the investments of scheme property of each of the AG Schemes into the Bridge Global CMC Fund, as referred to in paragraphs 328, 330 and 331 above,

AAM:

377.3 was engaging in the provision of financial services covered by its AFS licence; and

377.4 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

ASIC repeats the particulars to paragraph 376 above.

378. By reason of the matters referred to in paragraphs 376 to 377 above, AAM contravened s 601FC(1)(b) and/or s 912A(1)(a) of the Corporations Act:

- 378.1 between 30 April and 2 May 2014, in connection with the transfer of investments held by the Canton Fund directly to the Bridge Global CMC Fund, the redemption of units held by the Maximiser Fund in the Canton Fund, in exchange for units in the Bridge Global CMC Fund, as referred to in paragraphs 326 and 327 above;
- 378.2 on 2 June 2014, in connection with the investments out of the scheme property of the Accelerator and Generator Funds referred to in paragraph 328 above;
- 378.3 on 1 July 2014, in connection with the investments out of the scheme property of the Accelerator Fund referred to in paragraph 330 above; and
- 378.4 on 1 October 2014, in connection with the investments out of the scheme property of the Emergent and Maximiser Funds referred to in paragraph 331 above.

B.4 In specie redemptions from the Worberg Global Fund and reinvestment of scheme property of the Emergent and Maximiser Funds into the Hanhong High-Yield Fund: s 601FC(1)(b), s 912A(1)(a)

379. In:

- 379.1 making *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Worberg Global Fund, as referred to in paragraphs 336 and 337 above;
- 379.2 making *in specie* redemptions of the investments held by the Advantage Fund in the Worberg Global Fund, and subsequently making *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Advantage Fund, as referred to in paragraphs 338 and 339 above; and
- 379.3 substantially reinvesting the Malaysian shares and equity derivatives received from those redemptions as scheme property of the Emergent and Maximiser Funds into the Hanhong High Yield Fund, as referred to in paragraph 342 above,

AAM:

- 379.4 was exercising its powers as responsible entity of the Emergent or Maximiser Fund (as applicable);
- 379.5 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in AAM's position.

Particulars

- (a) The making of those investments had the effect of exposing each of the AG Schemes to the Malaysian shares and equity derivatives held by the Hanhong High-Yield Fund: ASIC refers to paragraphs 343 and 344 above.
- (b) Further, the eventual redemption of those investments left the Accelerator, Emergent and Maximiser Funds with a very high proportion of their scheme property directly invested in Malaysian shares and equity derivatives, including companies listed on the second-board ACE market of Bursa Malaysia: ASIC refers to paragraph 356 above.
- (c) AAM did not give adequate notification to members of the Accelerator, Generator and Maximiser Funds that the investment risk for each of those funds had materially increased as a consequence of those funds having become materially exposed to investments in Malaysian shares and equity derivatives, including companies listed on the ACE market: ASIC refers to paragraphs 361-367 above.

380. Further or alternatively, in:

- 380.1 making *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Worberg Global Fund, as referred to in paragraphs 336 and 337 above;
- 380.2 making *in specie* redemptions of the investments held by the Advantage Fund in the Worberg Global Fund, and subsequently making *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Advantage Fund, as referred to in paragraphs 338 and 339 above;
- 380.3 substantially reinvesting the Malaysian shares and equity derivatives received from those redemptions as scheme property of the Emergent and Maximiser Funds into the Hanhong High Yield Fund, as referred to in paragraph 342 above; and
- 380.4 investing scheme property of the Accelerator and Generator Funds into the Hanhong High-Yield Fund, as referred to in paragraph 343 above,

AAM:

- 380.5 was engaging in the provision of financial services covered by its AFS licence; and
- 380.6 failed to do all things necessary to ensure that it provided those services efficiently, honestly and fairly.

Particulars

ASIC repeats the particulars to paragraph 380 above.

381. Accordingly, AAM contravened s 601FC(1)(b) and/or s 912A(1)(a) of the Corporations Act between 1 April 2014 and 8 September 2014.

C. Contraventions by Rowles

C.1 Failure to provide monthly investor reports for the AG Schemes

382. In relation to AAM's contravention of s 912A(1)(a) of the Corporations Act, in connection with AAM's failure to provide monthly investor reports to members of the AG Schemes, as alleged in paragraph 358 above, Rowles:

- 382.1 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position;
- 382.2 alternatively, failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM complied with s 912A(1)(a) of the Corporations Act.

Particulars

A reasonable person in Rowles's position would have ensured that AAM provided monthly, alternatively regular, investor reports to members of the AG Schemes as had been the practice prior to Bridge Global Securities' appointment as fund manager on 1 April 2013.

383. By reason of the matters referred to in paragraph 384 above, Rowles contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act from 30 January 2014.

C.2 Non-disclosure, or inadequate disclosure, of change of investment mandate of the AG Schemes: s 601FD

384. In relation to AAM's contravention of s 1017B(1) of the Corporations Act, in connection with the change of investment mandate of each of the AG Schemes, as alleged in paragraphs 359 to 367 above, Rowles:

384.1 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position;

384.2 alternatively, failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM complied with s 1017B(1) of the Corporations Act.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) notified the members of each of the Accelerator, Generator and Maximiser Funds that those Funds proposed to invest substantially in Malaysian equity investments, including in ACE market-listed companies, before those Funds became exposed to those investments, either directly or indirectly; and
- (b) explained to the members of each Fund that the making of those investments would materially affect the risks associated with investing in the Fund.

385. By reason of the matters referred to in paragraph 384 above, Rowles contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act:

385.1 from 30 January 2014, in respect of the Maximiser Fund; and

385.2 from no later than 2 September 2014, in respect of each of the Accelerator and Generator Funds;

385.3 alternatively, on or around 7 February 2014, in respect of the notice given to members of each of the Accelerator, Generator and Maximiser Funds.

C.3 Investments of scheme property of the AG Schemes into the Bridge Global CMC Fund: s 209 (as modified), ss 601FC & 601FD

386. Rowles authorised, procured, or was otherwise concerned in or party to:

386.1 the redemption of units held by investors in the Canton Fund in exchange for units in the Bridge Global CMC Fund and

386.2 the transfer of investments held by the Canton Fund directly to the Bridge Global CMC Fund, between 30 April and 1 June 2014,

referred to in paragraphs 326 and 327 above.

Particulars

- (a) On 20 April 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Maximiser Fund, signed a subscription agreement to invest US\$486,322.46 out of the scheme property of the Maximiser Fund into the Bridge Global CMC Fund.
- (b) On 24 April 2014, Rowles and Dempsey signed a request to redeem all of the units held by the Maximiser Fund in the Canton Fund.

Copies of each of the above forms are available for inspection on reasonable notice.

387. Further, Rowles authorised, procured, or was otherwise concerned in or party to:

387.1 each of the investments out of the scheme property of the Accelerator and Generator Funds into the Bridge Global CMC Fund on 2 June 2014 referred to in paragraph 328 above;

Particulars

ASIC refers to paragraphs 10.5-10.6 and 11.3 above.

387.2 the investment out of the scheme property of the Accelerator Fund into the Bridge Global CMC Fund on 1 July 2014 referred to in paragraph 330 above; and

Particulars

ASIC refers to paragraphs 10.5-10.6 and 11.3 above.

387.3 each of the investments out of the scheme property of the Emergent and Maximiser Funds into the Bridge Global CMC Fund on 1 October 2014 referred to in paragraph 331 above.

Particulars

- (a) On 18 August 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Emergent Fund, signed a subscription agreement to invest US\$73,477.99 out of the scheme property of the Emergent Fund into the Bridge Global CMC Fund.
- (b) On 20 August 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Maximiser Fund, signed a subscription agreement to invest US\$317,529.89 out of the scheme property of the Maximiser Fund into the Bridge Global CMC Fund.

Copies of each of the above forms are available for inspection on reasonable notice.

388. At the time when each of those investments was made, Rowles knew:

388.1 of the making of each of those investments;

388.2 that each of the investments referred to in paragraphs 386 to 387.3 above involved the payment:

- (a) by AAM, as responsible entity of each of the AG Schemes;
- (b) of money out of the scheme property of the relevant AG Scheme;
- (c) to Bridge Global SPC in its capacity as operator of the Bridge Global CMC Fund; and

388.3 that he and Dixon were the only directors of Bridge Global SPC.

Particulars

Rowles's knowledge of those matters is to be inferred from:

- (a) the matters referred to in paragraphs 10.3, 10.6, 11.3, 22.4, 23.2 and 23.3 above; and
- (b) Rowles having signed the subscription agreements and redemption request referred to in the particulars to paragraphs 386 and 387.3 above.

389. By reason of the matters in paragraphs 386 to 388 above, Rowles was involved in AAM's contraventions of s 208(1), and/or s 601FC(1)(b), of the Corporations Act:

389.1 between 30 April and 1 June 2014, as alleged in paragraphs 371 and 378.1 above;

389.2 on 2 June 2014, as alleged at paragraph 375.1 and 378.2 above;

389.3 on 1 July 2014, as alleged at paragraph 375.2 and 378.3 above; and

389.4 on 1 October 2014, as alleged at paragraph 375.3 and 378.4 above,

and thereby contravened s 209(2) (as modified by s 601LA) and/or s 601FC(5) of the Corporations Act on each occasion.

390. Alternatively, in relation to each of AAM's contraventions of s 208(1), s 601FC(1)(b) and/or s 912A(1)(a), of the Corporations Act:

390.1 between 30 April and 1 June 2014, as alleged in paragraphs 371 and 378.1 above;

390.2 on 2 June 2014, as alleged at paragraph 375.1 and 378.2 above;

390.3 on 1 July 2014, as alleged at paragraph 375.2 and 378.3 above; and

390.4 on 1 October 2014, as alleged at paragraph 375.3 and 378.4 above,

Rowles:

390.5 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position;

390.6 alternatively, failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM complied with the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) did not invest any scheme property of the AG Schemes in the Bridge Global CMC Fund;
- (b) alternatively, disclosed to members of the Maximiser Fund that AAM proposed to transfer that Fund's investment in the Canton Fund to a wholesale fund based in the Cayman Islands, which was operated by a related party of AAM;
- (c) disclosed to members of the Accelerator, Generator and Maximiser Funds that AAM proposed to invest scheme property of those Funds into a wholesale fund based in the Cayman Islands, which was operated by a related party of AAM;
- (d) explained to members of each of those Funds that the investment of scheme property of those Funds in offshore funds would likely limit ASIC's ability to identify the securities or other investments in which those Funds were ultimately invested; and
- (e) conveyed to members of each of those Funds a warning in similar terms to the warning referred to in paragraph 51 above.

C.4 Investment of scheme property of each of the AG Schemes into the Hanhong High-Yield Fund: ss 601FC & 601FD

391. Rowles authorised, procured, or was otherwise concerned in or party to:

- 391.1 the *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Worberg Global Fund on 1 April 2014, as referred to in paragraph 336 above;

Particulars

- (a) On 20 March 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Emergent and Maximiser Funds, signed requests for the redemption of all of the units held by the Emergent Fund, and of certain units held by the Maximiser Fund, in the Worberg Global Fund.
- (b) On 21 March 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Emergent and Maximiser Funds, signed requests that each of those redemptions be made by an *in specie* distribution of certain Malaysian shares and equity derivatives held by the Worberg Global Fund.

Copies of those requests are available for inspection on reasonable notice.

391.2 the *in specie* redemption of the investments held by the Maximiser Fund in the Worberg Global Fund on 2 May 2014, as referred to in paragraph 337 above;

Particulars

- (a) On 24 April 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Maximiser Fund, signed a request for the redemption of all of the remaining units held by the Maximiser Fund in the Worberg Global Fund:
- (b) On 25 April 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Maximiser Fund, signed a request that the redemption be made by an *in specie* distribution of certain Malaysian shares and equity derivatives held by the Worberg Global Fund.

Copies of those requests are available for inspection on reasonable notice.

391.3 the *in specie* redemptions of the investments held by the Advantage Fund in the Worberg Global Fund, and the subsequent *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Advantage Fund on 2 May 2014 and 1 July 2014, as referred to in paragraphs 338 and 339 above;

Particulars

- (a) On 13 June 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Emergent and Maximiser Fund, signed requests for the redemption of all of the remaining units held by the Emergent and Maximiser Funds in the Advantage Fund.
- (b) On 16 June 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Emergent and Maximiser Fund, signed requests that each of those redemptions be made by an *in specie* distribution of certain Malaysian shares and equity derivatives held by the Advantage Fund.

Copies of those requests are available for inspection on reasonable notice.

391.4 the substantial reinvesting of the Malaysian shares and equity derivatives received from those redemptions as scheme property of the Emergent and Maximiser Funds into the Hanhong High Yield Fund on or around 8 September 2014, as referred to in paragraph 342 above; and

Particulars

- (a) On 5 September 2014, Rowles and Dempsey, on behalf of AAM as responsible entity of the Emergent and Maximiser Funds, signed subscription agreements with Hanhong SPC, to make investments:
- (i) from scheme property of the Emergent Fund, with an aggregate value of approximately US\$1.9 million; and
 - (ii) from scheme property of the Maximiser Fund, with an aggregate value of approximately US\$5.6 million.

Copies of the subscription agreements are available for inspection on reasonable notice.

391.5 each of the investments of scheme property of the Accelerator and Generator Funds into the Hanhong High-Yield Fund on 8 September 2014, as referred to in paragraph 343 above.

Particulars

ASIC refers to paragraphs 11.2 and 11.3 above.

392. When each of:

392.1 the *in specie* redemptions referred to in paragraphs 391.1 to 391.3 above was made, Rowles knew:

- (a) of the making of those *in specie* redemptions; and
- (b) that in requesting those redemptions, AAM was exercising its powers as responsible entity of the Emergent or Maximiser Fund (as applicable).

392.2 the investments referred to in paragraphs 391.4 and 391.5 above was made, Rowles knew:

- (a) of the making of those investments; and
- (b) that in making those investments, AAM was exercising its powers as responsible entity of the relevant AG Scheme.

Particulars

Rowles's knowledge of those matters is to be inferred from:

- (i) the matters referred to in paragraphs 10.3, 11.2 and 11.3 above; and
- (ii) Rowles having signed the redemption requests, requests for *in specie* distributions and subscription agreements referred to in the particulars to paragraphs 391 to 391.4 above.

393. By reason of the matters referred to in paragraphs 391 and 392 above, Rowles was involved in AAM's contravention of s 601FC(1)(b) of the Corporations Act, between 1 April and 8 September 2014, in connection with:

393.1 the *in specie* redemptions of the Malaysian shares and equity derivatives indirectly held by the Emergent and Maximiser Funds through the Worberg Global Fund, and the substantial reinvestment of those assets in the Hanhong High-Yield Fund; and

393.2 the investment of scheme property of the Accelerator and Generator Funds into the Hanhong High-Yield Fund,

and thereby contravened s 601FC(5) of the Corporations Act.

394. Alternatively, in relation to each of AAM's contraventions of s 601FC(1)(b) and/or s 912A(1)(a) of the Corporations Act, in connection with:

394.1 the *in specie* redemptions of the Malaysian shares and equity derivatives indirectly held by the Emergent and Maximiser Funds through the Worberg Global Fund, and the substantial reinvestment of those assets in the Hanhong High-Yield Fund; and

394.2 the investment of scheme property of the Accelerator and Generator Funds into the Hanhong High-Yield Fund,

as referred to in paragraph 381 above, Rowles:

394.3 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Rowles's position; and

394.4 failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM complied with the Corporations Act, and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act between 1 April 2014 and 8 September 2014.

Particulars

A reasonable person in Rowles's position would have ensured that AAM:

- (a) did not invest scheme property of the AG Schemes in the Hanhong High-Yield Fund;
- (b) alternatively, disclosed to members of the AG Schemes that AAM proposed to invest scheme property of those Funds into a wholesale fund based in the Cayman Islands;
- (c) explained to members of each of those Funds that the investment of scheme property of those Funds in offshore funds would likely limit ASIC's ability to identify the securities or other investments in which those Funds were ultimately invested; and
- (d) conveyed to members of each of those Funds a warning in similar terms to the warning referred to in paragraph 53 above.

C.5 Breaches of director's duties: s 180(1)

395. Rowles:

395.1 authorised, procured or was concerned in or party to;

395.2 further or alternatively, failed to take reasonable steps to prevent AAM from engaging in,

the conduct upon which ASIC alleges that AAM committed the contraventions alleged in paragraphs 358, 365.1-365.2, 371, 375.1-375.3, 378.1-378.4 and 381 above.

Particulars

- (i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 386 to 387.3 and 391 to 391.5 above.
- (ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 382, 384, 390 and 394 above.

396. AAM's commission of those contraventions, alternatively its engagement in that conduct, caused actual damage to AAM, in that ASIC obtained orders:

396.1 for the appointment of provisional liquidators to AAM; and

396.2 for AAM to be wound up on the just and equitable ground,
by reference to those alleged contraventions and/or that conduct.

397. Further, as a consequence of the contraventions committed by AAM, it was reasonably foreseeable that AAM may become liable:

397.1 to compensate members of the Advantage Fund and/or any of the AG Schemes under s 1317H of the Corporations Act;

397.2 further or alternatively, in tort to members of any of the registered or unregistered schemes of which AAM was responsible entity or trustee.

398. By reason of the matters referred to in paragraphs 395 to 397 above, between 30 January 2014 and 8 September 2014, Rowles:

398.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in AAM's circumstances and occupied the office held by Rowles, and had the same responsibilities within the corporation as Rowles; and

398.2 thereby contravened s 180(1) of the Corporations Act.

D. Contraventions by Dempsey

D.1 Failure to provide monthly investor reports for the AG Schemes

399. In relation to AAM's contravention of s 912A(1)(a) of the Corporations Act, in connection with AAM's failure to provide monthly investor reports to members of the AG Schemes, as alleged in paragraph 358 above, Dempsey:

399.1 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;

399.2 alternatively, failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM complied with s 912A(1)(a) of the Corporations Act.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM provided monthly, alternatively regular, investor reports to members of the AG Schemes as had been the practice prior to Bridge Global Securities' appointment as fund manager on 1 April 2013.

400. By reason of the matters referred to in paragraph 399 above, Dempsey contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act from 30 January 2014.

D.2 Non-disclosure, or inadequate disclosure, of change of investment mandate of the AG Schemes: s 601FD(1)(b) & (f)(i)

401. In relation to AAM's contravention of s 1017B(1) of the Corporations Act, in connection with the change of investment mandate of each of the AG Schemes, as alleged in paragraphs 359 to 367 above, Dempsey:

- 401.1 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;
- 401.2 alternatively, failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM complied with s 1017B(1) of the Corporations Act.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

- (a) notified the members of each of the Accelerator, Generator and Maximiser Funds that those Funds proposed to invest substantially in Malaysian equity investments, including in companies listed on the secondary ACE, before those funds became exposed to those investments, either directly or indirectly; and
- (b) explained to the members of each Fund that the making of those investments would materially affect the risks associated with investing in the fund.

402. By reason of the matters referred to in paragraph 401 above, Dempsey contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act:

- 402.1 from no later than 1 August 2013, in respect of the Maximiser Fund; and
- 402.2 from no later than 2 September 2014, in respect of each of the Accelerator and Generator Funds;

402.3 alternatively, on or around 7 February 2014, in respect of the notice given to members of each of the Accelerator, Generator and Maximiser Funds.

D.3 Investments of scheme property of the AG Schemes into the Bridge Global CMC Fund: s 209 (as modified), ss 601FC, 601FD

403. Dempsey authorised, procured, or was otherwise concerned in or party to

403.1 the redemption of units held by investors in the Canton Fund, in exchange for units in the Bridge Global CMC Fund between 30 April and 1 June 2014; and

403.2 the transfer of investments held by the Canton Fund directly to the Bridge Global CMC Fund,

referred to in paragraphs 326 and 327 above.

Particulars

ASIC repeats the particulars to paragraph 386 above.

404. Dempsey authorised, procured, or was otherwise concerned in or party to:

404.1 each of the investments out of the scheme property of the Accelerator and Generator Funds into the Bridge Global CMC Fund on 2 June 2014, as referred to in paragraph 328 above;

Particulars

ASIC refers to paragraph 15.3 above.

404.2 the investment out of the scheme property of the Accelerator Fund into the Bridge Global CMC Fund on 1 July 2014, referred to in paragraph 330 above; and

Particulars

ASIC refers to paragraph 15.3 above.

404.3 each of the investments out of the scheme property of the Emergent and Maximiser Funds into the Bridge Global CMC Fund on 1 October 2014, referred to in paragraph 331 above.

Particulars

ASIC repeats the particulars to paragraph 387.3 above.

405. At the time when each of those investments was made, Dempsey knew:

405.1 of the making of each of those investments;

405.2 that each of the investments referred to in paragraphs 386 to 387.3 above involved the payment:

(a) by AAM, as responsible entity of the AG Schemes;

(b) of money out of the scheme property of the relevant AG Scheme;

(c) to Bridge Global SPC in its capacity as operator of the Bridge Global CMC Fund; and

405.3 that Rowles and Dixon were the only directors of Bridge Global SPC.

Particulars

Dempsey's knowledge of those matters is to be inferred from:

(a) the matters referred to in paragraphs 14.4 and 15.3 above; and

(b) Dempsey having signed the subscription agreements and redemption request referred to in the particulars to paragraphs 386 and 387.3 above.

406. By reason of the matters referred to in paragraphs 403 to 405 above, Dempsey was involved in AAM's contraventions of s 208(1), and/or s 601FC(1)(b), of the Corporations Act:

406.1 between 30 April and 1 June 2014, as alleged in paragraphs 371 and 378.1 above;

406.2 on 2 June 2014, as alleged at paragraph 375.1 and 378.2 above;

406.3 on 1 July 2014, as alleged at paragraph 375.2 and 378.3 above; and

406.4 on 1 October 2014, as alleged at paragraph 375.3 and 378.4 above,

and thereby contravened s 209(2) (as modified by s 601LA) and/or s 601FC(5) of the Corporations Act on each occasion.

407. Alternatively, in relation to each of AAM's contraventions of s 208(1), and/or s 601FC(1)(b), of the Corporations Act:

407.1 between 30 April and 1 June 2014, as alleged in paragraphs 371 and 378.1 above;

407.2 on 2 June 2014, as alleged at paragraph 375.1 and 378.2 above;

407.3 on 1 July 2014, as alleged at paragraph 375.2 and 378.3 above; and

407.4 on 1 October 2014, as alleged at paragraph 375.3 and 378.4 above,

Dempsey:

407.5 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;

407.6 failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM complied with the Corporations Act,

and thereby contravened s 601FD(1)(b), and/or s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

- (a) did not invest any scheme property of the AG Schemes in the Bridge Global CMC Fund;
- (b) alternatively, disclosed to members of the Maximiser Fund that AAM proposed to transfer that Fund's investment in the Canton Fund to a wholesale fund based in the Cayman Islands, which was operated by a related party of AAM;
- (c) disclosed to members of the Accelerator, Generator and Maximiser Funds that AAM proposed to invest scheme property of those Funds into a wholesale fund based in the Cayman Islands, which was operated by a related party of AAM;
- (d) explained to members of each of those Funds that the investment of scheme property of those Funds in offshore funds would likely limit ASIC's ability to identify the securities or other investments in which those Funds were ultimately invested; and
- (e) conveyed to members of each of those Funds a warning in similar terms to the warning referred to in paragraph 51 above.

D.4 Investment of scheme property of each of the AG Schemes into the Hanhong High-Yield Fund: ss 601FC, 601FD

408. Dempsey authorised, procured, or was otherwise concerned in or party to:

408.1 the *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Worberg Global Fund on 1 April 2014, as referred to in paragraph 336 above;

Particulars

ASIC repeats the particulars to paragraph 391 above.

408.2 the *in specie* redemption of the investments held by the Maximiser Fund in the Worberg Global Fund on 2 May 2014, as referred to in paragraph 337 above.

Particulars

ASIC repeats the particulars to paragraph 391.2 above.

408.3 the *in specie* redemptions of the investments held by the Advantage Fund in the Worberg Global Fund, and the subsequent *in specie* redemptions of the investments held by the Emergent and Maximiser Funds in the Advantage Fund on 2 May 2014 and 1 July 2014, as referred to in paragraphs 338 and 339 above.

Particulars

ASIC repeats the particulars to paragraph 391.3 above.

408.4 the substantial reinvesting of the Malaysian shares and equity derivatives received from those redemptions as scheme property of the Emergent and Maximiser Funds into the Hanhong High Yield Fund on or around 8 September 2014, as referred to in paragraph 342 above.

Particulars

ASIC repeats the particulars to paragraph 391.4 above.

408.5 each of the investments of scheme property of the Accelerator and Generator Funds into the Hanhong High-Yield Fund on 8 September 2014, as referred to in paragraph 343 above.

Particulars

ASIC refers to paragraphs 15.3 above.

409. When each of the:

409.1 *in specie* redemptions referred to in paragraphs 408.1 to 408.3 above was made, Dempsey knew:

- (a) of the making of those *in specie* redemptions; and
- (b) that in requesting those redemptions, AAM was exercising its powers as responsible entity of the Emergent or Maximiser Fund (as applicable).

409.2 investments referred to in paragraphs 408.4 and 408.5 above was made, Dempsey knew:

- (a) of the making of those investments; and
- (b) that in making those investments, AAM was exercising its powers as responsible entity of the relevant AG Scheme.

Particulars

Dempsey's knowledge of those matters is to be inferred from:

- (a) the matters referred to in paragraphs 14.4 and 15.3 above;
- (b) Dempsey having signed the redemption requests, requests for *in specie* distributions and subscription agreements referred to in the particulars to paragraphs 391 to 391.4 above.

410. By reason of the matters referred to in paragraphs 408 and 409 above, Dempsey was involved in AAM's contraventions of s 601FC(1)(b) of the Corporations Act between 1 April and 8 September 2014, in connection with

410.1 the *in specie* redemptions of the Malaysian shares and equity derivatives indirectly held by the Emergent and Maximiser Funds through the Worberg Global Fund, and the substantial reinvestment of those assets in the Hanhong High-Yield Fund; and

410.2 the investment of scheme property of the Accelerator and Generator Funds into the Hanhong High-Yield Fund,

as referred to in paragraph 381 above, and thereby contravened s 601FC(5) of the Corporations Act between 1 April and 8 September 2014.

411. Alternatively, in relation to each of AAM's contraventions of s 601FC(1)(b) and/or s 912A(1)(a) of the Corporations Act, in connection with:

411.1 the *in specie* redemptions of the Malaysian shares and equity derivatives indirectly held by the Emergent and Maximiser Funds through the Worberg Global Fund, and the substantial reinvestment of those assets in the Hanhong High-Yield Fund; and

411.2 the investment of scheme property of the Accelerator and Generator Funds into the Hanhong High-Yield Fund,

as referred to in paragraph 381 above, Dempsey:

411.3 failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position;

411.4 failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM complied with the Corporations Act,

and thereby contravened s 601FD(1)(b), alternatively s 601FD(1)(f)(i), of the Corporations Act on each occasion.

Particulars

A reasonable person in Dempsey's position would have ensured that AAM:

- (a) did not invest scheme property of the AG Schemes in the Hanhong High-Yield Fund;
- (b) alternatively, disclosed to members of the AG Schemes that AAM proposed to invest scheme property of those Funds into a wholesale fund based in the Cayman Islands;
- (c) explained to members of each of those Funds that the investment of scheme property of those Funds in offshore funds would likely limit ASIC's ability to identify the securities or other investments in which those Funds were ultimately invested; and
- (d) conveyed to members of each of those Funds a warning in similar terms to the warning referred to in paragraph 53 above.

D.5 Breaches of director's duties: s 180(1)

412. Dempsey:

412.1 authorised, procured or was concerned in or party to;

412.2 further or alternatively, failed to take reasonable steps to prevent AAM from engaging in,

the conduct upon which ASIC alleges that AAM committed the contraventions alleged in paragraphs 358, 365.1-365.2, 371, 375.1-375.3, 378.1-378.4 and 381 above.

Particulars

(i) As to authorising, procuring or being concerned or party, ASIC refers to paragraphs 403 to 404.3 and 408 to 408.5 above.

(ii) As to failure to take reasonable steps, ASIC repeats the particulars to paragraphs 399, 401, 407 and 411 above.

413. AAM's commission of those contraventions, alternatively its engagement in that conduct, caused actual damage to AAM, in that ASIC obtained orders:

413.1 for the appointment of provisional liquidators to AAM; and

413.2 for AAM to be wound up on the just and equitable ground,

by reference to those alleged contraventions and/or that conduct.

414. Further, as a consequence of the contraventions committed by AAM, it was reasonably foreseeable that AAM may become liable:

414.1 to compensate members of the Advantage Fund and/or any of the AG Schemes under s 1317H of the Corporations Act;

414.2 further or alternatively, in tort to members of any of the registered or unregistered schemes of which AAM was responsible entity or trustee.

415. By reason of the matters in paragraphs 412 to 414 above, between 1 August 2013 and 8 September 2014, Dempsey:

415.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in AAM's circumstances and occupied the office held

by Dempsey, and had the same responsibilities within the corporation as Dempsey; and

415.2 thereby contravened s 180(1) of the Corporations Act.

V. MANAGING CONFLICTS OF INTEREST AND DEMPSEY'S CONDUCT AS A MEMBER OF THE COMPLIANCE COMMITTEE

A. Additional facts

A.1 AAM's conflicts of interest register

416. At all material times, AAM maintained a conflicts of interest register for the recording of identified conflicts of interest arising in connection with its financial services business and the steps taken by AAM to manage those conflicts of interest.

417. In relation to:

417.1 the investment of the Emergent and Maximiser Funds into the Advantage and Worberg Global Funds, and the holding of shares in AG Financial by the Advantage and Worberg Global Funds, as referred to in paragraph 71 above;

417.2 the indirect investment by the Generator Fund in shares of AG Financial, through the Safecrest Fund, as referred to in paragraph 93 above,

AAM did not take any action to resolve those conflicts of interest beyond recording their existence in its conflicts of interest register.

Particulars

ASIC refers to paragraphs 72 and 94 above.

418. AAM did not record any conflict of interest in relation to:

418.1 AAM's acquisitions of shares in AG Financial through the Advantage, Canton, Worberg Global and Safecrest Funds, as referred to in paragraphs 56.1-56.3, 74, 79, 80, 81.1-81.3 and 83.1-83.3 above;

418.2 AAM making unsecured loans to itself and AG Financial from the Avestra Credit Fund, as referred to in paragraphs 213 to 237 above; or

418.3 AAM's transferring of unitholdings in, and investments of, the Canton Fund to the Bridge Global CMC Fund, or subsequent investments of scheme property of the Accelerator, Generator and Maximiser Funds into the Bridge Global CMC Fund, as referred to in paragraphs 325 to 333 above.

419. For every matter recorded in AAM's conflict of interest register:

- 419.1 the action taken to resolve the conflict of interest is recorded as "disclosure and monitoring";
- 419.2 the conflict was never recorded as having been resolved, but instead remained recorded as "ongoing"; and
- 419.3 AAM's management of the conflict was reviewed by Rowles and/or Dempsey.

Particulars

Copies of the extracts of AAM's conflicts of interest register produced to ASIC by AAM are available for inspection on reasonable notice.

A.2 AAM's compliance committee

420. During 2013 and 2014, meetings of AAM's compliance committee were held on:

- 420.1 3 April, 21 June, 25 September and 12 December 2013; and
- 420.2 13 March, 19 June, 29 September, 27 October and 18 December 2014.

421. The investment of registered managed investment schemes in AAM's unregistered schemes:

- 421.1 was identified as a potential conflict of interest by the compliance committee, but deferred the matter for discussion at its next meeting; and
- 421.2 was again deferred by the committee in its meeting on 25 September 2013; and
- 421.3 was never addressed in substance by the compliance committee.

Particulars

ASIC refers to paragraphs 77.5, 96.6 and 101.6 above.

422. No conflict of interest was ever discussed by the compliance committee, nor was any decision made by the compliance regarding the resolution of a conflict of interest, in relation to:

- 422.1 AAM's investments of scheme property of the Emergent and Maximiser Funds into the Canton and Worberg Global Funds, despite the issue having been

noted and held over until a later meeting in each of the meetings on 1 June and 25 September 2013;

Particulars

ASIC refers to paragraphs 77.5, 96.6 and 101.6 above.

- 422.2 AAM's acquisitions of shares in AG Financial through the Advantage, Canton, Worberg Global and Safecrest Funds, prior to ASIC having notified AAM in late November 2013 of its view that AAM had contravened ss 606 and 671B of the Corporations Act;

Particulars

ASIC refers to paragraphs 101.3 to 101.5 above.

- 422.3 AAM making unsecured loans to itself and AG Financial from the Avestra Credit Fund; or
- 422.4 AAM's transferring of unitholdings in, and investments of, the Canton Fund to the Bridge Global CMC Fund, or subsequent investments of scheme property of the Accelerator, Generator and Maximiser Funds into the Bridge Global CMC Fund.
423. In the circumstances, AAM took no action to resolve the conflicts of interest inherent in:
- 423.1 AAM's acquisitions of shares in AG Financial through the Advantage, Canton, Worberg Global and Safecrest Funds, prior to disposing of those Funds' shareholders in early 2014, after the commencement of ASIC's investigation into AAM's contraventions of ss 606 and 671B of the Corporations Act;
- 423.2 the investments of scheme property of the Emergent and Maximiser Funds into the Canton and Worberg Global Funds, prior to the closure of those funds during 2014, after the commencement of ASIC's enquiries regarding the Canton and Worberg Global Funds;
- 423.3 AAM making unsecured loans to itself and AG Financial from the Avestra Credit Fund; or
- 423.4 the investment of scheme property of each of the Accelerator, Generator and Maximiser Funds in the Bridge Global CMC Funds, prior to the *in specie*

redemptions of those investments from November 2014, after ASIC's initial enquiries regarding the Bridge Global CMC and Hanhong High-Yield Funds.

B. Contraventions by AAM

424. At all times from 20 March 2013 until 1 February 2015, AAM did not have in place adequate arrangements for the management of conflicts of interest arising wholly, or partially, by AAM in the provision of financial services as part of its financial services business.

Particulars

ASIC refers to paragraphs 416 to 423 above.

425. Accordingly, AAM contravened s 912A(1)(aa) of the Corporations Act between 20 March 2013 and 1 February 2015.

C. Contravention by Rowles: s 601FD(1)(f)(i)

426. Rowles failed to take all steps that a reasonable person would take, if they were in Rowles's position, to ensure that AAM did not contravene s 912A(1)(aa), and thereby contravened s 601FD(1)(f)(i) of the Corporations Act between 20 March 2013 and 6 January 2015.

Particulars

A reasonable person in Rowles's position would have ensured that positive steps were taken to resolve each of the conflicts of interest that were, or should have been, recorded on AAM's conflicts of interest register, including each of the conflicts of interest referred to in paragraphs 71 and 93 above.

D. Contraventions by Dempsey: ss 601JD(1)(b), 601FD(1)(f)(i)

427. At all times from 20 March 2013 until 1 February 2015, in his role as a member of AAM's compliance committee for:

427.1 the Advantage Fund; and

427.2 the AG Schemes (from 30 January 2014),

Dempsey failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Dempsey's position.

Particulars

- (a) ASIC refers to paragraphs 14.3 and 15.2 above.
- (b) A reasonable person in Dempsey's position would have ensured that each of the matters referred to in paragraphs 423.1 to 423.4 above were brought promptly to the attention of, and discussed by, the compliance committee, in order that the committee could:
 - (i) require further enquiries to be carried out, or advice obtained, as to whether any breach of the Corporations Act had been committed; and/or
 - (ii) require that any action be taken to resolve a conflict of interest.

428. Accordingly, Dempsey contravened section 601JD(1)(b) of the Corporations Act between 20 March 2013 and 1 February 2015.

429. Further or alternatively, Dempsey failed to take all steps that a reasonable person would take, if they were in Dempsey's position, to ensure that AAM did not contravene s 912A(1)(aa), and thereby contravened s 601FD(1)(f)(i) of the Corporations Act between 20 March 2013 and 6 January 2015.

Particulars

A reasonable person in Dempsey's position would have ensured that positive steps were taken to resolve each of the conflicts of interest that were, or should have been, recorded on AAM's conflicts of interest register, including each of the matters referred to in paragraphs 417, 418, 421 and 422 above.

VI. RELIEF

A. Declarations of contravention

A.1 Contraventions by AAM

430. ASIC seeks declarations of contravention against AAM pursuant to s 1317E(1) of the Corporations Act and/or section 21 of the *Federal Court of Australia Act 1976*, in respect of AAM's contraventions of:

430.1 s 208(1) (as modified by s 601LC) alleged in:

- (a) paragraph 112.1 above;
- (b) paragraph 112.2 above;
- (c) paragraph 112.3 above;

430.2 s 601FC(1)(c) alleged in:

- (a) paragraph 114.1 above;
- (b) paragraph 114.2 above;
- (c) paragraph 114.3 above;

430.3 s 208(1) (as modified by s 601LC) alleged in:

- (a) paragraph 118.1 above;
- (b) paragraph 118.2 above;
- (c) paragraph 118.3 above;

430.4 s 912A(1)(a) alleged in:

- (a) paragraph 121.1 above;
- (b) paragraph 121.2 above;
- (c) paragraph 121.3 above;
- (d) paragraph 121.4 above;

- (e) paragraph 121.5 above;
- (f) paragraph 121.6 above;
- (g) paragraph 121.7 above;
- (h) paragraph 121.8 above;

430.5 s 208(1) (as modified by s 601LC) alleged in:

- (a) paragraph 255.1 above;
- (b) paragraph 255.2 above;

430.6 s 912A(1)(a) alleged in:

- (a) paragraph 257.1 above;
- (b) paragraph 257.2 above;

430.7 s 208(1) (as modified by s 601LC) alleged in:

- (a) paragraph 261.1 above;
- (b) paragraph 261.2 above;
- (c) paragraph 261.3 above;
- (d) paragraph 261.4 above;

430.8 s 208(1) (as modified by s 601LC) alleged in paragraph 265 above;

430.9 s 912A(1)(a) alleged in:

- (a) paragraph 267.1 above;
- (b) paragraph 267.2 above;
- (c) paragraph 267.3 above;
- (d) paragraph 267.4 above;
- (e) paragraph 267.5 above;

430.10 s 912A(1)(a) alleged in paragraph 269 above;

430.11 s 208(1) (as modified by s 601LC) alleged in:

- (a) paragraph 272.1 above;
- (b) paragraph 272.2 above;

430.12 s 601FC(1)(c) and/or s 601FC(1)(m), alleged in:

- (a) paragraph 274.1 above;
- (b) paragraph 274.2 above;

430.13 s 912A(1)(a) alleged in paragraph 358 above;

430.14 s 1017B(1) alleged in:

- (a) paragraph 365.1 above;
- (b) paragraph 365.2 above;
- (c) alternatively, paragraph 367 above;

430.15 s 208(1) (as modified by s 601LC) alleged in paragraph 371 above;

430.16 s 208(1) (as modified by s 601LC) alleged in:

- (a) paragraph 375.1 above;
- (b) paragraph 375.2 above;
- (c) paragraph 375.3 above;

430.17 s 601FC(1)(b) and/or s 912A(1)(a) alleged in:

- (a) paragraph 378.1 above;
- (b) paragraph 378.2 above;
- (c) paragraph 378.3 above;
- (d) paragraph 378.4 above;

430.18 s 601FC(1)(b) and/or s 912A(1)(a) alleged in paragraph 381 above; and

430.19 s 912A(1)(aa) alleged in paragraph 425 above.

A.2 Contraventions by Rowles

431. Declarations of contravention against Rowles pursuant to s 1317E(1) of the Corporations Act and/or section 21 of the *Federal Court of Australia Act 1976*, in respect of his contraventions of:

431.1 s 601FD(3), by reason of the contraventions of s 601FD(1)(c) and/or s 601FD(1)(e), alleged in:

- (a) paragraph 152.1 above;
- (b) paragraph 152.2 above;
- (c) paragraph 152.3 above;

431.2 s 601FC(5) and/or s 209(2) (as modified by s 601LA) alleged in:

- (a) paragraph 154.1 above;
- (b) paragraph 154.2 above;
- (c) paragraph 154.3 above;
- (d) paragraph 154.4 above.

431.3 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

- (a) paragraph 155.1 above;
- (b) paragraph 155.2 above;
- (c) paragraph 155.3 above;
- (d) paragraph 155.4 above;
- (e) paragraph 155.5 above;
- (f) paragraph 155.6 above;
- (g) paragraph 155.7 above;
- (h) paragraph 155.8 above;

- 431.4 s 209(2) (as modified by s 601LA) alleged in:
- (a) paragraph 158.1 above;
 - (b) paragraph 158.2 above;
 - (c) paragraph 158.3 above;
- 431.5 s 209(2) (as modified by s 601LA) alleged in paragraph 161 above;
- 431.6 s 209(2) (as modified by s 601LA) alleged in:
- (a) paragraph 164.1 above;
 - (b) paragraph 164.2 above;
 - (c) paragraph 164.3 above;
- 431.7 s 209(2) (as modified by s 601LA) alleged in:
- (a) paragraph 167.1 above;
 - (b) paragraph 167.2 above;
- 431.8 s 1308(2), alternatively s 1308(4), alleged in paragraph 171 above;
- 431.9 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:
- (a) paragraph 172.1 above;
 - (b) paragraph 172.2 above;
 - (c) paragraph 172.3 above;
 - (d) paragraph 172.4 above;
 - (e) paragraph 172.5 above;
 - (f) paragraph 172.6 above;
- 431.10 s 180(1) alleged in paragraph 176 above;
- 431.11 s 180(1) alleged in paragraph 180 above;

431.12 s 209(2) (as modified by s 601LA) alleged in:

- (a) paragraph 277.1 above;
- (b) paragraph 277.2 above;

431.13 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

- (a) paragraph 278.1 above;
- (b) paragraph 278.2 above;

431.14 s 209(2) (as modified by s 601LA) alleged in

- (a) paragraph 281.1 above;
- (b) paragraph 281.2 above;
- (c) paragraph 281.3 above;
- (d) paragraph 281.4 above;
- (e) paragraph 281.5 above;

431.15 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

- (a) paragraph 282.1 above;
- (b) paragraph 282.2 above;
- (c) paragraph 282.3 above;
- (d) paragraph 282.4 above;
- (e) paragraph 282.5 above;

431.16 s 601FD(3), by reason of the contravention of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in paragraph 284 above;

431.17 s 601FD(3), by reason of the contraventions of s 601FD(1)(c) and/or s 601FD(1)(f)(i) alleged in:

- (a) paragraph 287.1 above;
- (b) paragraph 287.2 above;

431.18 s 209(2) (as modified by s 601LA), and/or s 601FC(5), alleged in:

- (a) paragraph 289.1 above;
- (b) paragraph 289.2 above;

431.19 s 180(1) alleged in paragraph 293 above;

431.20 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in paragraph 383 above;

431.21 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

- (a) paragraph 385.1 above; and
- (b) paragraph 385.2 above;
- (c) alternatively, paragraph 385.3 above;

431.22 s 209(2) (as modified by s 601LA) and/or s 601FC(5) alleged in:

- (a) paragraph 389.1 above;
- (b) paragraph 389.2 above;
- (c) paragraph 389.3 above;
- (d) paragraph 389.4 above;

431.23 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

- (a) paragraph 390.1 above;
- (b) paragraph 390.2 above;

(c) paragraph 390.3 above;

(d) paragraph 390.4 above;

431.24 s 601FC(5) alleged in paragraph 393 above;

431.25 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in paragraph 394 above;

431.26 s 180(1) alleged in paragraph 398 above; and

431.27 s 601FD(3), by reason of the contravention of s 601FD(1)(f)(i) alleged in paragraph 426 above.

A.3 Contraventions by Dempsey

432. Declarations of contravention against Dempsey pursuant to s 1317E(1) of the Corporations Act and/or section 21 of the *Federal Court of Australia Act 1976*, in respect of his contraventions of:

432.1 s 601FD(3), by reason of the contraventions of s 601FD(1)(c) and/or s 601FD(1)(e), alleged in:

(a) paragraph 184.1 above;

(b) paragraph 184.2 above;

(c) paragraph 184.3 above;

432.2 s 209(2) (as modified by s 601LA) and/or s 601FC(5), as alleged in:

(a) paragraph 186.1 above;

(b) paragraph 186.2 above;

(c) paragraph 186.3 above;

(d) paragraph 186.4 above;

432.3 s 601FD(3), by reason of the contraventions of s 601FD(1)(f)(i) alleged in:

(a) paragraph 187.1 above;

(b) paragraph 187.2 above;

- (c) paragraph 187.3 above;
- (d) paragraph 187.4 above;
- (e) paragraph 187.5 above;
- (f) paragraph 187.6 above;
- (g) paragraph 187.7 above;
- (h) paragraph 187.8 above;

432.4 s 209(2) (as modified by s 601LA) alleged in:

- (a) paragraph 190.1 above;
- (b) paragraph 190.2 above;
- (c) paragraph 190.3 above;

432.5 s 209(2) (as modified by s 601LA) alleged in paragraph 193 above;

432.6 s 209(2) (as modified by s 601LA) alleged in:

- (a) paragraph 196.1 above;
- (b) paragraph 196.2 above;
- (c) paragraph 196.3 above;

432.7 s 209(2) (as modified by s 601LA) alleged in:

- (a) paragraph 199.1 above;
- (b) paragraph 199.2 above;

432.8 s 1308(2), alternatively s 1308(4), alleged in paragraph 203 above;

432.9 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

- (a) paragraph 204.1 above;
- (b) paragraph 204.2 above;

(c) paragraph 204.3 above;

(d) paragraph 204.4 above;

(e) paragraph 204.5 above;

(f) paragraph 204.6 above;

432.10 s 180(1) alleged in paragraph 208 above;

432.11 s 180(1) alleged in paragraph 212 above;

432.12 s 209(2) (as modified by s 601LA), as alleged in:

(a) paragraph 296.1 above;

(b) paragraph 296.2 above;

432.13 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

(a) paragraph 297.1 above;

(b) paragraph 297.2 above;

432.14 s 209(2) (as modified by s 601LA), as alleged in:

(a) paragraph 300.1 above;

(b) paragraph 300.2 above;

(c) paragraph 300.3 above;

(d) paragraph 300.4 above;

(e) paragraph 300.5 above;

432.15 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

(a) paragraph 301.1 above;

(b) paragraph 301.2 above;

- (c) paragraph 301.3 above;
 - (d) paragraph 301.4 above;
 - (e) paragraph 301.5 above;
- 432.16 s 601FD(3), by reason of the contravention of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in paragraph 303 above;
- 432.17 s 601FD(1)(c), and/or s 601FD(1)(m), alleged in:
- (a) paragraph 306.1 above;
 - (b) paragraph 306.2 above;
- 432.18 s 209(2) (as modified by s 601LA) and/or s 601FC(5), as alleged in:
- (a) paragraph 308.1 above;
 - (b) paragraph 308.2 above;
- 432.19 s 1308(2) alleged in paragraph 311 above;
- 432.20 s 180(1) alleged in paragraph 315 above;
- 432.21 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in paragraph 400 above;
- 432.22 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:
- (a) paragraph 402.1 above; and
 - (b) paragraph 402.2 above;
 - (c) alternatively, paragraph 402.3 above;
- 432.23 s 209(2) (as modified by s 601LA) and/or s 601FC(5) alleged in:
- (a) paragraph 406.1 above;
 - (b) paragraph 406.2 above;
 - (c) paragraph 406.3 above;

(d) paragraph 406.4 above;

432.24 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in:

(a) paragraph 407.1 above;

(b) paragraph 407.2 above;

(c) paragraph 407.3 above;

(d) paragraph 407.4 above;

432.25 s 601FC(5) alleged in paragraph 410 above;

432.26 s 601FD(3), by reason of the contraventions of s 601FD(1)(b), alternatively s 601FD(1)(f)(i), alleged in paragraph 411 above;

432.27 s 180(1) alleged in paragraph 415 above;

432.28 s 601JD(3), by reason of the contravention of s 601JD(1)(b) alleged in paragraph 428 above; and

432.29 s 601FD(3), by reason of the contravention of s 601FD(1)(f)(i) alleged in paragraph 429 above.

B. Disqualification and injunctions

B.1 Disqualification of, and injunction against, Rowles

433. An order disqualifying Rowles from managing corporations for such period as the Court considers appropriate:

433.1 pursuant to s 206C(1)(a)(i), if the court makes any of the declarations of contravention of sections 180(1), 209(2), 601FC(5) or 601FD(3) pleaded in paragraph 431 above, under s 1317E of the Corporations Act;

433.2 further, pursuant to s 206E(1)(a)(ii), on the basis that Rowles has at least twice contravened the Corporations Act while he was an officer of AAM and/or Bridge Global Securities (as applicable);

Particulars

In addition to the contraventions referred to in paragraph 433.1 above, ASIC also relies on Rowles' contravention of s 1308(2), alternatively 1308(4), as alleged in paragraph 171 above and which is the subject of the declaration sought at paragraph 431.8 above.

433.3 further, pursuant to s 206E(1)(a)(i), on the bases that:

- (a) AAM has at least twice contravened the Corporations Act while Rowles was an officer of AAM, and each time Rowles failed to take reasonable steps to prevent the contravention; and

Particulars

- (i) ASIC refers to AAM's contraventions alleged at paragraphs 112.1-112.3, 114.1-114.3, 118.1-118.3, 121.1-121.8, 122, 123.2, 124, 125, 126, 127.2, 255.1-255.2, 257.1-257.2, 261.1-261.4, 265, 267.1-267.5, 269, 272.1-272.2, 274.1-274.2, 358, 365.1-365.2, 367, 371, 375.1-375.3, 378.1-378.4, 381 and 425 above.
 - (ii) As to Rowles' failure to take reasonable steps, ASIC repeats the particulars to paragraphs 155, 170.2, 172, 278, 282, 283, 286.2, 382, 384, 390, 394 and 426 above.
- (b) Bridge Global Securities has at least twice contravened the Corporations Act while Rowles was an officer of Bridge Global Securities, and each time Rowles failed to take reasonable steps to prevent the contravention.

Particulars

- (i) ASIC refers to Bridge Global Securities' contraventions alleged at paragraphs 132.1-132.3, 137, 142.1-142.3 and 147.1-147.2 above.
- (ii) As to Rowles' failure to take reasonable steps, ASIC repeats the particulars to paragraphs 133, 138, 143 and 148 above.

434. Pursuant to s 1324(1) of the Corporations Act, an injunction restraining Rowles, whether by himself or by others:

434.1 from carrying on a business concerning financial products or financial services;

434.2 from providing financial product advice; or

434.3 from dealing in financial products,

for such period as the Court considers appropriate, on the basis that Rowles has engaged in conduct that constituted a contravention of the Corporations Act:

Particulars

ASIC refers to each of the contraventions the subject of paragraphs 433.1 and 433.2 above.

B.2 Disqualification of, and injunction against, Dempsey

435. An order disqualifying Dempsey from managing corporations for such period as the Court considers appropriate:

435.1 pursuant to s 206C(1)(a)(i), if the court makes any of the declarations of contravention of sections 180(1), 209(2), 601FC(5), 601FD(3) or 601JD(3) pleaded in paragraph 432 above, under s 1317E of the Corporations Act;

435.2 further, pursuant to s 206E(1)(a)(ii), on the basis that Dempsey has at least twice contravened the Corporations Act while he was an officer of AAM and/or Bridge Global Securities (as applicable);

Particulars

In addition to the contraventions referred to in paragraph 435.1 above, ASIC also relies on Dempsey's contraventions of:

- (a) s 1308(2), alternatively 1308(4), as alleged in paragraph 203 above and which is the subject of the declaration sought at paragraph 432.8 above; and
- (b) s 1308(2), as alleged in paragraph 311 above and which is the subject of the declaration sought at paragraph 432.19 above.

435.3 further, pursuant to s 206E(1)(a)(i), on the bases that:

- (a) AAM has at least twice contravened the Corporations Act while Dempsey was an officer of AAM, and each time Dempsey failed to take reasonable steps to prevent the contravention; and

Particulars

As to AAM's contraventions, ASIC repeats paragraph (i) of the particulars to paragraph 433.3(a) above.

As to Dempsey's failure to take reasonable steps, ASIC repeats the particulars to paragraphs 187, 202.2, 204, 297, 301, 302, 305.2, 399, 401, 407, 411 and 429 above.

- (b) Bridge Global Securities has at least twice contravened the Corporations Act while Dempsey was an officer of Bridge Global Securities, and each time Dempsey failed to take reasonable steps to prevent the contravention.

Particulars

As to Bridge Global Securities' contraventions, ASIC repeats paragraph (i) of the particulars to paragraph 433.3(b) above.

As to Dempsey's failure to take reasonable steps, ASIC repeats the particulars to paragraphs 133, 138, 143 and 148 above.

436. Pursuant to s 1324(1) of the Corporations Act, an injunction restraining Dempsey, whether by himself or by others:

436.1 from carrying on a business concerning financial products or financial services;

436.2 from providing financial product advice; or

436.3 from dealing in financial products,

for such period as the Court considers appropriate, on the basis that Dempsey has engaged in conduct that constituted a contravention of the Corporations Act.

Particulars

ASIC refers to each of the contraventions the subject of paragraphs 435.1 and 435.2 above.

Date: 2 May 2016



Savas Miriklis
Lawyer for the Plaintiff

This pleading was prepared by Jonathon Moore and Tom Clarke of counsel and Savas Miriklis of ASIC.

CERTIFICATE OF LAWYER

I, Savas Miriklis, certify to the Court that, in relation to the statement of claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 2 May 2016



Signed by Savas Miriklis
Lawyer for the Plaintiff

Annexure 1

Acquisitions of shares in AG Financial made by AAM: March – August 2013

Date	Type of purchase	Advantage Fund	Worberg Global Fund	Canton Fund	Safecrest Fund
20-21 March	Off-market from Spann	230,000	2,000,000	4,400,000	
30 May	Placement	4,200,000			
24 June	On market		33,527		
27 June	On market		13,850		
3 July	On market				500,000
4 July	On market				500,000
12 July	Rights issue	16,700,000	8,500,000	17,760,000	
16 July	On market		100,000		
19 July	Shortfall allocation		9,000,000	21,000,000	7,500,000
1 August	Off market				500,000
2 August	On market		60,381		

SCHEDULE

Federal Court of Australia

No. VID 514/2015

District Registry: Victoria

Division: General

AVESTRA ASSET MANAGEMENT LIMITED (IN LIQUIDATION) (ACN 119 227 440)

First defendant

PAUL JOHN ROWLES

Second defendant

CLAYTON DEMPSEY

Third defendant