

## NOTICE OF FILING

### Details of Filing

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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

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

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Form 1  
Rule 2.1

## Statement of Claim

No.      of 2025

Federal Court of Australia  
District Registry: Victoria  
Division: General

### **Australian Securities and Investments Commission**

Plaintiff

### **SQM Research Pty Ltd (ACN 122 592 036)**

Defendant

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission (Plaintiff)		
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## A. THE PARTIES

1. The plaintiff, the Australian Securities and Investments Commission, (**ASIC**) is:
  - (a) a body corporate under s 8(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**); and
  - (b) entitled to commence and maintain this proceeding in its corporate name under s 8(1)(d) of the ASIC Act.
2. The defendant, SQM Research Pty Ltd (ACN 122 592 036), (**SQM**) was, between 1 August 2021 and 31 December 2023, (the **Relevant Period**) and is:
  - (a) a company duly incorporated pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**);
  - (b) the holder of an Australian Financial Services Licence (**AFSL**) (licence no: 421913) which authorises it to carry on a financial services business to provide financial product advice for certain classes of financial products, including (*inter alia*) interests in managed investment schemes excluding investor directed portfolio services, to wholesale clients;
  - (c) a financial services licensee (previously within the meaning of s 761A of the Corporations Act and now within the meaning of s 9 of the Corporations Act); and
  - (d) the provider of financial services (within the meaning of Chapter 7 of the Corporations Act).

## PARTICULARS

- A. Current & Historical Company Extract of SQM dated 30 September 2025 (SQR.0003.0003.0115).
- B. As to paragraph 2(b), AFSL effective 26 June 2012 (SQR.0003.0003.0001).

## **B. BACKGROUND**

### **B1. SQM**

3. During the Relevant Period, SQM was a privately owned investment research house that specialised in producing research, data and ratings reports on (*inter alia*) managed funds.
4. During the Relevant Period:
  - (a) SQM's sole director and secretary was Louis Christopher;
  - (b) SQM had in place a research team;
  - (c) the members of SQM's research team relevantly included:
    - i. Robert da Silva, who held the role of Head of Research;
    - ii. Otto Rieth, who held the role of Senior Investment Analyst; and
    - iii. Michael Lindsay, who held the role of Investment Analyst;
  - (d) SQM had in place a business management team; and
  - (e) the members of SQM's business management team relevantly included Peter Evans, who held the role of Account Manager – Ratings.
5. During the Relevant Period, SQM produced and published (*inter alia*) the following reports:
  - (a) a report dated 6 October 2021 and published on SQM's website on or about 6 October 2021 on the Conservative, Balanced and Growth classes of the Shield Master Fund (**SMF**) (**6 October 2021 Report**);
  - (b) a report dated 6 October 2021 and published on SQM's website on or about 18 March 2022 on the Conservative, Balanced, Growth and High Growth classes of the SMF (**March 2022 Report**); and
  - (c) a report dated 26 October 2022 and published on SQM's website on or about 26 October 2022 on the Conservative, Balanced, Growth and High Growth classes of the SMF (**October 2022 Report**).

## **PARTICULARS**

A. 6 October 2021 Report (SQR.0016.0001.0115).

B. March 2022 Report (SQR.0016.0001.0156).

C. October 2022 Report (SQR.0010.0001.2855).

**B2. SQM's processes and procedures for the production and publication of reports**

6. During 2021 and 2022, SQM had in place a document titled 'SQM Research – Frequently Asked Questions' (the **FAQ Document**) which set out (*inter alia*) in summary, information regarding the ratings methodology used by SQM to produce a research, data and ratings report.

**PARTICULARS**

- A. FAQ Document dated on or about 12 December 2021 (**2021 FAQ Document**) (SQR.0016.0008.1688).
- B. FAQ Document dated on or about 8 August 2022 (**2022 FAQ Document**) (SQR.0013.0001.0057).
7. Part 6 (Rating Research Process) of the FAQ Document provided (*inter alia*) that:
- (a) the underlying components of SQM's rating process were:
- i. form an opinion about the investment competence and quality of the fund manager in terms of their ability to deliver the risk and return objectives outlined in the product disclosure statement (**PDS**);
  - ii. benchmark investment performance and risk metrics against industry peers and market indexes;
  - iii. evaluate management capabilities (executive and investment functions) and organisation stability;
  - iv. review the structure and ownership of the investment manager and responsible entity; and
  - v. investigate the investment manager with respect to its business goals and commercial plans;
- (b) SQM considered, but was not restricted to, the following elements of its rating review:
- i. business profile – product strategies and future direction;
  - ii. marketing strategies and capabilities, market access;

- iii. executive management and oversight of the investment management firm;
  - iv. corporate governance / fund compliance / risk management;
  - v. investment team and investment process;
  - vi. fund performance, investment style, market conditions, investment market outlook;
  - vii. recent material portfolio changes;
  - viii. investment liquidity;
  - ix. investment risks; and
  - x. fund / trust fees, charges, and expenses;
- (c) SQM's rating research process included investment, operational and governance research, generally involving (*inter alia*):
- i. review of official documents such as PDSs, Financial Services Council (**FSC**) questionnaires, statutory financial statements, performance attribution, compliance plan audits and other relevant documents;
  - ii. review of the manager's response to the 'SQM Fund Questionnaire' (tailored to the relevant asset class);
  - iii. where possible and practical, cross-checks to seek 'corroborating evidence' for assertions and statements made by a fund manager;
  - iv. review of the 'SQM Data Template' completed by the manager, which included extensive current and historical data on a variety of metrics, fund positioning and investment information; and
  - v. a comprehensive meeting with key people in the investment management team and relevant business-side executives including a deep-dive discussion of the topics in the request for information (**RFI**) documents and, if relevant, may include case studies of positions or stocks that illustrated the investment process;
- (d) operational research was largely conducted through:
- i. review of key documents;

- ii. review of output, if necessary, from key operational systems, for example, reports on risk, trades, exposures, and compliance;
  - iii. demonstrations of systems and processes, where necessary; and
  - iv. discussions with relevant operational staff, where necessary;
- (e) governance and risk research was largely conducted through reviews of key legal documents and financial statements and detailed responses to SQM questions regarding governance and risk; and
- (f) in relation to qualitative and quantitative assessment factors:
- i. qualitative and quantitative factors were scored on a 37-point checklist, with varying weights attached to each category, reflecting the relative importance of that factor (a **Scorecard**);
  - ii. a zero to five-star score was applied to each checkpoint, in increments of 0.25;
  - iii. the weighted average star score formed the central case for the final rating, with a subjective 0.25 discretion either side that could be applied by the analyst and discussed internally;
  - iv. quantitative analysis was conducted via a proprietary system and other analytics developed by SQM's Head of Research; and
  - v. a summary version of the scoresheet appeared as follows:

Category	Weight %
Governance/Business	20
People	25
Product Features	15
Risk and Return	10
Philosophy / Process	20
Portfolio Construction	10

## PARTICULARS

- A. 2021 FAQ Document (SQR.0016.0008.1688), (pp.1690-1691).
- B. 2022 FAQ Document (SQR.0013.0001.0057), (pp.0060-0061).



8. Between June 2022 and at least October 2022, the ratings methodology used by SQM was that set out in the SQM document titled 'SQM Research, Overview- Funds Research and Data, June 2022' (**SQM Ratings Methodology**).

### PARTICULARS

SQM Ratings Methodology dated June 2022  
(SQR.0013.0001.0347).

9. The SQM Ratings Methodology provided (*inter alia*) that:
- (a) the SQM Ratings Table comprised the following star ratings:

### SQM Ratings Table

Star Rating*	Description	Definition	Investment Grading
4½ stars and above	Outstanding	Highly suitable for inclusion on APLs	High Investment grade
4¼ stars	Superior	Suitable for inclusion on most APLs	High Investment grade
4 stars	Superior	Suitable for inclusion on most APLs	High Investment grade
3¾ stars	Favourable	Consider for APL inclusion	Approved
3½ stars	Acceptable	Consider for APL inclusion	Low investment grade
3¼ stars	Caution required	Not suitable for most APLs	Unapproved
3 stars	Strong Caution Required	Not suitable for most APLs	Unapproved
Below 3 stars	Avoid or redeem	Not suitable for most APL inclusion	Unapproved

\* The definitions in the table above are not all encompassing and not all individual items mentioned will necessarily be relevant to the rated Fund. Users should read the current rating report for a comprehensive assessment.

- (b) the full description afforded to the 3¾ star rating by SQM (the **3¾ Star Rating Description**) was that:

*SQM Research concludes the Fund has a moderate potential to outperform over the medium-to-long term. Past performance has tended to be reasonable. Management is experienced and displays investment-grade quality. There are no corporate governance concerns, or they are of a minor nature.*

- (c) the SQM rating process comprised the following steps:



- (d) SQM's rating process comprised a 37 point checklist across several categories, namely people, governance / business, philosophy / process, product features, portfolio construction, risk and return.

## PARTICULARS

SQM Ratings Methodology (SQR.0013.0001.0347), (pp.0365, .0367, .0368, .0383).

### B3. Overview of the SMF

#### 10. The SMF:

- (a) was, during the Relevant Period, a registered managed investment scheme, registered on or about 11 May 2021 with Australian Registered Scheme Number (ARSN) 650 112 057;
- (b) was, during the Relevant Period, a financial product and a financial service for the purpose of Division 2 of Part 2 of the ASIC Act;
- (c) was, as at about August 2021, a new fund with no funds under management; and
- (d) first received investor funds in about April 2022.

## PARTICULARS

- A. As to paragraph 10(a), Current & Historical Company Extract of the SMF dated 2 July 2025 (KSS.0003.0002.1208), (p.1209).
- B. As to paragraph 10(b), ASIC refers to and relies upon ss 12BAA(1) and 12BAB of the ASIC Act.
- C. As to paragraphs 10(c) and (d), SMF Annual Report for the period 28 April 2021 to 30 June 2022 dated 26 October 2022 (KAM.1000.0014.3721), (p.0004).

11. During the Relevant Period:

- (a) the responsible entity of the SMF was Keystone Asset Management Limited (ACN 612 443 008) (**Keystone**); and
- (b) the investment manager of the SMF was CF Capital Investments Pty Ltd (ACN 633 394 751) (**CF Capital**).

12. Keystone (*inter alia*):

- (a) was the trustee of the Chiodo Diversified Property Fund (**CDPF**), an unregistered open-ended unit trust, between about 15 June 2021 and at least 27 August 2024;
- (b) was and is the trustee of the Advantage Diversified Property Fund (**ADPF**), an unregistered open-ended unit trust, on and from about 18 October 2021; and
- (c) was the responsible entity of the Advantage Diversified Property Class (**ADPC**), a class of the SMF, between about 1 September 2022 and 1 March 2023.

## PARTICULARS

- A. Trust Deed for the CDPF dated 22 August 2016 but said to have been executed on 15 June 2021 (KAM.1000.0047.7724), (pp.\_0002, \_0042).
- B. Trust Deed for the ADPF dated 18 October 2021 (S9Z.0014.0001.0899).

C. Information Memorandum on the ADPF dated 1 March 2022 (S9Z.0014.0001.0945), (p.0953).

D. PDS for the ADPC dated 1 September 2022 (KSS.0032.0002.0077), (pp.0078, .0081, .0087, .0088).

13. CF Capital was the investment manager of (*inter alia*):

- (a) the ADPF between 1 March 2022 and 1 March 2023; and
- (b) the ADPC between 1 September 2022 and 1 March 2023.

#### **PARTICULARS**

A. Information Memorandum on the ADPF dated 1 March 2022 (S9Z.0014.0001.0945), (p.0953).

B. PDS for the ADPC dated 1 September 2022 (KSS.0032.0002.0077), (pp.0078, .0087, .0088).

14. Paul Chiodo:

- (a) was a director of Keystone between 27 April 2020 and 27 May 2024;
- (b) was a director of CF Capital between 10 May 2019 and 17 June 2024;
- (c) was and is a director of Malana Management Pty Ltd (ACN 633 213 948) (**Malana**) on and from about 2 May 2019;
- (d) was and is a director of Chiodo Corporation Pty Ltd (ACN 611 404 909) (**Chiodo Corporation**) on and from about 18 March 2016; and
- (e) was and is sole director and shareholder of Pure Development & Project Management Pty Ltd (ACN 141 910 581) (**Pure Development & Project Management**) on and from about 8 February 2010.

#### **PARTICULARS**

A. As to paragraph 14(a), Current & Historical Company Extract of Keystone dated 30 September 2025 (SQR.0003.0003.0089), (p.0092).

- B. As to paragraph 14(b), Current & Historical Company Extract of CF Capital dated 30 September 2025 (SQR.0003.0003.0107), (p.0110).
- C. As to paragraph 14(c), Current & Historical Company Extract of Malana dated 30 September 2025 (SQR.0003.0003.0085), (p.0087).
- D. As to paragraph 14(d), Current & Historical Company Extract of Chiodo Corporation dated 30 September 2025 (SQR.0003.0003.0120), (p.0121).
- E. As to paragraph 14(e), Current & Historical Company Extract of Pure Development & Project Management dated 30 September 2025 (SQR.0003.0003.0080), (p.0082).

15. Ilya Frolov:

- (a) was a director of Keystone between 27 April 2020 and 29 December 2023;
- (b) was a director of CF Capital between 10 May 2019 and 29 December 2023; and
- (c) was and is a director of Malana on and from about 2 May 2019.

**PARTICULARS**

- A. As to paragraph 15(a), Current & Historical Company Extract of Keystone dated 30 September 2025 (SQR.0003.0003.0089), (p.0092).
- B. As to paragraph 15(b), Current & Historical Company Extract of CF Capital dated 30 September 2025 (SQR.0003.0003.0107), (p.0110).
- C. As to paragraph 15(c), Current & Historical Company Extract of Malana dated 30 September 2025 (SQR.0003.0003.0085), (p.0087).

16. At all times during the Relevant Period, the SMF relevantly included four investment classes described as follows:
- (a) the Conservative class;
  - (b) the Balanced class;
  - (c) the Growth class; and
  - (d) the High Growth class.
17. With respect to the each of the Conservative, Balanced and Growth classes of the SMF relevantly:
- (a) a PDS was issued on or about 8 September 2021;
  - (b) a supplementary PDS was issued on or about 3 November 2021; and
  - (c) a further supplementary PDS was issued on or about 4 April 2022.

#### **PARTICULARS**

- A. PDS for the Conservative class of the SMF dated 8 September 2021 (SQR.0016.0001.3014).
- B. Supplementary PDS for the Conservative class of the SMF dated 4 April 2022, including the supplementary PDS dated 3 November 2021 (SQR.0010.0001.3739).
- C. PDS for the Balanced class of the SMF dated 8 September 2021 (SQR.0016.0001.2988).
- D. Supplementary PDS for the Balanced class of the SMF dated 4 April 2022, including the supplementary PDS dated 3 November 2021 (SQR.0024.0001.6931).
- E. PDS for the Growth class of the SMF dated 8 September 2021 (SQR.0016.0001.2962).
- F. Supplementary PDS for the Growth class of the SMF dated 4 April 2022, including the supplementary PDS dated 3 November 2021 (SQR.0010.0001.3772).

18. With respect to the High Growth class of the SMF:
- (a) a PDS was issued on or about 12 October 2021;
  - (b) a supplementary PDS was issued on or about 3 November 2021; and
  - (c) a further supplementary PDS was issued on or about 4 April 2022.

#### **PARTICULARS**

Supplementary PDS for the High Growth class of the SMF dated 4 April 2022, including the supplementary PDS dated 3 November 2021 and the PDS dated 12 October 2021 (SQR.0010.0001.3805).

### **C. THE 6 OCTOBER 2021 REPORT, THE MARCH 2022 REPORT AND THE OCTOBER 2022 REPORT**

#### **C1. The October 2020 CDPD Report**

19. On or about 14 October 2020, SQM rated the Chiodo Diversified Property Development Class (**CDPD**), a class of a registered managed investment scheme, as '3½ stars, Acceptable, Consider for APL inclusion, Low Investment Grade' (**October 2020 CDPD Report**).

#### **PARTICULARS**

October 2020 CDPD Report (SQR.0016.0001.0188), cover page, introduction page, pp2, 3 (pp.0188, .0189, .0191, .0192).

20. The October 2020 CDPD Report provided (*inter alia*), in summary, that the CDPD invested in the CDPF.

#### **PARTICULARS**

October 2020 CDPD Report (SQR.0016.0001.0188), (p.0192).

#### **C2. Producing and publishing the 6 October 2021 Report**

21. On or about 12 August 2021, Mr Frolov emailed Mr Evans, copying Mr Christopher, asking (*inter alia*), in summary, whether three new products could be rated by SQM 'with fast-track'.

## PARTICULARS

Email from Mr Frolov to Mr Evans, copying Mr Christopher, dated 12 August 2021 (SQR.0016.0001.0140).

22. On or about 16 August 2021:

- (a) SQM agreed to conduct an assessment of the Conservative, Balanced and Growth classes of the SMF; and
- (b) Keystone and SQM entered into an agreement titled 'Terms and Conditions of Engagement of SQM Research' (**SQM / Keystone Agreement**).

## PARTICULARS

SQM / Keystone Agreement dated 16 August 2021 (SQR.0010.0001.0003).

23. The SQM / Keystone Agreement provided as follows (*inter alia*):

- (a) Keystone, as client, engaged SQM to conduct an assessment of the Balanced, Conservative and Growth classes of the SMF (p1);
- (b) SQM would conduct its assessment pursuant to its obligations under (*inter alia*) its wholesale licence and Regulatory Guide (RG79): 'Research report providers: Improving the quality of investment research' issued by ASIC on 10 December 2012' (**RG 79**) (p1);
- (c) the assessment process was thorough and would include a delivery of a checklist of information required as well as one or more meetings with key personnel as well as desktop research (Clause A, Trust Assessment Process);
- (d) SQM would consider (but would not be restricted to) the following factors as part of its assessment (Clause A, Trust Assessment Process):
  - i. management – of responsible entity and the asset management team;
  - ii. business profile – fund / product strategies and future direction;
  - iii. marketing strategies and capabilities, market access;
  - iv. review of fund performance, investment style, market conditions / fundamentals, discussion of investment market outlook and material portfolio changes;



- v. fund / trust fees and expenses;
  - vi. investment team and investment process;
  - vii. risk management and fund liquidity profile; and
  - viii. corporate governance;
- (e) SQM had developed an assessment model to assess funds using a star rating system; other qualitative factors were also used in determining the published ratings (Clause F, Assessment Model);
  - (f) each fund received an overall star rating to a maximum of five stars, based on an appraisal of each of the assessment categories (a '**Rating**'). The submitted fund star Rating may be represented by a combination of full, half or quarter stars (Clause F, Assessment Model);
  - (g) funds receiving an overall rating of two or more stars would be placed on the SQM website, where the rating and report would be displayed and accessible by paid subscribers to SQM Ratings (Clause F, Assessment Model);
  - (h) SQM would provide Keystone with one electronic copy of the draft report for each fund upon completion of the assessment period, assuming all required information contained in the Checklist has been provided to SQM in the required time, and Keystone would have seven business days to provide feedback or suggest amendments to matters of fact contained within the report (Clause G, Draft Reports, Final Reports and Ratings);
  - (i) SQM would, at its discretion, determine the nature of any amendments as identified by Keystone and determine what, if any, modifications were required (Clause G, Draft Reports, Final Reports and Ratings);
  - (j) the total cost of the independent review was \$24,000.00 (excluding GST) (Clause M, Fees); and
  - (k) the completed report would remain valid for 12 months from the date of issue and at the end of 12 months, the report and rating will expire and SQM will withdraw the report and rating (Clause N, Validity of the Report and Rating).

### Particulars

SQM / Keystone Agreement dated 16 August 2021 (SQR.0010.0001.0003), (pp .0003-.0005, .0007).

24. On or about 18 August 2021, Mr Rieth emailed Mr Frolov, copying Mr da Silva:
- (a) attaching copies of two questionnaires, namely a qualitative (Word) questionnaire and quantitative (Excel) questionnaire (the **2021 Quantitative Questionnaire Template**) to be completed;
  - (b) requesting (*inter alia*), in summary, that the questionnaires be completed and returned to SQM no later than two weeks from the date of the email; and
  - (c) stating (*inter alia*) 'as discussed, use the 'Balanced' option as the example for all information and we will frame the report around that, while noting the other risk profiles available'.

### PARTICULARS

- A. Email from Mr Rieth to Mr Frolov, copying Mr da Silva, dated 18 August 2021 (SQR.0016.0001.0702).
- B. Document titled 'CF Capital Shield – SQM Multi-Asset Questionnaire QUAL' (SQR.0016.0001.0703).
- C. 2021 Quantitative Questionnaire Template (SQR.0016.0001.0710).

25. The 2021 Quantitative Questionnaire Template provided, in the Sheet titled 'Intro', (*inter alia*):

*In addition to this document, please include the following:*

- 1. *Performance Attribution Report (summary table) – for 1, 3 and 5 years to the most recent available date*
- 2. *Most Recently Issued PDS, Information Memorandum, or other Offer Document For the Fund*
- 3. *Copy Of The Fund Constitution & any Amendments Which Have been Lodged with ASIC*

4. *FSC (or other Due Diligence) Documentation For The Fund (Most Recent Including the Quant Spreadsheet Attachment*
  5. *Latest Financial Reports For Both The Parent Entity And The Responsible Entity Of The Fund*
  6. *Copy Of The Most Recent Compliance Plan Audit Conducted In Relation To The Responsible Entity*
26. On or about 10 September 2021, Mr Frolov emailed Mr Rieth, copying Mr da Silva:
- (a) attaching copies of documents titled:
    - i. CF Capital Shield - SQM Multi-Asset Questionnaire QUAL – IF (**2021 Qualitative Questionnaire**); and
    - ii. CF Capital Shield - SQM Multi-Asset Questionnaire QUANT (**2021 Quantitative Questionnaire**); and
  - (b) (*inter alia*), in summary, requesting a time for the review meeting.

#### **PARTICULARS**

- A. Email from Mr Frolov to Mr Rieth, copying Mr da Silva, dated 10 September 2021 (SQR.0016.0001.0498).
  - B. 2021 Qualitative Questionnaire (SQR.0016.0001.0500).
  - C. 2021 Quantitative Questionnaire (SQR.0016.0001.0519).
27. The 2021 Qualitative Questionnaire and the 2021 Quantitative Questionnaire predominantly related to the Balanced class of the SMF and did not materially address the Conservative class or the Growth class of the SMF.
28. On or about 16 September 2021, a review meeting took place between CF Capital and SQM (**September 2021 Review Meeting**).

#### **PARTICULARS**

- A. Handwritten note of Mr Rieth dated 16 September 2021 (SQR.0016.0002.2118) which recorded (*inter alia*) 'Provides

Liquidity to their property product. SMELLY!!' (emphasis in original).

B. The September 2021 Review Meeting was attended by Mr Rieth, Mr Frolov and Mr Chiodo.

29. On or about 30 September 2021, Mr Rieth emailed Mr da Silva stating (*inter alia*), in summary that the report was ready for a look.

**Particulars**

Email from Mr Rieth to Mr da Silva dated 30 September 2021 (SQR.0016.0001.1569).

30. Also on or about 30 September 2021, Mr Rieth emailed Mr Frolov:

- (a) attaching a copy of a document titled 'CF Capital Shield Multi Asset Fund DRAFT'; and
- (b) stating (*inter alia*) please have the relevant team member check for factual errors and the like.

**Particulars**

A. Email from Mr Rieth to Mr Frolov dated 30 September 2021 at 4:23pm (KSS.0210.0002.5035).

B. Document titled 'CF Capital Shield Multi Asset Fund DRAFT' (KSS.0210.0002.5036).

31. Also on or about 30 September 2021, Mr Frolov emailed Mr Rieth:

- (a) attaching copy of a document titled 'CF Capital Shield Multi Asset Fund DRAFT-IF'; and
- (b) stating (*inter alia*) that he had a few minor corrections on entities and class names.

**Particulars**

A. Email from Mr Frolov to Mr Rieth dated 30 September 2021 at 5:13pm (KSS.0210.0002.5142).

B. Document titled 'CF Capital Shield Multi Asset Fund DRAFT-IF' (KSS.0210.0002.5146).

32. Also on or about 30 September 2021, Mr Rieth emailed (*inter alia*) Mr Frolov stating (*inter alia*) that the CF Capital Shield Balanced Class Fund has been awarded 3.75 stars, which rating was described as 'Favourable Consider for APL inclusion Approved'.

#### **PARTICULARS**

Email from Mr Rieth to (*inter alia*) Mr Frolov dated 30 September 2021 at 6:13pm (SQR.0016.0001.0520).

33. On or about 1 October 2021, Mr Rieth emailed Mr Frolov, copying Mr da Silva, attaching:
- (a) a SQM Report titled 'Shield Master Fund – Balanced Class' dated 1 October 2021 (**1 October 2021 Report**); and
  - (b) an undated document titled 'SQM Disclaimer' (**SQM Disclaimer**).

#### **PARTICULARS**

A. Email from Mr Rieth to Mr Frolov, copying Mr da Silva, dated 1 October 2021 (SQR.0016.0001.0712).

B. 1 October 2021 Report (SQR.0016.0001.0713).

C. SQM Disclaimer (SQR.0016.0001.0736).

34. In the course of producing the 1 October 2021 Report, SQM commenced preparing a Scorecard, but has subsequently been unable to produce a completed Scorecard.

#### **PARTICULARS**

Incomplete Scorecard for the 1 October 2021 Report (SQR.0016.0001.0067).

35. On or about 6 October 2021, Mr Frolov emailed Mr Rieth, copying (*inter alia*) Mr da Silva:
- (a) making (*inter alia*), in summary, a request that either the 1 October 2021 SQM Report be amended, or otherwise Mr Rieth provide an email to confirm that the 1 October

2021 Report extended to each of the Conservative, Balanced and Growth classes of the SMF, which email could be sent by CF Capital to advisors and platforms; and

(b) attaching:

- i. the PDSs for the Conservative, Balanced and Growth classes of the SMF each dated 8 September 2021; and
- ii. a single document containing asset allocation tables for the Conservative, Balanced and Growth classes of the SMF extracted from the respective PDSs for those classes of the SMF.

#### **PARTICULARS**

- A. Email from Mr Frolov to Mr Rieth, copying (*inter alia*) Mr da Silva, dated 6 October 2021 (SQR.0016.0001.2960).
- B. Conservative class PDS dated 8 September 2021 (SQR.0016.0001.3014).
- C. Balanced class PDS dated 8 September 2021 (SQR.0016.0001.2988).
- D. Growth class PDS dated 8 September 2021 (SQR.0016.0001.2962).
- E. Asset allocation tables for the Conservative, Balanced and Growth classes of the SMF (SQR.0016.0001.3040).

36. On or about 6 October 2021, Mr da Silva emailed Mr Frolov attaching the 6 October 2021 Report, which had been produced by SQM in the same way as the 1 October 2021 Report, as referred to in paragraphs 21 to 34 above, but for those additional matters referred to in paragraph 35 above.

#### **PARTICULARS**

- A. Email from Mr da Silva to Mr Frolov dated 6 October 2021 (SQR.0016.0001.0114).
- B. 6 October 2021 Report (SQR.0016.0001.0115).

37. The 6 October 2021 Report was substantively the same as the 1 October 2021 Report save that the following substantive changes had been made to the 1 October 2021 Report:

- (a) the 6 October 2021 Report was dated 6 October 2021, not 1 October 2021;
- (b) on the cover page and at page 2, in the Product Suite Name row, the 6 October 2021 Report did not include the words 'Balanced Class';
- (c) at page 3:
  - i. under the heading 'Fund Summary, Description', the 6 October 2021 Report provided that:

A range of options are offered (Conservative, Balanced, Growth) within the Shield Master Fund. See table below.

The Balanced Portfolio is used in this Report as the prime exemplar and key focus of analysis.

Code	Product Options	Return Objective
KSA1536AU	Shield Conservative Class	CPI plus 3.5%
KSA5852AU	Shield Balanced Class	CPI plus 4.5%
KSA8803AU	Shield Growth Class	CPI plus 5.5%

- ii. under the heading 'Fund Rating', the 6 October 2021 Report provided that:

This rating applies to the following options:

Code	Product Options
KSA1536AU	Shield Conservative Class
KSA5852AU	Shield Balanced Class
KSA8803AU	Shield Growth Class

## PARTICULARS

- A. 1 October 2021 Report (SQR.0016.0001.0713), (pp.0713, .0714, .0716, .0717).
- B. 6 October 2021 Report (SQR.0016.0001.0115), (pp.0115, .0116, .0118, .0119).

38. In the course of producing the 6 October 2021 Report, SQM did not:

- (a) obtain completed FSC questionnaires for the SMF addressing the Conservative, Balanced and Growth classes of the SMF;
- (b) obtain any audited financial statements for the SMF, Keystone or CF Capital;
- (c) obtain constitutions of the SMF, Keystone or CF Capital;
- (d) obtain policies for the SMF, Keystone or CF Capital relating to governance, compliance, risk management and investment processes;
- (e) obtain material information in relation to the fund data for the Conservative, Balanced and Growth classes of the SMF and each underlying fund into which each class of the SMF invested or was to invest in, including fund data relating to systems, attribution (including asset allocations), equity sector allocations or asset allocations for multi-asset funds;
- (f) take any material steps to evaluate the ADPC in circumstances where it was said that the ADPC:
  - i. was replacing the CDPD, as referred to in paragraph 88(d)(iv) below; and
  - ii. had not been rated by SQM prior to the publication of the 6 October 2021 Report;
- (g) take any material steps to evaluate Pearl Funds Management Pty Ltd (ACN 616 471 580) (**Pearl**) and Watershed Funds Management Pty Ltd (ACN 166 324 858) (**Watershed**) (**Pearl / Watershed**) as an underlying fund manager of the SMF or the Pearl / Watershed Multi-Asset Funds (as defined in paragraph 88(e)(ii) below) in circumstances where the Pearl / Watershed Multi-Asset Funds had not been rated by SQM prior to the publication of the 6 October 2021 Report;
- (h) take any steps to consider, assess, verify or analyse the 2021 Inconsistencies, Missing Information and Differences (as defined in paragraph 89 below); nor
- (i) prepare or complete any separate further Scorecard, in respect of the 6 October 2021 Report.

39. The 6 October 2021 Report was:

- (a) on or about 6 October 2021, uploaded to SQM's website; and
- (b) between about 6 October 2021 and 18 March 2022, made available on SQM's website to subscribers for SQM's services.



40. The 6 October 2021 Report rated each of the Conservative, Balanced and Growth classes of the SMF as '3¾ stars, Favourable, Consider for APL inclusion, Approved'.

**PARTICULARS**

- A. 6 October 2021 Report (SQR.0016.0001.0115), cover page, introduction page, pp2, 3 (pp.0115, .1116, .0118, .0119).
- B. ASIC refers to and repeats the 3¾ Star Rating Description (see paragraph 9(b) above).

**C3. Expiry of the October 2020 CDPD Report**

41. On or about 14 October 2021, SQM's rating of the CDPD in the October 2020 CDPD Report expired.

**PARTICULARS**

Email from Mr Evans to Mr Frolov dated 15 July 2021 (SQR.0016.0001.0140).

**C4. Producing and publishing the March 2022 Report**

42. On or about 11 March 2022, Mr Frolov emailed Mr da Silva requesting, in summary, that the High Growth class of the SMF be added to the 6 October 2021 Report.

**PARTICULARS**

Email from Mr Frolov to Mr da Silva dated 11 March 2022 (SQR.0016.0001.0144), (pp.0145-0146).

43. On or about 14 March 2022, Mr Evans emailed Mr Frolov requesting (*inter alia*), in summary, clarification as to the information which Mr Frolov wanted included about the High Growth class of the SMF in the 6 October 2021 Report.

**PARTICULARS**

Email from Mr Evans to Mr Frolov dated 14 March 2022 (SQR.0016.0001.0144), (p.0145).

44. Also on or about 14 March 2022, Mr Frolov emailed Mr Evans responding to Mr Evans' email of the same date stating (*inter alia*), in summary, that he only needed the class / product added to the summary page on page 3 of the 6 October 2021 Report.

**PARTICULARS**

Email from Mr Frolov to Mr Evans dated 14 March 2022  
(SQR.0016.0001.0144), (p.0145).

45. On or about 18 March 2022, Mr Evans emailed Mr Frolov:
- (a) attaching a copy of the March 2022 Report; and
  - (b) requesting (*inter alia*), in summary, that Mr Frolov confirm that the changes were ok.

**PARTICULARS**

Email from Mr Evans to Mr Frolov dated 18 March 2022  
(SQR.0016.0001.0144).

46. The March 2022 Report was the same as the 6 October 2021 Report save that the following changes had been made to page 3 of the March 2022 Report:
- (a) the words 'KSA9675AU Shield High Growth Class CPI plus 5.5%' were added at the end of the table under the heading 'Fund Summary, Description'; and
  - (b) the words 'KSA9675AU Shield High Growth Class' were added at the end of the second table under the heading 'Fund Rating'.

**PARTICULARS**

A. 6 October 2021 Report (SQR.0016.0001.0115), (p.0119).

B. March 2022 Report (SQR.0016.0001.0156), (p.0160).

47. In the course of producing the March 2022 Report, SQM did not:
- (a) obtain completed FSC questionnaires for the SMF addressing the Conservative, Balanced, Growth and High Growth classes of the SMF;
  - (b) obtain any audited financial statements for the SMF, Keystone or CF Capital;
  - (c) obtain constitutions of the SMF, Keystone or CF Capital;

- (d) obtain policies for the SMF, Keystone or CF Capital relating to governance, compliance, risk management and investment processes;
- (e) obtain a completed SQM qualitative questionnaire for the SMF that fully addressed the Conservative, Growth and High Growth classes of the SMF;
- (f) obtain a completed SQM quantitative questionnaire for the SMF that addressed the Conservative, Growth and High Growth classes of the SMF;
- (g) obtain material information in relation to the fund data for the Conservative, Balanced, Growth and High Growth classes of the SMF and each underlying fund into which each class of the SMF invested or was to invest in, including fund data relating to performance and funds under management, systems, attribution (including asset allocations), equity sector allocations or asset allocations for multi-asset funds;
- (h) obtain the Target Market Determinations (**TMD**) for each of the Conservative, Balanced, Growth and High Growth classes of the SMF;
- (i) obtain the PDS for the High Growth class of the SMF dated 12 October 2021;
- (j) obtain the supplementary PDSs for the Conservative, Balanced, Growth and High Growth classes of the SMF, each dated 3 November 2021;
- (k) hold a review meeting with Keystone, CF Capital and each manager of the underlying funds that the High Growth class of the SMF invested in or would be investing in;
- (l) arrange for an internal peer review of a draft of the March 2022 Report;
- (m) prepare or complete a Scorecard;
- (n) take any material steps to evaluate the ADPC in circumstances where;
  - i. the ADPC was replacing the CDPD, as referred to in paragraph 88(d)(iv) below;
  - ii. the ADPC had not been rated by SQM prior to the publication of the March 2022 Report; and
  - iii. SQM's rating of the CDPD in the October 2020 CDPD Report had expired, as referred to in paragraph 41 above;
- (o) take any material steps to evaluate Pearl / Watershed as an underlying fund manager of the SMF or the Pearl / Watershed Multi-Asset Funds in circumstances where the Pearl / Watershed Multi-Asset Funds had not been rated by SQM prior to the publication of the March 2022 Report; nor

- (p) take any steps to consider, assess, verify or analyse the March 2022 Inconsistencies, Missing Information and Differences (as defined in paragraph 91 below).
48. The March 2022 Report was:
- (a) on or about 18 March 2022, uploaded to SQM's website; and
  - (b) between about 18 March 2022 and 26 October 2022, made available on SQM's website to subscribers for SQM's services.

#### **PARTICULARS**

Email from Mr da Silva to Mr Evans dated 18 March 2022 (SQR.0016.0001.0346).

49. The March 2022 Report rated the Conservative, Balanced, Growth and High Growth classes of the SMF as '3¾ stars, Favourable, Consider for APL inclusion, Approved'.

#### **PARTICULARS**

- A. March 2022 Report (SQR.0016.0001.0156), cover page, introduction page, pp2, 3 (pp.0156, .0157, .0159, .0160).
- B. ASIC refers to and repeats the 3¾ Star Rating Description (see paragraph 9(b) above).

#### **C5. Producing and publishing the October 2022 Report**

50. On or about 21 June 2022, Mr Frolov emailed Mr Evans stating, in summary, that the SMF would be accepting a further review of its rating from SQM.

#### **PARTICULARS**

Email from Mr Frolov to Mr Evans dated 21 June 2022 (SQR.0016.0005.5133), (p.5135).

51. On or about 23 June 2022, Mr Lindsay emailed Mr Frolov, copying Mr da Silva (*inter alia*):
- (a) thanking Mr Frolov for commissioning SQM to provide rating reports for the Conservative, Balanced, Growth and High Growth classes of the SMF;

- (b) requesting completion of a qualitative (Word) RFI document and a quantitative (Excel) RFI document; and
- (c) attaching copies of a qualitative (Word) RFI document and a quantitative (Excel) RFI document (**2022 Quantitative Questionnaire Template**) to be completed.

#### **PARTICULARS**

- A. Email from Mr Lindsay to Mr Frolov, copying Mr da Silva, dated 23 June 2022 (SQR.0016.0002.1278).
- B. Qualitative (Word) RFI Document (SQR.0016.0002.1279).
- C. 2022 Quantitative Questionnaire Template (SQR.0016.0002.1287).

52. The 2022 Quantitative Questionnaire Template stated, in the Sheet titled 'Intro', (*inter alia*) that:

*Please provide copies of the documents or analysis listed below:*

- 1. *Latest Version of the PDS, Information Memorandum, or other Offer Document*
- 2. *Fund Constitution & any Amendments Lodged With ASIC*
- 3. *FSC (or other Due Diligence) Documentation For The Fund*
- 4. *Latest Financial Reports for the Fund Manager AND The Responsible Entity*
- 5. *Most Recent Compliance Plan Audit Conducted*
- 6. *Most Recent TMD (Target Market Determination) document*
- 7. *Performance Attribution - for 1 and 3 years to the most recent available date*

53. CF Capital paid SQM a fee for a review of the SMF's rating from SQM.

#### **PARTICULARS**

Email from Mr Frolov to Mr Christopher and Mr Evans dated 29 July 2022 (SQR.0016.0005.5133).

54. On or about 5 August 2022, Jake Ou of CF Capital emailed Mr Lindsay, copying Mr Frolov and Mr da Silva:

- (a) enclosing a Dropbox link containing certain documents relevant to the SMF; and
- (b) attaching documents titled:
  - i. Shield Master Fund 2022 - SQM Multi-Asset Questionnaire - IF (**August 2022 Qualitative Questionnaire**); and
  - ii. Shield Master Fund 2022 - SQM Multi-Asset Review (**First August 2022 Quantitative Questionnaire**).

#### PARTICULARS

- A. Emails from Mr Ou to Mr Lindsay, copying Mr Frolov and Mr da Silva, dated 5 August 2022 at 8.34pm and 8.35pm (SQR.0016.0002.2264).
- B. August 2022 Qualitative Questionnaire (SQR.0016.0002.2267).
- C. First August 2022 Quantitative Questionnaire (SQR.0016.0002.2285).

55. On or about 8 August 2022, Mr Ou emailed Mr Lindsay, copying Mr Frolov and Mr da Silva, stating (*inter alia*) that:

- (a) the remaining documents were now in the shared Dropbox folder;
- (b) the compliance audit and financial reports for that year were still being conducted, so last year's reports had been provided; and
- (c) the RFI excel sheet was reattached, updated to add the FUM figures under 'Returns & FUM' for the alternate classes, and attached a copy of it (the **Second August 2022 Quantitative Questionnaire**).

#### PARTICULARS

- A. Email from Mr Ou to Mr Lindsay, copying Mr Frolov and Mr da Silva, dated 8 August 2022 (SQR.0016.0002.2286).
- B. Second August 2022 Quantitative Questionnaire (SQR.0016.0002.2289).

56. Between about 5 and 11 August 2022, CF Capital provided SQM with copies of the following documents:
- (a) SMF's Constitution dated 28 April 2021;
  - (b) Keystone's Financial Statements for the year ended 30 June 2021, dated 26 October 2021, audited by BDO Audit Pty Ltd (ACN 134 022 870) (**BDO**);
  - (c) Keystone's Annual Completion Report for the year ended 30 June 2021, issued on 21 October 2021, prepared by BDO;
  - (d) a document titled 'FSC Operational Due Diligence Questionnaire' for CF Capital;
  - (e) the FSC Investment Management Questionnaire relating to the Conservative, Balanced and Growth classes of the SMF dated January 2022;
  - (f) the Supplementary PDSs for each of the Conservative, Balanced, Growth and High Growth classes of the SMF each dated 4 April 2022;
  - (g) the Risk Management Framework for Keystone dated 25 May 2021; and
  - (h) the TMDs for the Conservative, Balanced, Growth and High Growth classes of the SMF each dated 16 November 2021.

#### **PARTICULARS**

- A. SMF's Constitution dated 28 April 2021 (SQR.0024.0001.6728).
- B. Keystone's Financial Statements for the year ended 30 June 2021, dated 26 October 2021, audited by BDO (SQR.0024.0001.6795).
- C. Keystone's Annual Completion Report for the year ended 30 June 2021, issued on 21 October 2021, prepared by BDO (SQR.0024.0001.6817).
- D. FSC Operational Due Diligence Questionnaire for CF Capital (SQR.0024.0001.6891).
- E. FSC Investment Management Questionnaire relating to the Conservative, Balanced and Growth classes of the SMF dated January 2022 (SQR.0010.0001.3630).

- F. Supplementary PDS for the Conservative class of the SMF dated 4 April 2022 (SQR.0010.0001.3739).
  - G. Supplementary PDS for the Balanced class of the SMF dated 4 April 2022 (SQR.0024.0001.6931).
  - H. Supplementary PDS for the Growth class of the SMF dated 4 April 2022 (SQR.0010.0001.3772).
  - I. Supplementary PDS for the High Growth class of the SMF dated 4 April 2022 (SQR.0010.0001.3805).
  - J. Risk Management Framework for Keystone dated 25 May 2021 (SQR.0024.0001.7063).
  - K. TMD – Conservative class of the SMF dated 16 November 2021 (SQR.0024.0001.7093).
  - L. TMD – Balanced class of the SMF dated 16 November 2021 (SQR.0024.0001.7123).
  - M. TMD – Growth class of the SMF dated 16 November 2021 (SQR.0024.0001.7103).
  - N. TMD – High Growth class of the SMF dated 16 November 2021 (SQR.0024.0001.7113).
57. In about mid to late August 2022, SQM prepared for a review meeting with CF Capital, Keystone and representatives of Pearl / Watershed.

#### **PARTICULARS**

Note titled 'Questions for Shield Master Fund – Review Meeting 30/8/22' (SQR.0010.0001.3838).

58. On or about 30 August 2022, a review meeting was held between SQM, CF Capital, Keystone and Pearl / Watershed (**August 2022 Review Meeting**).



## PARTICULARS

A. Note titled 'Review Meeting Notes' dated 30 August 2022 (SQR.0010.0001.3841).

B. The August 2022 Review Meeting was attended by:

- a. Mr da Silva and Mr Lindsay, on behalf of SQM;
- b. Mr Frolov and Mr Chiodo, on behalf of CF Capital and Keystone; and
- c. Adrian Rowley and Ben Bowen, on behalf of Pearl / Watershed.

59. During the August 2022 Review Meeting, Keystone provided a presentation which included a presentation from Pearl / Watershed (**August 2022 Review Meeting Presentation**).

## PARTICULARS

August 2022 Review Meeting Presentation  
(SQR.0016.0001.0100).

60. On or about 12 September 2022, Mr Frolov emailed Mr Lindsay, copying Mr da Silva, attaching copies of the following documents:

- (a) Shield Master Fund 2022 - SQM Multi-Asset Review 31082022 (**September 2022 Quantitative Questionnaire**);
- (b) Shield Master Fund 2022 - SQM Multi-Asset Questionnaire IF 09092022 (**September 2022 Qualitative Questionnaire**); and
- (c) the August 2022 Review Meeting Presentation.

## PARTICULARS

A. Email from Mr Frolov to Mr Lindsay, copying Mr da Silva, dated 12 September 2022 (SQR.0016.0001.0080).

B. September 2022 Quantitative Questionnaire  
(SQR.0016.0001.0081).

C. September 2022 Qualitative Questionnaire  
(SQR.0016.0001.0082).

D. August 2022 Review Meeting Presentation  
(SQR.0016.0001.0100).

61. On or about 13 October 2022, Mr Frolov emailed Mr Lindsay attaching a copy of a document titled '20220808 Market Update August 2022\_vF (1).pptx'.

#### **PARTICULARS**

A. Email from Mr Frolov to Mr Lindsay dated 13 October 2022  
(SQR.0016.0002.2347).

B. 20220808 Market Update August 2022\_vF (1).pptx  
(SQR.0016.0002.2348).

62. On or about 14 October 2022, Mr Frolov emailed Mr Lindsay attaching copies of the following documents:

- (a) Watershed Multi-Asset July Factsheets for the Conservative, Balanced, Growth and High Growth classes of the Pearl / Watershed Multi-Asset Fund;
- (b) certain Keystone policy documents, being:
  - i. the External Fund Manager Selection and Monitoring Policy dated 5 July 2021; and
  - ii. the Conflicts of Interest Policy and Procedure dated October 2021;
- (c) the Tactical Asset Allocations (**TAA**) for the Conservative, Balanced and Growth classes of the SMF from April 2022 to August 2022; and
- (d) the TAA for the High Growth class of the SMF from May 2022 to August 2022.

#### **PARTICULARS**

A. Email from Mr Frolov to Mr Lindsay dated 14 October 2022 at 11.04am (SQR.0010.0001.3031).

B. Watershed July Factsheet – Conservative  
(SQR.0010.0001.3063).

- C. Watershed July Factsheet - Balanced (SQR.0010.0001.3062).
- D. Watershed July Factsheet – Growth (SQR.0010.0001.3064).
- E. Watershed July Factsheet – High Growth (SQR.0010.0001.3065).
- F. External Fund Manager Selection and Monitoring Policy dated 5 July 2021 (SQR.0010.0001.3033).
- G. Conflicts of Interest Policy and Procedure dated October 2021 (SQR.0010.0001.3040).
- H. TAA – Conservative class of the SMF (SQR.0010.0001.3059).
- I. TAA – Balanced class of the SMF (SQR.0010.0001.3058).
- J. TAA – Growth class of the SMF (SQR.0010.0001.3060).
- K. TAA – High Growth class of the SMF (SQR.0010.0001.3061).

63. Also on or about 14 October 2022, Mr Frolov emailed Mr Lindsay, the effect of which was to (*inter alia*) in summary:

- (a) confirm that Robert Talevski, Founder and Managing Director of Activus Investment Advisors Pty Ltd (ACN 612 295 280) (**Activus**), had been engaged to advise the SMF on (*inter alia*) asset allocation and manager selection; and
- (b) provide Mr Lindsay with copies of the following documents relating to Activus:
  - i. a document titled ‘Activus Investment Advisors Investment Process’ dated June 2022; and
  - ii. a document titled ‘Activus Investment Advisors Partnering with Activus: Managed Accounts’ dated 2022.

#### **PARTICULARS**

- A. Email from Mr Frolov to Mr Lindsay dated 14 October 2022 at 12.03pm (SQR.0010.0001.3066).

- B. Email from Mr Frolov to Mr Lindsay dated 14 October 2022 at 3.34pm (SQR.0010.0001.3073).
  - C. Activus Investment Advisors Investment Process dated June 2022 (SQR.0010.0001.3077).
  - D. Activus Investment Advisors Partnering with Activus: Managed Accounts dated 2022 (SQR.0010.0001.3092).
64. On or about 19 October 2022, Mr Frolov and Mr Lindsay exchanged emails, the effect of which was (*inter alia*), in summary, for Mr Frolov to provide to Mr Lindsay:
- (a) a further version of the quantitative questionnaire (**First October 2022 Quantitative Questionnaire**); and
  - (b) further information regarding CF Capital.

#### PARTICULARS

- A. Email from Mr Frolov to Mr Lindsay dated 19 October 2022 (SQR.0016.0002.2516).
  - B. First October 2022 Quantitative Questionnaire (SQR.0016.0002.2524).
65. On or about 20 October 2022, Mr Lindsay emailed Mr Frolov stating (*inter alia*), in summary that:
- (a) Mr Lindsay had not previously taken a close look at the month by month returns for the funds,
  - (b) Mr Lindsay had now done so and saw a significant difference between the gross and net returns in some months; and
  - (c) Mr Lindsay inquired as to the reason for that difference.

#### PARTICULARS

Email from Mr Lindsay to Mr Frolov dated 20 October 2022 (SQR.0010.0001.3282).

66. Also on or about 20 October 2022, and in response to Mr Lindsay's email of 20 October 2022 referred to in paragraph 65 above, Mr Frolov emailed Mr Lindsay:
- (a) stating that it looked like the formulas were not moved over; and
  - (b) attaching a further updated version of the quantitative questionnaire (**Second October 2022 Quantitative Questionnaire**).

#### **PARTICULARS**

A. Email from Mr Frolov to Mr Lindsay dated 20 October 2022 (SQR.0010.0001.3175).

B. Second October 2022 Quantitative Questionnaire (SQR.0010.0001.3176).

67. On or about 21 October 2022, Mr Lindsay emailed Mr da Silva stating (*inter alia*), in summary, that:
- (a) a copy of the draft report for the SMF was ready for Mr da Silva's review;
  - (b) there had been no material changes to the SMF's investment team or process;
  - (c) the SMF was transitioning from relying solely on Watershed in the multi-asset component of the fund, but that the investment framework was unchanged; and
  - (d) Mr Lindsay recommended maintaining the rating at 3.75 stars.

#### **PARTICULARS**

Email from Mr Lindsay to Mr da Silva dated 21 October 2021 (SQR.0010.0001.3301).

68. On or about 24 October 2022, Mr da Silva emailed Mr Lindsay stating (*inter alia*), in summary that:
- (a) Mr da Silva had reviewed the draft report on the SMF;
  - (b) the draft report on the SMF was 'good to go'; and
  - (c) Mr da Silva agreed with Mr Lindsay's comments and the rating recommendation.

## PARTICULARS

Email from Mr da Silva to Mr Lindsay dated 24 October 2022 (SQR.0010.0001.3302).

69. On or about 25 October 2022, Mr Lindsay emailed Mr Frolov:

- (a) attaching a copy of the draft report on the SMF; and
- (b) stating (*inter alia*), in summary, that Mr Frolov should check the attached report carefully and make any amendments of a factual / statistical nature.

## PARTICULARS

A. Email from Mr Lindsay to Mr Frolov dated 25 October 2022 at 8.20am (SQR.0010.0001.3308).

B. Draft SQM report provided to Mr Frolov on 25 October 2022 (SQR.0010.0001.3309).

70. Also on or about 25 October 2022, Mr Frolov emailed Mr Lindsay:

- (a) attaching a copy of the draft report on the SMF with Mr Frolov's proposed changes; and
- (b) attaching a copy of a further updated version of the quantitative questionnaire (**Third October 2022 Quantitative Questionnaire**).

## PARTICULARS

A. Email from Mr Frolov dated 25 October 2022 at 2.26pm (SQR.0010.0001.3179).

B. Draft SQM Report containing Mr Frolov's proposed changes (SQR.0010.0001.3182).

C. Email from Mr Frolov to Mr Lindsay of SQM dated 25 October 2022 at 5.25pm (SQR.0010.0001.3198).

D. Third October 2022 Quantitative Questionnaire (SQR.0010.0001.3202).

71. On or about 25 and 26 October 2022, Mr Frolov and Mr Lindsay exchanged emails regarding (*inter alia*), in summary, benchmarking data.

**PARTICULARS**

- A. Email from Mr Lindsay to Mr Frolov dated 25 October 2022 at 5.33pm (SQR.0010.0001.3203).
  - B. Email from Mr Frolov to Mr Lindsay dated 25 October 2022 at 5.40pm (SQR.0010.0001.3203), attaching a data screenshot (SQR.0010.0001.3208).
  - C. Email exchanges between Mr Lindsay and Mr Frolov dated 25 October 2022 and 26 October 2022 (SQR.0010.0001.3325).
72. On or about 26 October 2022, Mr Lindsay emailed Mr Frolov stating (*inter alia*) in summary that the SQM Rating Review of the SMF was now complete and that the Fund (including each investment option) has achieved a rating of 3.75 stars.

**PARTICULARS**

- Email from Mr Lindsay to Mr Frolov dated 26 October 2022 (SQR.0010.0001.3233).
73. In the course of preparing the October 2022 Report, SQM prepared a Scorecard.

**PARTICULARS**

- Scorecard for the October 2022 Report (SQR.0010.0001.3562).
74. In the course of producing the October 2022 Report, SQM did not take any steps to consider, assess, verify or analyse the October 2022 Inconsistencies and Differences (as defined in paragraph 120 below).
75. The October 2022 Report was:
- (a) on or about 26 October 2022, uploaded to SQM's website; and
  - (b) between about 26 October 2022 and 18 December 2023, made available on SQM's website to subscribers for SQM's services.

## **PARTICULARS**

October 2022 Report (SQR.0010.0001.2855).

76. The October 2022 Report rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as '3¾ stars, Favourable, Consider for APL inclusion, Approved'.

## **PARTICULARS**

- A. October 2022 Report (SQR.0010.0001.2855), cover page, introduction page, pp2, 3 (pp.2855, .2856, .2858, .2859).
- B. ASIC refers to and repeats the 3¾ Star Rating Description (see paragraph 9(b) above).

## **C6. Publication of the 'Hold' rating for the October 2022 Report, and the January 2024 Report**

77. On or about 8 December 2023, ASIC commenced an investigation into the SMF.
78. On or about 14 December 2023, ASIC issued a notice to SQM pursuant to s 33 of the ASIC Act seeking books relating to the SMF.

## **PARTICULARS**

Email from ASIC to Mr Christopher dated 14 December 2023 (SQR.0010.0001.2169), (p.2171).

79. On or about 19 December 2023, SQM published a 'Hold' rating for the SMF.

## **PARTICULARS**

Email exchanges between (*inter alia*) Mr Lindsay and SQM office administrators dated 18 December 2023 and 19 December 2023 (SQR.0016.0002.6509).



80. On or about 17 January 2024, SQM rated the Conservative, Balanced, Growth and High Growth classes of the SMF as '3½ stars, Acceptable, Consider for APL inclusion, Low Investment Grade' (**January 2024 Report**).

## **PARTICULARS**

January 2024 Report (SQR.0010.0002.0002), cover page, introduction page, pp2, 3 (pp.0002, .0003, .0005, .0006).

### **D. SQM'S OBLIGATIONS UNDER SECTION 912A(1) OF THE CORPORATIONS ACT**

#### **D1. Section 912A(1) of the Corporations Act**

81. During the Relevant Period, as holder of the AFSL, SQM was required, pursuant to s 912A(1)(a) of the Corporations Act, to do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly.

#### **D2. RG 79 and the SQM/Keystone Agreement**

82. On about 10 December 2012, ASIC issued RG 79.
83. RG 79 was, at all material times, and is a guide for Australian financial services licensees who are research report providers.
84. At all material times, RG 79 provided (*inter alia*) that:
- (a) research is promoted as an expert service to assist intermediaries and clients in making decisions about investment products. It is important that research does (and is seen to) demonstrate the professional expertise and judgement of the research report provider. Users of research should be able to see and assess the expertise that different research report providers bring to the task of preparing research (RG 79.39);
  - (b) in the context of expert or professional opinions, cases decided under the false, misleading or deceptive conduct provisions in the ASIC Act and the (then) *Trade Practices Act 1974* have held that a statement of opinion by a person in their professional capacity involves an implied assertion that the opinion has a reasonable basis, is the result of the exercise of due care and skill, and is able to be relied upon (RG 79.41);

- (c) a research report provider is expected to maintain and follow a robust methodology in their research and to be transparent in the methodology adopted and how it is applied (RG 79.59);
  - (d) it is essential that an appropriate sign-off process is incorporated into a research report provider's work process. All research should be subject to proper evaluation (e.g., via a peer review process) and a proper approval process (e.g., involving a committee of senior research staff) (RG 79.84);
  - (e) a research report should be based on reasonable grounds (RG 79.85);
  - (f) research reports should be based on 'reasonable grounds', with each research report reflecting the views of the research staff who wrote or approved it (RG 79.86, Table 3, row 2);
  - (g) a research report (or accompanying disclosures) should state the reasons for the opinions and recommendations. This will help clients form a view about the research report and whether to rely on it. A research report provider is expected to take reasonable steps to ensure that their recommendations, and the basis for those recommendations, are clear, unambiguous and transparent (RG 79.87);
  - (h) a research report provider should ensure that research reports are based on objective, verifiable facts and analysis (RG 79.89); and
  - (i) cases decided under the analogous provisions of the (then) Trade Practices Act, (now the *Competition and Consumer Act 2010*) have held that a statement of opinion by a person in their professional capacity involves an implied assertion that the opinion has a reasonable basis, is the result of the exercise of due care and skill, and is able to be relied upon (RG 79.90).
85. By reason of the term of the SQM / Keystone Agreement pleaded in paragraph 23(b) above, SQM agreed with Keystone that SQM would conduct its assessment of the SMF pursuant to the guidance contained in RG 79, including each of the provisions of RG 79 referred to in paragraph 84 above.
86. SQM was required, pursuant to s 912A(1)(a) of the Corporations Act, to (*inter alia*) conduct its assessment of the SMF pursuant to the provisions of RG 79 referred to in paragraph 84 above by reason of the matters pleaded in paragraphs 81 to 85 above.

**D3. SQM's obligations under section 912A(1) of the Corporations Act when producing**

**and publishing the 6 October 2021 Report, the March 2022 Report and the October 2022 Report**

87. In producing and publishing each of the 6 October 2021 Report, the March 2022 Report and the October 2022 Report, SQM was required, in order to comply with s 912A(1)(a) of the Corporations Act, to:

- (a) obtain up-to-date information relevant to and necessary for SQM to rate each class of the SMF the subject of the report, including up-to-date copies of:
  - i. completed SQM qualitative and quantitative questionnaires for the SMF addressing each class of the SMF the subject of the report;
  - ii. the PDS for each class of the SMF the subject of the report;
  - iii. a completed FSC questionnaire for the SMF addressing each class of the SMF the subject of the report;
  - iv. audited financial statements for the SMF, Keystone and CF Capital;
  - v. the constitution of each of the SMF, Keystone and CF Capital;
  - vi. policies for the SMF, Keystone and CF Capital relating to governance, compliance, risk management and investment processes;
  - vii. current and historical fund data for each class of the SMF the subject of the report and each underlying fund into which each class of the SMF invested or was to invest in; and
  - viii. in relation to the March 2022 Report and the October 2022 Report, the TMD for each class of the SMF the subject of the Report,

together, the **Relevant Information** (the **Relevant Information Obligation**);

**PARTICULARS**

A. In relation to each of the 6 October 2021 Report and the March 2022 Report:

- a. 2021 FAQ Document (SQR.0016.0008.1688), Part 6 (see paragraphs 7(c), 7(d) and 7(e) above);

- b. SQM Ratings Methodology (SQR.0013.0001.0347) (see paragraphs 9(c) and 9(d) above);
- c. SQM / Keystone Agreement (SQR.0010.0001.0003) (see paragraphs 22(b), 23(c) and 23(d) above);
- d. 2021 Quantitative Questionnaire Template (SQR.0016.0001.0710) (see paragraph 25 above); and
- e. RG 79, paragraphs 79.59, 79.85, 79.87 and 79.89 (see paragraphs 84 and 85 above).

B. In relation to the October 2022 Report:

- a. ASIC refers to and repeats paragraph A above;
- b. 2022 FAQ Document (SQR.0013.0001.0057), Part 6 (see paragraphs 7(c), 7(d) and 7(e) above); and
- c. 2022 Quantitative Questionnaire Template (SQR.0016.0002.1287) (see paragraph 52 above).

C. SQM's Relevant Information Obligation is informed by the matters set out above and further particulars may be provided after the service of expert evidence.

(b) hold at least one meeting, to be held after, rather than before, SQM had received and reviewed all of the Relevant Information, to be attended by SQM and representatives of each of:

- i. the responsible entity of the SMF;
- ii. the investment manager of the SMF; and
- iii. each manager of the underlying funds that the SMF invested in or would be investing in,

for the purposes of those representatives presenting to SQM and discussing in detail with SQM the Relevant Information that had been provided to SQM and any queries which SQM had arising from the Relevant Information (the **Meeting Obligation**); and

## PARTICULARS

- A. In relation to each of the 6 October 2021 Report and the March 2022 Report:
    - a. 2021 FAQ Document (SQR.0016.0008.1688), Part 6 (see paragraph 7(c)(v) above);
    - b. SQM Ratings Methodology (SQR.0013.0001.0347) (see paragraph 9(c) above);
    - c. SQM / Keystone Agreement (SQR.0010.0001.0003) (see paragraphs 22(b) and 23(c) above); and
    - d. RG 79, paragraphs 79.59, 79.85, 79.87 and 79.89 (see paragraphs 84 and 85 above).
  - B. In relation to the October 2022 Report:
    - a. ASIC refers to and repeats paragraph A above; and
    - b. 2022 FAQ Document (SQR.0013.0001.0057), Part 6 (see paragraph 7(c)(v) above).
  - C. SQM's Meeting Obligation is informed by the matters set out above and further particulars may be provided after the service of expert evidence.
- (c) review, consider, assess, verify and analyse the information obtained pursuant to the Relevant Information Obligation and the Meeting Obligation (the **Analysis Obligation**).

## PARTICULARS

- A. In relation to each of the 6 October 2021 Report and the March 2022 Report:

- a. 2021 FAQ Document (SQR.0016.0008.1688) and 2022 FAQ Document (SQR.0013.0001.0057), Part 6 (see paragraph 7 above);
  - b. SQM Ratings Methodology (SQR.0013.0001.0347) (see paragraphs 9(c) and 9(d) above);
  - c. SQM / Keystone Agreement (SQR.0010.0001.0003) (see paragraphs 22(b) and 23 above); and
  - d. RG 79, paragraphs 79.59, 79.84, 79.85, 79.87 and 79.89 (see paragraphs 84 and 85 above).
- B. In relation to the October 2022 Report:
- a. ASIC refers to and repeats paragraph A above; and
  - b. 2022 FAQ Document (SQR.0013.0001.0057), Part 6 (see paragraph 7 above).
- C. SQM's Analysis Obligation is informed by the matters set out above and further particulars may be provided after the service of expert evidence.

**E. SQM'S CONTRAVENTIONS IN RELATION TO THE 6 OCTOBER 2021 REPORT, THE MARCH 2022 REPORT AND THE OCTOBER 2022 REPORT**

**E1. The nature and characteristics of the SMF relevant to the 6 October 2021 Report and the March 2022 Report**

88. The nature and characteristics of the SMF, which were relevant to the production and publication of the 6 October 2021 Report, and which were disclosed to SQM prior to the publication of the 6 October 2021 Report relevantly comprised:
- (a) that the type of investment was a multi-asset, multi-manager, managed fund;

#### **PARTICULARS**

2021 Qualitative Questionnaire (SQR.0016.0001.0500), (pp.0502, .0509).

- (b) that the SMF was a new fund;

#### **PARTICULARS**

2021 Qualitative Questionnaire (SQR.0016.0001.0500), (pp.0503, .0518).

- (c) that:

- i. the SMF may invest in other classes or funds of which CF Capital or Keystone were trustee, responsible entity or manager; and
- ii. CF Capital acted as the investment manager for each class of the SMF and that CF Capital and Keystone had directors in common;

#### **PARTICULARS**

A. PDS for the Conservative class of the SMF dated 8 September 2021 (SQR.0016.0001.3014), section 4 (pp.3020-3021).

B. PDS for the Balanced class of the SMF dated 8 September 2021 (SQR.0016.0001.2988), section 4 (pp.2994-2995).

C. PDS for the Growth class of the SMF dated 8 September 2021 (SQR.0016.0001.2962), section 4 (pp.2968-2969).

- (d) that the 2021 Qualitative Questionnaire provided (*inter alia*) the following information in relation to the responsible entity of the SMF, Keystone:

- i. 100% of the shares in Keystone were owned by Malana;
- ii. the shareholders of Malana were Mr Chiodo and Mr Frolov;
- iii. the directors of Keystone were Mr Chiodo, Mr Frolov and Mark Yorston;
- iv. Keystone had launched the ADPC, which would be the retail class that invested into the CDPF, replacing the CDPD; and

- v. Keystone had one active fund with \$91 million funds under management.

### PARTICULARS

2021 Qualitative Questionnaire (SQR.0016.0001.0500), (pp.0500, 0502-0503).

- (e) that the 2021 Qualitative Questionnaire provided (*inter alia*) the following information in relation to the fund managers of the SMF:
- i. CF Capital was the appointed fund manager of the Conservative, Balanced and Growth classes of the SMF;
  - ii. Pearl / Watershed was appointed to manage the multi-asset listed portfolios (together, the **Pearl / Watershed Multi-Asset Funds**), had \$700 million funds under management and had the following target allocation for the Balanced class of the Multi-Asset Fund (the strategic allocation column of which did not total 100%):

Sector Allocations	Range	Strategic
Cash	0-40%	5%
Fixed Interest	20-60%	25%
Listed Property	0-10%	5%
Australian Equities	10-70%	30%
International Equities	10-60%	25%
Alternative Assets	0-15%	0%
TOTAL		100%

- iii. CF Capital was appointed to manage the alternative (unlisted property) portfolio (being the ADPC, which invested into the CDPF), had \$90 million funds under management and had the following target allocation:





- iv. the allocations to the two underlying managers, CF Capital and Pearl / Watershed were rebalanced monthly to 20 / 80 respectively;

### PARTICULARS

2021 Qualitative Questionnaire (SQR.0016.0001.0500), (pp.0500, 0502, .0505, .0510-.0512, .0515).

- (f) that the 2021 Qualitative Questionnaire provided (*inter alia*) the following information in relation to the SMF's product and business development strategy:
  - i. Keystone's product strategy was to launch three multi-asset classes with three risk profiles, targeting investors who were looking for a growth, balanced and conservative financial solution;
  - ii. the multi-asset solution ensured the SMF was compliant with ASIC's definition of a liquid fund, with 80% allocated to liquid securities and 20% to illiquid managed funds;
  - iii. the product strategy was to partner with external fund managers to ensure the best returns for investors;
  - iv. the property component of the class, which was said to be the ADPF, would be managed by CF Capital;
  - v. the listed assets would be managed by Pearl / Watershed;
  - vi. each of the Conservative, Balanced and Growth classes of the SMF was said to have 20% allocated to the ADPF;
  - vii. the Conservative class would have 80% allocated to the Conservative class of the Pearl / Watershed Multi-Asset Fund;

- viii. the Balanced class would have 80% allocated to the Balanced class of the Pearl / Watershed Multi-Asset Fund; and
- ix. the Growth class would have 80% allocated to the Growth class of the Pearl / Watershed Multi-Asset Fund;

## **PARTICULARS**

2021 Qualitative Questionnaire (SQR.0016.0001.0500), (p.0502).

- (g) that the 2021 Qualitative Questionnaire provided (*inter alia*) the following information in relation to the SMF's investment philosophy and core tenets:
  - i. the Balanced class of the SMF would provide investors predominantly with exposure to growth assets, such as listed Australian / International investments, real assets such as precious metals, commodities, real estate, land, equipment and natural resources, and alternative assets being those other assets that fall outside the principal asset classes (equities, real property, fixed interest and cash) and could include exposure to hedge funds, managed futures, distressed assets, digital assets and private equity;
  - ii. investors could be exposed to more defensive assets such as fixed income, cash and cash equivalents where appropriate;
  - iii. the Balanced class of the SMF investment structure was to partner with fund managers who specialised in each asset class, region and sector;
  - iv. the Balanced class was a medium-high risk investment that aimed to provide exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets;
  - v. the investment selection process:
    - I. identified specialist managers in preferred asset classes, regions and sectors;
    - II. selected investment funds managed by external managers to achieve the best path to outperformance;
    - III. considered the mix of active and passive management;

- IV. invested passive funds to ensure the sector exposure was consistent with the benchmark index for that sector; and
- V. included several investment funds managed by established industry names and others from emerging boutiques with expertise in key assets / sectors;
- vi. the fund may also invest in underlying assets for which the investment manager and / or the responsible entity also provided services, including the property development asset class of the SMF in which CF Capital would deploy funds into selected projects that were ideally suited for the risk and return of the Balanced class; and
- vii. the actual asset allocation may fall outside the stated ranges during certain times such as extreme market conditions, asset class transitions or during material transactions;

#### **PARTICULARS**

2021 Qualitative Questionnaire (SQR.0016.0001.0500), (pp.0506, 0507).

- (h) that the 2021 Quantitative Questionnaire provided (*inter alia*) the following information:
  - i. in the Sheet titled 'FundDetails', as to fund constraints and risk limits, the permitted range or limit for:
    - I. listed equities was a minimum allocation of 20%;
    - II. real assets was a maximum allocation of 30%;
    - III. alternatives was a maximum allocation of 35%;
    - IV. fixed interest was a maximum allocation of 65%; and
    - V. cash was a maximum allocation of 20%;
  - ii. in the Sheet titled 'FundSnapshot', as to the top five positions by weight (% of fund), 80% was said to be allocated to the Balanced class of the Pearl / Watershed Multi-Asset Fund and 20% was said to be allocated to the ADPF;
  - iii. in the Sheet titled 'Portfolio', as to the rating of:

- I. the CDPD, that it had received a rating of 3.5 stars from SQM; and
- II. the Balanced class of the Pearl / Watershed Multi-Asset Fund, that it had not been rated by SQM;

### **PARTICULARS**

2021 Quantitative Questionnaire (SQR.0016.0001.0519), Sheets titled 'FundDetails', 'FundSnapshot' and 'Portfolio'.

- (i) that the PDS for the Conservative class provided (*inter alia*):
  - i. in section 2, that (*inter alia*) the Conservative class:
    - I. would provide investors predominantly with exposure to growth assets;
    - II. aimed to provide exposure to an actively managed portfolio of a 50% allocation to defensive assets and 50% allocation to growth assets;
    - III. the type of suitable investor was a long-term investor seeking a diversified total return investment strategy; and
    - IV. was a long-term investment, with a recommended investment period of five to seven years; and
  - ii. in section 5, that (*inter alia*):
    - I. an internal investment approach had been crafted around dynamic asset allocation, which was the main focus of the multi-asset investment model and the principal driver of returns for investors;
    - II. the SMF may invest in underlying assets for which Keystone and / or CF Capital also provides services, including the Property Development Asset class of the SMF;
    - III. the Conservative class aimed to build exposure to a diverse portfolio with investments selected for characteristics such as long-term capital growth, inflation protection and risk mitigation, and to facilitate this, CF Capital had defined targets around long term target exposure allocation as shown by the following table:

### Asset Categories / Class

Asset Category	Target Exposure Allocation*
Growth Assets	57%
Defensive Assets	43%

### Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	37%	20 - 100%
Real Assets	Active	10%	0 – 30%
Alternatives (i.e. Property)	Active	10%	0 – 35%
Fixed Interest	Passive	40%	0 – 60%
Cash	Passive	3%	0 – 40%

- IV. the Target Exposure Allocation (indicated by the asterisk in the above tables) was an indicative representation of the estimated average weighting over the long term as at the date of the PDS and that actual weighting will differ, at times substantially, and potentially for extended periods; and
- V. the SMF does not seek to employ leverage, however the underlying assets may use leverage, derivatives for hedging and investment purposes, borrowing and short selling;

### PARTICULARS

PDS for the Conservative class of the SMF dated 8 September 2021 (SQR.0016.0001.3014), sections 2, 5 (pp.3018-3019, 3022-3024).

- (j) that the PDS for the Balanced class provided (*inter alia*):

- i. in section 2, that (*inter alia*) the Balanced class:
  - I. would provide investors predominantly with exposure to growth assets;
  - II. aimed to provide exposure to an actively managed portfolio of a 60:40 allocation between growth assets and defensive assets;
  - III. the type of suitable investor was a long-term investor seeking a diversified total return investment strategy; and
  - IV. was a long-term investment, with a recommended investment period of five to seven years; and
- ii. in section 5, that (*inter alia*):
  - I. an internal investment approach had been crafted around dynamic asset allocation, which was the main focus of the multi-asset investment model and the principal driver of returns for investors;
  - II. the SMF may invest in underlying assets for which Keystone and / or CF Capital also provides services, including the Property Development Asset class of the SMF;
  - III. the Balanced class aimed to build exposure to a diverse portfolio with investments selected for characteristics such as long-term capital growth, inflation protection and risk mitigation, and to facilitate this, CF Capital has defined targets around long term target exposure allocation as shown by the following table:

**Asset Categories / Class**

Asset Category	Target Exposure Allocation*
Growth Assets	68%
Defensive Assets	32%

**Asset Class Allocation Ranges**

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	38%	20 - 100%
Real Assets	Active	10%	0 - 30%
Alternatives (i.e. Property)	Active	20%	0 - 35%
Fixed Interest	Passive	30%	0 - 65%
Cash	Passive	2%	0 - 20%

- IV. the Target Exposure Allocation (indicated by the asterisk in the above tables) was an indicative representation of the estimated average weighting over the long term as at the date of the PDS and that actual weighting will differ, at times substantially, and potentially for extended periods; and
- V. the SMF does not seek to employ leverage, however the underlying assets may use leverage, derivatives for hedging and investment purposes, borrowing and short selling;

### PARTICULARS

PDS for the Balanced class of the SMF dated 8 September 2021 (SQR.0016.0001.2988), sections 2, 5 (pp.2992-2993, 2996-2998).

- (k) that the PDS for the Growth class provided (*inter alia*):
- i. in section 2, that (*inter alia*) the Growth class:
    - I. would provide investors predominantly with exposure to growth assets;
    - II. aimed to provide exposure to an actively managed portfolio of predominantly growth assets, with the potential for capital growth;
    - III. the type of suitable investor was a long-term investor seeking a diversified total return investment strategy; and
    - IV. was a long-term investment, with a recommended investment period of five to seven years; and

- ii. in section 5, that (*inter alia*):
- I. an internal investment approach had been crafted around dynamic asset allocation, which was the main focus of the multi-asset investment model and the principal driver of returns for investors;
  - II. the SMF may invest in underlying assets for which Keystone and / or CF Capital also provides services, including the Property Development Asset class of the SMF;
  - III. the Growth class aimed to build exposure to a diverse portfolio with investments selected for characteristics such as long-term capital growth, inflation protection and risk mitigation, and to facilitate this, CF Capital has defined targets around long term target exposure allocation as shown by the following table:

**Asset Categories / Class**

Asset Category	Target Exposure Allocation*
Growth Assets	83%
Defensive Assets	17%

**Asset Class Allocation Ranges**

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	48%	20 - 100%
Real Assets	Active	15%	0 – 30%
Alternatives	Active	20%	0 – 35%
Fixed Interest	Passive	15%	0 – 35%
Cash	Passive	2%	0 – 20%

- IV. the Target Exposure Allocation (indicated by the asterisk in the above tables) was an indicative representation of the estimated average weighting over the long term as at the date of the PDS and that actual



weighting will differ, at times substantially, and potentially for extended periods; and

- V. the SMF does not seek to employ leverage, however the underlying assets may use leverage, derivatives for hedging and investment purposes, borrowing and short selling.

### **PARTICULARS**

PDS for the Growth class of the SMF dated 8 September 2021 (SQR.0016.0001.2962), sections 2, 5 (pp.2966-2967, 2970-2972).

- 89. Further, the nature and characteristics of the SMF, which were relevant to the production and publication of the 6 October 2021 Report and which ought to have been known by SQM prior to the publication of the 6 October 2021 Report (had it complied with the Relevant Information Obligation referred to in paragraph 87(a) above and the Analysis Obligation referred to in paragraph 87(c) above) relevantly comprised:

- (a) that there were material inconsistencies and ambiguities arising out of the PDSs for the Conservative, Balanced and Growth classes of the SMF each dated 8 September 2021, the 2021 Qualitative Questionnaire and the 2021 Quantitative Questionnaire;

### **PARTICULARS**

- A. With respect to the Conservative class, there were internal inconsistencies in the PDS relating to the allocation of assets. The PDS for the Conservative class referred to asset allocations of, on the one hand, 50% growth / 50% defensive (see paragraph 88(i)(i)(II) above) and, on the other hand, an indicative target exposure allocation of 57% growth / 43% defensive (see paragraphs 88(i)(ii)(III) and (IV) above).
- B. With respect to the Balanced class, there were internal inconsistencies in the PDS relating to the allocation of assets. The PDS for the Balanced class referred to asset allocations of, on the one hand, 60% growth / 40% defensive (see paragraph 88(j)(i)(II) above) and, on the other hand, an indicative target exposure

allocation of 68% growth / 32% defensive (see paragraphs 88(j)(ii)(III) and (IV) above).

- C. On the one hand, the 2021 Qualitative Questionnaire provided that 80% was allocated to liquid securities and 20% to illiquid managed funds, which was said to be compliant with ASIC's definition of a liquid fund (see paragraph 88(f)(ii) above) and, on the other hand, the 2021 Quantitative Questionnaire and the PDS for the Balanced class of the SMF provided that the maximum allocation to 'alternatives' was 35% (see paragraphs 88(h)(i)(III) and 88(j)(ii)(III) above) and the 2021 Qualitative Questionnaire provided that: (1) the target allocation range for 'alternative assets' with respect to the Balanced class of the Pearl / Watershed Multi Asset Funds was up to 15% (see paragraph 88(e)(ii) above); and (2) the entirety of CF Capital's portfolio was allocated to 'alternative (unlisted property)' (see paragraph 88(e)(iii) above) in circumstances where 'alternatives' were illiquid assets.
- D. On the one hand, the 2021 Qualitative Questionnaire provided that the Balanced class aimed to provide exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets (see paragraph 88(g)(iv) above) and, on the other hand, the PDS for the Balanced class of the SMF provided that it aimed to provide exposure to an actively managed portfolio of a 60:40 allocation between growth assets and defensive assets (see paragraph 88(j)(i)(II) above).
- E. On the one hand, the 2021 Qualitative Questionnaire provided that the target allocation for the Balanced class of the Pearl / Watershed Multi-Asset Fund comprised sector allocations of cash (up to 40%), fixed interest (up to 60%), listed property (up to 10%), Australian Equities (up to 70%), International Equities (up to 60%) and Alternative Assets (up to 15%) (see paragraph 88(e)(ii) above) and, on the other hand, the 'listed assets' would be managed by Pearl / Watershed (see paragraph 88(f)(v) above).

F. Further particulars may be provided after the service of expert evidence.

(b) that the 2021 Quantitative Questionnaire did not include material information in relation to:

- i. in the Sheet titled 'Systems', systems and valuations;
  - ii. in the Sheet titled 'Attribution', data for attribution assessments, including actual asset allocations and strategic asset allocations;
  - iii. in the Sheet titled 'EQ\_Sector', equity sector allocations; or
  - iv. in the Sheet titled 'Multi', asset allocations for multi-asset funds,
- all of which Sheets were largely incomplete; and

#### **PARTICULARS**

2021 Quantitative Questionnaire (SQR.0016.0001.0519), Sheets titled 'Systems', 'Attribution', 'EQ\_Sector' and 'Multi'.

(c) that there were material differences between the Conservative, Balanced and Growth classes of the SMF.

#### **PARTICULARS**

A. ASIC refers to and repeats paragraphs 88(i) to 88(k) above.

B. Further particulars may be provided after the service of expert evidence.

(with subparagraphs (a) to (c) together, the **2021 Inconsistencies, Missing Information and Differences**).

- 90. The nature and characteristics of the SMF, which were relevant to the production and publication of the March 2022 Report, and which were disclosed to SQM prior to the publication of the March 2022 Report relevantly comprised all of the matters referred to in paragraph 88 above.
- 91. Further, the nature and characteristics of the SMF, which were relevant to the production and publication of the March 2022 Report and which ought to have been known by SQM

prior to the publication of the March 2022 Report (had it complied with the Relevant Information Obligation referred to in paragraph 87(a) above and the Analysis Obligation referred to in paragraph 87(c) above) relevantly comprised:

- (a) all of the matters referred to in paragraph 89 above;
- (b) that a PDS for the High Growth class of the SMF was issued on or about 12 October 2021, as referred to in paragraph 18(a) above;
- (c) that supplementary PDSs for each of the Conservative, Balanced, Growth and High Growth classes of the SMF were issued on or about 3 November 2021, as referred to in paragraphs 17(b) and 18(b) above; and
- (d) that the supplementary PDS for the High Growth class provided (*inter alia*):
  - i. in section 2, that (*inter alia*) the High Growth class:
    - I. will provide investors predominantly with exposure to growth assets;
    - II. aims to provide exposure to an actively managed portfolio of predominantly growth assets, with the potential for capital growth;
    - III. the type of suitable investor was a long-term investor seeking a diversified total return investment strategy; and
    - IV. was a long-term investment, with a recommended investment period of five to seven years; and
  - ii. in section 5, that (*inter alia*):
    - I. an internal investment approach had been crafted around dynamic asset allocation, which was the main focus of the multi-asset investment model and the principal driver of returns for investors;
    - II. the SMF may invest in underlying assets for which Keystone and / or CF Capital also provides services, including the Property Development Asset Class of the SMF;
    - III. the High Growth class aims to build exposure to a diverse portfolio with investments selected for characteristics such as long-term capital growth, inflation protection and risk mitigation, and to facilitate this, CF Capital has defined targets around long term target exposure allocation as shown by the following table:

### Asset Categories / Class

Asset Category	Target Exposure Allocation*
Growth Assets	92%
Defensive Assets	8%

### Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	65%	20 - 100%
Real Assets	Active	7%	0 – 30%
Alternatives	Active	20%	0 – 35%
Fixed Interest	Passive	6%	0 – 35%
Cash	Passive	2%	0 – 20%

- IV. the Target Exposure Allocation (indicated by the asterisk in the above tables) was an indicative representation of the estimated average weighting over the long term as at the date of the PDS and that actual weighting will differ, at times substantially and potentially for extended periods; and
- V. the SMF does not seek to employ leverage, however the underlying assets may use leverage, derivatives for hedging and investment purposes, borrowing and short selling; and

### PARTICULARS

PDS and Supplementary PDSs for the High Growth class of the SMF dated 3 November 2021 (SQR.0010.0001.3805 commencing at p.3812) sections 2, 5 (pp.3816-.3817, .3820-.3822).

- (e) that there were material differences between the Conservative, Balanced, Growth and High Growth classes of the SMF.

## PARTICULARS

- A. ASIC refers to and repeats paragraphs 88(i) to 88(k) and 91(d) above.
- B. Further particulars may be provided after the service of expert evidence.

(with subparagraphs (a) to (e) together, the **March 2022 Inconsistencies, Missing Information and Differences**).

### **E2. SQM's section 912A(1) contraventions with respect to the 6 October 2021 Report and the March 2022 Report**

92. SQM produced and published the:

- (a) 6 October 2021 Report in circumstances where it had not obtained:
  - i. a completed SQM qualitative questionnaire for the SMF that fully addressed the Conservative and Growth classes of the SMF, as referred to in paragraph 27 above;
  - ii. a completed SQM quantitative questionnaire for the SMF that addressed the Conservative or Growth classes of the SMF, as referred to in paragraph 27 above;
  - iii. completed FSC questionnaires for the SMF addressing the Conservative, Balanced and Growth classes of the SMF, as referred to in paragraph 38(a) above;
  - iv. any audited financial statements for the SMF, Keystone or CF Capital, as referred to in paragraph 38(b) above;
  - v. the constitutions of the SMF, Keystone or CF Capital, as referred to in paragraph 38(c) above;
  - vi. policies for the SMF, Keystone or CF Capital relating to governance, compliance, risk management and investment processes, as referred to in paragraph 38(d) above; or

- vii. material information in relation to the fund data for the Conservative, Balanced and Growth classes of the SMF and each underlying fund into which each class of the SMF invested or was to invest in, including fund data relating to systems, attribution (including asset allocations), equity sector allocations or asset allocations for multi-asset funds, as referred to in paragraphs 38(e) and 89(b) above; and
- (b) March 2022 Report in circumstances where it had not obtained:
- i. any of the documents or information referred to in paragraph 92(a) above, including any of those types of documents or that type of information in relation to the High Growth class of the SMF, as referred to in paragraphs 47(a) to 47(g) above;
  - ii. the TMDs for each of the Conservative, Balanced, Growth and High Growth classes of the SMF, as referred to in paragraph 47(h) above;
  - iii. the PDS for the High Growth class of the SMF dated 12 October 2021, as referred to in paragraph 47(i) above; or
  - iv. the supplementary PDSs for the Conservative, Balanced, Growth and High Growth classes of the SMF, each dated 3 November 2021, as referred to in paragraph 47(j) above.
93. SQM produced and published each of the 6 October 2021 Report and the March 2022 Report in circumstances where it had not held at least one meeting after, rather than before, SQM had received and reviewed all of the Relevant Information, attended by (*inter alia*) each manager of the underlying funds that the SMF invested in or would be investing in.

## **PARTICULARS**

### A. In relation to the 6 October 2021 Report:

- a. the only material documents which SQM received from CF Capital or Keystone prior to the September 2021 Review Meeting were the 2021 Qualitative Questionnaire and the 2021 Quantitative Questionnaire (see paragraphs 26 to 28 above). The 2021 Qualitative Questionnaire and the 2021 Quantitative Questionnaire predominantly related to the

Balanced class of the SMF and did not materially address the Conservative or the Growth classes of the SMF (see paragraph 27 above); and

- b. the September 2021 Review Meeting was not attended by representatives of Pearl / Watershed.

B. In relation to the March 2022 Report:

- a. ASIC refers to and repeats paragraph A above.
- b. The 2021 Qualitative Questionnaire and the 2021 Quantitative Questionnaire predominantly related to the Balanced class of the SMF and did not materially address the Conservative, Growth or High Growth classes of the SMF (see paragraphs 47(e) and 47(f) above);
- c. the September 2021 Review Meeting did not relate to the High Growth class of the SMF (see paragraph 28 above); and
- d. no review meeting was held in the course of preparing the March 2022 Report (see paragraph 47(k) above).

94. SQM produced and published the 6 October 2021 Report in circumstances where it had not:

- (a) completed a Scorecard in the course of preparing the 6 October 2021 Report, as referred to in paragraphs 34 and 38(i) above;
- (b) obtained and therefore could not review, consider, assess, verify and analyse all information required to have been obtained pursuant to the Relevant Information Obligation and the Meeting Obligation, as referred to in paragraphs 27, 38(a) to 38(h), 92(a) and 93 above; nor
- (c) considered, assessed, verified and analysed the 2021 Inconsistencies, Missing Information and Differences, as referred to in paragraph 89 above.

95. SQM produced and published the March 2022 Report in circumstances where it had not:



- (a) taken any of the steps referred to in paragraph 94 above;
  - (b) arranged for an internal peer review of a draft of the March 2022 Report, as referred to in paragraph 47(l) above;
  - (c) prepared or completed a Scorecard in the course of preparing the March 2022 Report, as referred to in paragraph 47(m) above;
  - (d) obtained and therefore could not review, consider, assess, verify and analyse all information required to have been obtained pursuant to the Relevant Information Obligation and the Meeting Obligation, as referred to in paragraphs 47(a) to 47(j), 92(b) and 94 above; nor
  - (e) considered, assessed, verified and analysed the March 2022 Inconsistencies, Missing Information and Differences, as referred to in paragraph 91 above.
96. In the premises pleaded in paragraph 92 above, SQM breached the Relevant Information Obligation pleaded in paragraph 87(a) above.
97. Further or in the alternative to paragraph 96 above, in the premises pleaded in paragraph 93 above, SQM breached the Meeting Obligation pleaded in paragraph 87(b) above.
98. Further or in the alternative to paragraphs 96 and 97 above, in the premises pleaded in paragraphs 92 to 95 above, SQM breached the Analysis Obligation pleaded in paragraph 87(c) above.
99. By reason of each of the breaches of obligation pleaded in paragraphs 96 to 98 above (separately or in any combination), SQM did not do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.
- E3. SQM's section 12DB contraventions with respect to the 6 October 2021 Report and the March 2022 Report**
- I. The 6 October 2021 Report Rating Representation and the 6 October 2021 Report Rating Components Representations***
100. Between 6 October 2021 and 17 March 2022, by publishing and continuing to make available to subscribers the 6 October 2021 Report, SQM made a representation that:

- (a) SQM had rated each of the Conservative, Balanced and Growth classes of the SMF as '3¾ stars, Favourable, Consider for APL inclusion, Approved' (**6 October 2021 Report Rating**); and
  - (b) the 6 October 2021 Report Rating was SQM's opinion:
    - i. for which opinion it had reasonable grounds; and
    - ii. in coming to which opinion it had exercised reasonable care and skill,
- (with (a) and (b) above, together, the **6 October 2021 Report Rating Representation**).

### PARTICULARS

- A. The 6 October 2021 Report Rating Representation was partly express and partly implied.
- B. Paragraph 100(a) was express and was contained in the 6 October 2021 Report (SQR.0016.0001.0115), cover page, introduction page, pp2, 3 (pp.0115, .0116, .0118, .0119).
- C. Paragraph 100(b) was implied, and was implied from: (1) the existence and content of the 6 October 2021 Report; (2) the fact that SQM was a privately owned investment research house that specialised in producing research, data and ratings reports on (*inter alia*) managed funds (see paragraph 3 above); (3) the fact that SQM was the holder of an AFSL (see paragraph 2(b) above); (4) the fact that SQM charged a fee to Keystone for the preparation of the 6 October 2021 Report (see paragraph 23(j) above); (5) the terms of RG 79, and in particular, paragraphs 79.39, 79.41, 79.85, 79.86 (table 3, row 2) and 79.90 (see paragraphs 84(a), 84(b), 84(e), 84(f), 84(i), 85 and 86 above); (6) the fact that the 6 October 2021 Report was uploaded to SQM's website and made available on SQM's website to subscribers for SQM's services (see paragraph 39 above); and (7) the fact that, pursuant to s 12ED(1) of the ASIC Act, SQM's contracts with subscribers who were consumers (within the meaning of s 12BC of the ASIC Act)

included an implied warranty that the services provided by SQM to those subscribers would be rendered with due care and skill.

101. Further or in the alternative to paragraph 100 above, between 6 October 2021 and 17 March 2022, by publishing and continuing to make available to subscribers the 6 October 2021 Report, SQM made representations that:

- (a) SQM had rated each of the Conservative, Balanced and Growth classes of the SMF as 3¾ stars out of a possible 5 stars;
- (b) SQM had rated each of the Conservative, Balanced and Growth classes of the SMF as 'favourable', which was defined to mean:
  - i. a fund that could be 'considered for inclusion' on an Approved Product List (**APL**); and
  - ii. that SQM had concluded that:
    - I. each of the Conservative, Balanced and Growth classes of the SMF had a moderate potential to outperform over the medium-to-long term;
    - II. the past performance of each of the Conservative, Balanced and Growth classes of the SMF has tended to be reasonable;
    - III. management of the SMF was experienced and displays investment-grade quality; and
    - IV. there were no corporate governance concerns with the SMF, or they were of a minor nature;
- (c) SQM had rated each of the Conservative, Balanced and Growth classes of the SMF as having an Investment Grading of 'Approved', being a grading that placed the SMF below an Investment Grading of 'High Investment Grade' but above an Investment Grading of 'Low Investment Grade' and 'Unapproved',  
(with (a) to (c) above, together, the **6 October 2021 Report Rating Components**); and
- (d) each of the 6 October 2021 Report Rating Components was SQM's opinion:
  - i. for which opinion it had reasonable grounds; and
  - ii. in coming to which opinion it had exercised reasonable care and skill,

(with (a) to (d) above, together, the **6 October 2021 Report Rating Components Representations**).

#### **PARTICULARS**

- A. The 6 October 2021 Report Rating Components Representations were partly express and partly implied.
  - B. Paragraphs 101(a) to 101(c) were express, and were contained in the 6 October 2021 Report (SQR.0016.0001.0115), introduction page, p 3 (p.0116, 0119).
  - C. Paragraph 101(d) was implied, and was implied from: (1) the existence and content of the 6 October 2021 Report; (2) the fact that SQM was a privately owned investment research house that specialised in producing research, data and ratings reports on (*inter alia*) managed funds (see paragraph 3 above); (3) the fact that SQM was the holder of an AFSL (see paragraph 2(b) above); (4) the fact that SQM charged a fee to Keystone for the preparation of the 6 October 2021 Report (see paragraph 23(j) above); (5) the terms of RG 79, and in particular, paragraphs 79.39, 79.41, 79.85, 79.86 (table 3, row 2) and 79.90 (see paragraphs 84(a), 84(b), 84(e), 84(f), 84(i), 85 and 86 above); (6) the fact that the 6 October 2021 Report was uploaded to SQM's website and made available on SQM's website to subscribers for SQM's services (see paragraph 39 above); and (7) the fact that, pursuant to s 12ED(1) of the ASIC Act, SQM's contracts with subscribers who were consumers (within the meaning of s 12BC of the ASIC Act) included an implied warranty that the services provided by SQM to those subscribers would be rendered with due care and skill.
102. Each of the 6 October 2021 Report Rating Representation and the 6 October Report Rating Components Representations was:
- (a) made in trade or commerce;
  - (b) made in connection with the supply or possible supply of financial services;

- (c) further or in the alternative to paragraph 102(b) above, made in connection with the promotion of the supply or use of financial services;
  - (d) a representation that services are of a particular standard, quality, value or grade; and
  - (e) further or in the alternative to paragraph 102(d) above, a representation that services have approval, performance characteristics, uses or benefits,
- within the meaning of s 12DB of the ASIC Act.

### **PARTICULARS**

As to paragraphs 102(b) and 102(c), ASIC refers to and repeats paragraph 10(b) above and the particulars thereto.

103. Each of the 6 October 2021 Report Rating Representation and the 6 October 2021 Report Rating Components Representations was false or misleading, because:

- (a) SQM did not have reasonable grounds for its opinions as to each of the 6 October 2021 Report Rating and the 6 October 2021 Report Rating Components; and/or
- (b) SQM did not exercise reasonable care and skill in forming its opinions as to each of the 6 October 2021 Rating and the 6 October 2021 Report Rating Components.

### **PARTICULARS**

- A. ASIC refers to and repeats paragraphs 92(a), 93 and 94 above and the particulars thereto.
- B. Further, one of the underlying fund managers for the SMF was Pearl / Watershed, which invested in the Pearl / Watershed Multi-Asset Funds (see paragraphs 88(e)(ii) and 88(f)(v) and (vii) to (ix) above).
- C. The Pearl / Watershed Multi-Asset Funds had not been rated by SQM prior to the publication of the 6 October 2021 Report nor did SQM take any material steps to evaluate Pearl / Watershed or the Pearl / Watershed Multi-Asset Funds as part of producing the 6 October 2021 Report (see paragraph 38(g) above).

- D. The other underlying fund manager for the SMF was CF Capital, which invested in the ADPC, which, in turn, invested in the CDPF (see paragraphs 88(d)(iv) and 88(e)(iii) above).
- E. It was disclosed to SQM that the ADPC had replaced the CDPD (see paragraph 88(d)(iv) above). The ADPC had not been rated by SQM prior to publication of the 6 October 2021 report nor did SQM take any material steps to evaluate the ADPC as part of producing the 6 October 2021 Report (see paragraph 38(f) above).
- F. Further particulars may be provided after the service of expert evidence.

104. By reason of the matters pleaded in paragraphs 100 to 103 above, SQM contravened each of ss 12DB(1)(a) and 12DB(1)(e) of the ASIC Act.

## ***II. The March 2022 Report Rating Representation and the March 2022 Report Rating Components Representations***

105. Between 18 March 2022 and 26 October 2022, by publishing and continuing to make available to subscribers the March 2022 Report, SQM made a representation that:

- (a) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as '3¾ stars, Favourable, Consider for APL inclusion, Approved' (**March 2022 Report Rating**); and
- (b) the March 2022 Report Rating was SQM's opinion:
  - i. for which opinion it had reasonable grounds; and
  - ii. in coming to which opinion it had exercised reasonable care and skill,

(with (a) and (b) above, together, the **March 2022 Report Rating Representation**).

### **PARTICULARS**

- A. The March 2022 Report Rating Representation was partly express and partly implied.

- B. Paragraph 105(a) was express and was contained in the March 2022 Report (SQR.0016.0001.0156), cover page, introduction page, pp2, 3 (pp.0156, .0157, .0159, .0160).
- C. Paragraph 105(b) was implied, and was implied from: (1) the existence and content of the March 2022 Report; (2) the fact that SQM was a privately owned investment research house that specialised in producing research, data and ratings reports on (*inter alia*) managed funds (see paragraph 3 above); (3) the fact that SQM was the holder of an AFSL (see paragraph 2(b) above); (4) the terms of RG 79, and in particular, paragraphs 79.39, 79.41, 79.85, 79.86 (table 3, row 2) and 79.90 (see paragraphs 84(a), 84(b), 84(e), 84(f), 84(i), 85 and 86 above); (5) the fact that the March 2022 Report was uploaded to SQM's website and made available on SQM's website to subscribers for SQM's services (see paragraph 48 above); and (6) the fact that, pursuant to s 12ED(1) of the ASIC Act, SQM's contracts with subscribers who were consumers (within the meaning of s 12BC of the ASIC Act) included an implied warranty that the services provided by SQM to those subscribers would be rendered with due care and skill.

106. Further or in the alternative to paragraph 105 above, between 18 March 2022 and 26 October 2022, by publishing and continuing to make available to subscribers the March 2022 Report, SQM made representations that:

- (a) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as 3¾ stars out of a possible 5 stars;
- (b) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as 'favourable', which was defined to mean:
  - i. a fund that could be 'considered for inclusion' on an APL; and
  - ii. that SQM had concluded that:
    - I. each of the Conservative, Balanced, Growth and High Growth classes of the SMF had a moderate potential to outperform over the medium-to-long term;

- II. the past performance of each of the Conservative, Balanced, Growth and High Growth classes of the SMF has tended to be reasonable;
  - III. management of the SMF was experienced and displays investment-grade quality; and
  - IV. there were no corporate governance concerns with the SMF, or they were of a minor nature;
- (c) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as having an Investment Grading of 'Approved', being a grading that placed the SMF below an Investment Grading of 'High Investment Grade' but above an Investment Grading of 'Low Investment Grade' and 'Unapproved',
- (with (a) to (c) above, together, the **March 2022 Report Rating Components**); and
- (d) each of the March 2022 Report Rating Components was SQM's opinion:
- i. for which opinion it had reasonable grounds; and
  - ii. in coming to which opinion it had exercised reasonable care and skill,
- (with (a) to (d) above, together, the **March 2022 Report Rating Components Representations**).

## PARTICULARS

- A. The March 2022 Report Rating Components Representations were partly express and partly implied.
- B. Paragraphs 106(a) to 106(c) were express, and were contained in the March 2022 Report (SQR.0016.0001.0156), introduction page, (p. 0157).
- C. Paragraph 106(d) was implied, and was implied from: (1) the existence and content of the March 2022 Report; (2) the fact that SQM was a privately owned investment research house that specialised in producing research, data and ratings reports on (*inter alia*) managed funds (see paragraph 3 above); (3) the fact that SQM was the holder of an AFSL (see paragraph 2(b) above) (4) the terms of RG 79, and in particular, paragraphs 79.39, 79.41,



79.85, 79.86 (table 3, row 2) and 79.90 (see paragraphs 84(a), 84(b), 84(e), 84(f), 84(i), 85 and 86 above); (5) the fact that the March 2022 Report was uploaded to SQM's website and made available on SQM's website to subscribers for SQM's services (see paragraph 48 above); and (6) the fact that, pursuant to s 12ED(1) of the ASIC Act, SQM's contracts with subscribers who were consumers (within the meaning of s 12BC of the ASIC Act) included an implied warranty that the services provided by SQM to those subscribers would be rendered with due care and skill.

107. Each of the March 2022 Report Rating Representation and the March 2022 Report Rating Components Representations was:

- (a) made in trade or commerce;
- (b) made in connection with the supply or possible supply of financial services;
- (c) further or in the alternative to paragraph 107(b) above, made in connection with the promotion of the supply or use of financial services;
- (d) a representation that services are of a particular standard, quality, value or grade; and
- (e) further or in the alternative to paragraph 107(d) above, a representation that services have approval, performance characteristics, uses or benefits,

within the meaning of s 12DB of the ASIC Act.

### **PARTICULARS**

As to paragraphs 107(b) and 107(c), ASIC refers to and repeats paragraph 10(b) above and the particulars thereto.

108. Each of the March 2022 Report Rating Representation and the March 2022 Report Rating Components Representations was false or misleading, because:

- (a) SQM did not have reasonable grounds for its opinions as to each of the March 2022 Report Rating and the March 2022 Report Rating Components; and/or
- (b) SQM did not exercise reasonable care and skill in forming its opinions as to each of the March 2022 Report Rating and the March 2022 Report Rating Components.

## PARTICULARS

- A. ASIC refers to and repeats paragraphs 92(b), 93 and 95 above and the particulars thereto.
- B. ASIC refers to and repeats particulars B to E to paragraph 103 above.
- C. Further, the Pearl / Watershed Multi-Asset Funds had not been rated by SQM prior to the publication of the March 2022 Report nor did SQM take any material steps to evaluate Pearl / Watershed or the Pearl / Watershed Multi-Asset Funds as part of producing the March 2022 Report (see paragraph 47(o) above).
- D. The ADPC had not been rated by SQM prior to publication of the March 2022 Report nor did SQM take any material steps to evaluate the ADPC as part of producing the March 2022 Report (see paragraph 47(n) above).
- E. Page 3 (p.0160) of the March 2022 Report (SQR.0016.0001.0156) provided (*inter alia*) that the CDPC was awarded 3.50 stars (issued October 2020) in circumstances where in about October 2021, SQM's rating of the CDPD in the October 2020 CDPD Report expired (see paragraph 41 above).
- F. Further particulars may be provided after the service of expert evidence.

109. By reason of the matters pleaded in paragraphs 105 to 108 above, SQM contravened each of ss 12DB(1)(a) and 12DB(1)(e) of the ASIC Act.

### ***III. The 6 October 2021 Report and the March 2022 Report Asset Allocation Representations***

110. Between 6 October 2021 and 17 March 2022, by publishing and continuing to make available to subscribers the 6 October 2021 Report, SQM made representations that:

- (a) the Conservative and Balanced classes of the SMF are each medium-high risk investments that provide exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets (the **6 October 2021 Report 80:20 Representation**); and

#### PARTICULARS

- A. The 6 October 2021 Report 80:20 Representation was partly express and partly implied.
- B. To the extent that it was express, it was contained in the 6 October 2021 Report (SQR.0016.0001.0115) at:
- a. page 3 (p.0119), which provided (*inter alia*) that 'The Shield Balanced Class Fund is a medium-high risk profile fund of fund investment which provides exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets'; and
  - b. page 6 (p.0122), which provided (*inter alia*) that 'The Shield Balanced Class is a medium-high risk investment [which] aims to provide exposure to an actively managed portfolio of a 80:20 allocation between growth assets and defensive assets.'
- C. To the extent that it was implied, it was implied from the content of the 6 October 2021 Report including: (1) pp 3-6, 17 (pp.0119-.0122, .0133); (2) the fact that the 6 October 2021 Report also applied to the Conservative class of the SMF; and (3) the fact that the 6 October 2021 Report did not otherwise expressly address asset allocations for the Conservative class of the SMF.
- (b) the growth portion (80%) of each of the Conservative, Balanced and Growth classes of the SMF is managed by Pearl / Watershed (the **6 October 2021 Report Growth Portion Representation**),

## PARTICULARS

- A. The 6 October 2021 Report Growth Portion Representation was partly express and partly implied.
- B. To the extent that it was express, it was contained in the 6 October 2021 Report (SQR.0016.0001.0115) at page 4 (p.0120), which provided (*inter alia*) that 'The Growth portion (80%) of the Portfolio, managed by Pearl-Watershed, invests in SMA's and managed funds covering all asset classes'.
- C. To the extent that it was implied, it was implied from the content of the 6 October 2021 Report including: (1) pp 3, 5-6; 17 (pp.0119, .0121-.0122, .0133); (2) the fact that the 6 October 2021 Report also applied to each of the Conservative and Growth classes of the SMF; and (3) the fact that the 6 October 2021 Report did not otherwise expressly address asset allocations for the Conservative or Growth classes of the SMF.

(with (a) and (b) above, together, the **6 October 2021 Report Asset Allocation Representations**).

111. Between 18 March 2022 and 25 October 2022, by publishing and continuing to make available to subscribers the March 2022 Report, SQM:

- (a) continued to make the 6 October 2021 Report 80:20 Representation;

## PARTICULARS

- A. ASIC refers to and repeats paragraph 110(a), and the particulars thereto.
- B. To the extent that the 6 October 2021 Report 80:20 Representation (as made by the March 2022 Report) was express, it was contained in the March 2022 Report (SQR.0016.0001.0156) at:
  - a. page 3 (p.0160), which provided (*inter alia*) that 'The Shield Balanced Class Fund is a medium-high risk profile fund of

fund investment which provides exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets'; and

- b. page 6 (p.0163), which provided (*inter alia*) that 'The Shield Balanced Class is a medium-high risk investment [which] aims to provide exposure to an actively managed portfolio of a 80:20 allocation between growth assets and defensive assets.'

C. To the extent that the 6 October 2021 Report 80:20 Representation (as contained in the March 2022 Report) was implied, it was implied from the content of the March 2022 Report including: (1) pp 3-6, 17 (pp.0160-.0163, .0174); (2) the fact that the March 2022 Report also applied to the Conservative class of the SMF; and (3) the fact that the March 2022 Report did not otherwise expressly address asset allocations for the Conservative class of the SMF.

- (b) continued to make the 6 October 2021 Report Growth Portion Representation;

#### **PARTICULARS**

- A. ASIC refers to and repeats paragraph 110(b), and the particulars thereto.
- B. To the extent that the 6 October 2021 Report Growth Portion Representation (as made by the March 2022 Report) was express, it was contained in the March 2022 Report: (SQR.0016.0001.0156) at page 4 (p.0161), which provided (*inter alia*) that 'The Growth portion (80%) of the Portfolio, managed by Pearl-Watershed, invests in SMA's and managed funds covering all asset classes'.
- C. To the extent that the 6 October 2021 Report Growth Portion Representation (as made by the March 2022 Report) was implied, it was implied from the content of the March 2022 Report including:

(1) pp 3, 5-6, 17 (pp.0160, .0162-.0163, .0174); (2) the fact that the March 2022 Report also applied to each of the Conservative and Growth classes of the SMF; and (3) the fact that the March 2022 Report did not otherwise expressly address asset allocations for the Conservative or Growth classes of the SMF.

- (c) made a representation that the High Growth class of the SMF is a medium-high risk investment that provides exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets (the **March 2022 Report High Growth Class 80:20 Representation**); and

#### **PARTICULARS**

- A. The March 2022 Report High Growth Class 80:20 Representation was partly express and partly implied.
- B. To the extent that it was express, it was contained in the March 2022 Report (SQR.0016.0001.0156) at:
- a. page 3 (p.0160), which provided (*inter alia*) that 'The Shield Balanced Class Fund is a medium-high risk profile fund of fund investment which provides exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets'; and
  - b. page 6 (p.0163), which provided (*inter alia*) that 'The Shield Balanced Class is a medium-high risk investment [which] aims to provide exposure to an actively managed portfolio of a 80:20 allocation between growth assets and defensive assets.'
- C. To the extent that it was implied, it was implied from the content of the March 2022 Report including: (1) pp 3-6, 17 (pp.0160-.0163, .0174); (2) the fact that the March 2022 Report also applied to the High Growth class of the SMF; and (3) the fact that the March 2022 Report did not otherwise expressly address asset allocations for the High Growth class of the SMF.

- (d) made a representation that the growth portion (80%) of the High Growth class of the SMF is managed by Pearl / Watershed (the **March 2022 Report High Growth Class Growth Portion Representation**).

#### **PARTICULARS**

- A. The March 2022 Report High Growth Class Growth Portion Representation was partly express and partly implied.
- B. To the extent that it was express, it was contained in the March 2022 Report (SQR.0016.0001.0156) at page 4 (p.0161), which provided (*inter alia*) that 'The Growth portion (80%) of the Portfolio, managed by Pearl-Watershed, invests in SMA's and managed funds covering all asset classes'.
- C. To the extent that it was implied, it was implied from the content of the March 2022 Report including: (1) pp3, 5-6; 17 (pp.0160, .0162-.0163, .0174); (2) the fact that the March 2022 Report also applied to the High Growth class of the SMF; and (3) the fact that the March 2022 Report did not otherwise expressly address asset allocations for the High Growth class of the SMF.

(with (a) to (d) above, together, the **March 2022 Report Asset Allocation Representations**).

112. Each of the 6 October 2021 Report Asset Allocation Representations and the March 2022 Asset Allocation Report Representations was:
- (a) made in trade or commerce;
  - (b) made in connection with the supply or possible supply of financial services;
  - (c) further or in the alternative to paragraph 112(b) above, made in connection with the promotion of the supply or use of financial services;
  - (d) a representation that services are of a particular standard, quality, value or grade; and
  - (e) further or in the alternative to paragraph 112(d) above, a representation that services have approval, performance characteristics, uses or benefits.

## **PARTICULARS**

As to paragraphs 112(b) and 112(c), ASIC refers to and repeats paragraph 10(b) above and the particulars thereto.

113. The 6 October 2021 Report 80:20 Representation was false or misleading because:

- (a) the PDS for the Conservative class of the SMF provided that the Conservative class aimed to provide exposure to an actively managed portfolio of a 50% allocation to growth assets and a 50% allocation to defensive assets, as referred to in paragraph 88(i)(i)(II) above, and provided that it had a target exposure allocation of 57% to growth assets and 43% to defensive assets, as referred to in paragraph 88(i)(ii)(III) above; and
- (b) the PDS for the Balanced class of the SMF provided that the Balanced class aimed to provide exposure to an actively managed portfolio of a 60:40 allocation between growth assets and defensive assets, as referred to in paragraph 88(j)(i)(II) above, and provided that it had a target exposure allocation of 68% to growth assets and 32% to defensive assets, as referred to in paragraph 88(j)(ii)(III) above.

114. The 6 October 2021 Report Growth Portion Representation was false or misleading because both Pearl / Watershed and CF Capital were appointed to manage portions of each of the Conservative, Balanced and Growth classes of the SMF which portions each included growth assets, as referred to in paragraphs 88(e)(i), 88(e)(ii), 88(e)(iii) and 88(f)(iv), 88(f)(vi) to 88(f)(ix) above.

## **PARTICULARS**

- A. The 2021 Qualitative Questionnaire provided that the funds which Pearl / Watershed was appointed to manage (being the Pearl / Watershed Multi-Asset Funds) were multi-asset funds (see paragraphs 88(e)(ii) and 88(f)(vii) to 88(f)(ix) above), which included growth assets and defensive assets (see paragraph 88(e)(ii) above).
- B. Further, the 2021 Qualitative Questionnaire provided that the funds which CF Capital was appointed to manage were 'the



alternative (unlisted property) portfolio' (see paragraphs 88(e)(i), 88(e)(iii) and 88(f)(iv) above), which also comprised growth assets.

C. Further particulars may be provided after the service of expert evidence.

115. The March 2022 Report High Growth Class 80:20 Representation was false or misleading because the PDS for the High Growth Class of the SMF provided that the High Growth class aimed to provide exposure to an actively managed portfolio of predominantly growth assets, with the potential for capital growth, as referred to in paragraph 91(d)(i)(II) above, and provided that it had a target exposure allocation of 92% to growth assets and 8% to defensive assets, as referred to in paragraph 91(d)(ii)(III) above.

116. The March 2022 Report High Growth Class Growth Portion Representation was false or misleading because both Pearl / Watershed and CF Capital were appointed to manage portions of the High Growth class of the SMF which portions each included growth assets, as referred to in paragraphs 88(e)(i), 88(e)(ii) and 88(e)(iii) above.

#### **PARTICULARS**

A. The 2021 Qualitative Questionnaire provided that the funds which Pearl / Watershed was appointed to manage (being the Pearl / Watershed Multi-Asset Funds) were multi-asset funds (see paragraph 88(e)(ii) above), which included growth assets and defensive assets (see paragraph 88(e)(ii) above).

B. Further, the 2021 Qualitative Questionnaire provided that the funds which CF Capital was appointed to manage were 'the alternative (unlisted property) portfolio' (see paragraphs 88(e)(i) and 88(e)(iii) above), which also comprised growth assets.

C. Further particulars may be provided after the service of expert evidence.

117. Further or alternatively, if and insofar as any of the 6 October 2021 Report and March 2022 Report Asset Allocation Representations is a representation with respect to future matters within the meaning of s 12BB of the ASIC Act:

- (a) SQM did not have reasonable grounds for making the 6 October 2021 Report and March 2022 Report Asset Allocation Representations; and
- (b) each of the 6 October 2021 Report and March 2022 Report Asset Allocation Representations is taken to be misleading by reason of s 12BB of the ASIC Act.

#### **PARTICULARS**

A. In relation to the 6 October 2021 Report, ASIC refers to and repeats paragraphs 113 and 114 above.

B. In relation to the March 2022 Report, ASIC refers to and repeats paragraphs 115 and 116 above.

118. By reason of the matters pleaded in paragraphs 110 to 117 above, SQM contravened each of ss 12DB(1)(a) and 12DB(1)(e) of the ASIC Act.

#### **E4. The nature and characteristics of the SMF relevant to the October 2022 Report**

119. The nature and characteristics of the SMF, which were relevant to the production and publication of the October 2022 Report, and which were disclosed to SQM prior to the publication of the October 2022 Report relevantly comprised:

- (a) all of the matters referred to in paragraph 88 above;
- (b) that the August 2022 Qualitative Questionnaire and the September 2022 Qualitative Questionnaire provided (*inter alia*) the following information:
  - i. as of 1 March, the ADPF was set up as a wholesale fund and was the primary unlisted fund that the SMF classes invested in, replacing the CDPF;
  - ii. the SMF received its first inflow on 7 April 2022;
  - iii. the allowable ranges for each SMF class were expanded following market volatility in the first two quarters of the 2022 calendar year;
  - iv. the multi-asset solution ensured the SMF was compliant with ASIC's definition of a liquid fund, with 80% allocated to liquid securities and 20% to illiquid managed funds;
  - v. in relation to the September 2022 Qualitative Questionnaire only, that the SMF may be sourcing specific managers in additional asset classes that are currently

not in the SMF's asset mix, or review the asset classes of the Pearl / Watershed Multi-Asset Fund and look to replace specific asset-classes with other managers;

- vi. the SMF had growth asset allocations ranging from 57% to 92%;
- vii. the Conservative class would have 90% allocated to the Conservative class of the Pearl / Watershed Multi-Asset Fund and 10% allocated to the ADPF;
- viii. the Balanced class would have 80% allocated to the Balanced class of the Pearl / Watershed Multi-Asset Fund and 20% allocated to the ADPF;
- ix. the Growth class would have 80% allocated to the Growth class of the Pearl / Watershed Multi-Asset Fund and 20% allocated to the ADPF;
- x. the High Growth class would have 80% allocated to the High Growth class of the Pearl / Watershed Multi-Asset Fund and 20% allocated to the ADPF;
- xi. the weightings between fund managers were reviewed at least monthly, although the weightings were not strict and depended on market conditions;
- xii. 80% liquidity was to be maintained at the fund level; and
- xiii. the minimum, benchmark and maximum asset allocations were described as follows:

Shield High Growth Class

Asset Categories

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	92%	40 - 100%
Defensive Assets	8%	0 - 60%

Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	65%	0 - 100%
Real Assets	Active	7%	0 - 40%
Alternatives	Active	20%	0 - 70%
Fixed Interest	Passive	6%	0 - 35%
Cash	Passive	2%	0 - 20%

Shield Growth Class

Asset Categories

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	83%	30 - 90%
Defensive Assets	17%	10 - 70%

Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	48%	0 - 80%
Real Assets	Active	15%	0 - 40%
Alternatives	Active	20%	0 - 70%
Fixed Interest	Passive	15%	0 - 35%
Cash	Passive	2%	0 - 20%

Shield Balanced Class

Asset Categories

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	68%	20 - 80%
Defensive Assets	32%	20 - 60%

Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	38%	0 - 80%
Real Assets	Active	10%	0 - 40%
Alternatives	Active	20%	0 - 70%
Fixed Interest	Passive	30%	0 - 35%
Cash	Passive	2%	0 - 20%

Shield Conservative Class

Asset Categories

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	57%	10 - 60%
Defensive Assets	43%	40 - 90%

Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	37%	0 - 80%
Real Assets	Active	10%	0 - 40%
Alternatives	Active	10%	0 - 70%
Fixed Interest	Passive	40%	0 - 60%
Cash	Passive	3%	0 - 40%

## PARTICULARS

- A. August 2022 Qualitative Questionnaire (SQR.0016.0002.2267), pp1-3, 6, 10, 13 (pp.2267-.2269, .2272, .2276, .2279).

B. September 2022 Qualitative Questionnaire (SQR.0016.0001.0082), pp1-3, 6, 10, 13-14 (pp.0082-.0084, .0087, .0091, .0094-.0095).

- (c) that the First August 2022 Quantitative Questionnaire and the Second August 2022 Quantitative Questionnaire (together, the **August 2022 Quantitative Questionnaires**) provided (*inter alia*) that, as at 30 June 2022, the weighting between the ADPF and the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model was 75.70% and 24.30% respectively;

#### **PARTICULARS**

A. First August 2022 Quantitative Questionnaire (SQR.0016.0002.2285), Fund Snapshot Tab (row 127-128), Portfolio Tab.

B. Second August 2022 Quantitative Questionnaire (SQR.0016.0002.2289), Fund Snapshot Tab (row 127-128), Portfolio Tab.

- (d) that the September 2022 Quantitative Questionnaire:
- i. provided (*inter alia*) that in the Sheet titled 'FundSnapshot', as at 30 August 2022, the weighting between the ADPF and the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model was, in rows 127 to 128, approximately 65% and 33% [sic] respectively;
  - ii. provided (*inter alia*) that in the Sheet titled 'Portfolio', as at 30 June 2022, the weighting between the ADPF and the Pearl Balanced Model was approximately 65% and 35% respectively; and
  - iii. the information contained in the Sheet titled 'FundSnapshot' row 127 to 128 was not identical to the information contained in the Sheet titled 'Portfolio'.

#### **PARTICULARS**

September 2022 Quantitative Questionnaire (SQR.0016.0001.0081), Fund Snapshot Tab (rows 127 to 128)

which referred to 64.69% and 33.34% and Portfolio Tab which referred to 64.56% and 35.44%.

- (e) that the First October 2022 Quantitative Questionnaire, the Second October 2022 Quantitative Questionnaire and the Third October 2022 Quantitative Questionnaire (together, the **October 2022 Quantitative Questionnaires**) provided (*inter alia*) that, as at 30 June 2022, the weighting between the ADPF and the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model was 75.70% and 24.30% respectively;

#### **PARTICULARS**

- A. First October 2022 Quantitative Questionnaire (SQR.0016.0002.2524), Fund Snapshot Tab (rows 127 to 128), Portfolio Tab.
- B. Second October 2022 Quantitative Questionnaire (SQR.0010.0001.3176), Fund Snapshot Tab (rows 127 to 128), Portfolio Tab.
- C. Third October 2022 Quantitative Questionnaire (SQR.0010.0001.3202), Fund Snapshot Tab (rows 127 to 128), Portfolio Tab.

- (f) that from the August 2022 Review Meeting:
- i. the SMF's end objective was to be a multi manager with meaningful allocation to direct property; and
  - ii. the SMF was moving away from its 80:20 narrative as part of its evolution and wanted to look at strategic asset allocation on a look through basis, i.e., including the ADPF;

#### **PARTICULARS**

August 2022 Review Meeting notes (SQR.0010.0001.3841), pp1, 3 (pp.3841, .3843).

- (g) that the supplementary PDS for the Conservative class of the SMF dated 4 April 2022 (*inter alia*) had changed the long term asset allocation of the Conservative class of the SMF to the following:

**Asset Categories**

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	57%	10 - 60%
Defensive Assets	43%	40 - 90%

**Asset Class Allocation Ranges**

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	37%	0 - 80%
Real Assets	Active	10%	0 - 40%
Alternatives	Active	10%	0 - 70%
Fixed Interest	Passive	40%	0 - 60%
Cash	Passive	3%	0 - 40%

\* An indicative representation of the estimated average weighting over the long term as at the date of this PDS. Actual weighting will differ, at times substantially, and potentially for extended periods.

## PARTICULARS

Supplementary PDS for the Conservative class of the SMF dated 4 April 2022 (SQR.0010.0001.3739), p7 (p.3745).

- (h) that the supplementary PDS for the Balanced class of the SMF dated 4 April 2022 (*inter alia*) had changed the long term asset allocation of the Balanced class of the SMF to the following:

#### Asset Categories

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	68%	20 - 80%
Defensive Assets	32%	20 - 80%

#### Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	38%	0 - 80%
Real Assets	Active	10%	0 - 40%
Alternatives	Active	20%	0 - 70%
Fixed Interest	Passive	30%	0 - 35%
Cash	Passive	2%	0 - 20%

\* An indicative representation of the estimated average weighting over the long term as at the date of this PDS. Actual weighting will differ, at times substantially, and potentially for extended periods.

### PARTICULARS

Supplementary PDS for the Balanced class of the SMF dated 4 April 2022 (SQR.0024.0001.6931), p7 (p.6937).

- (i) that the supplementary PDS for the Growth class of the SMF dated 4 April 2022 (*inter alia*) had changed the long term asset allocation of the Growth class of the SMF to the following:

#### Asset Categories

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	83%	30 - 90%
Defensive Assets	17%	10 - 70%

#### Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	48%	0 - 80%
Real Assets	Active	15%	0 - 40%
Alternatives	Active	20%	0 - 70%
Fixed Interest	Passive	15%	0 - 35%
Cash	Passive	2%	0 - 20%

\* An indicative representation of the estimated average weighting over the long term as at the date of this PDS. Actual weighting will differ, at times substantially, and potentially for extended periods.

### PARTICULARS

Supplementary PDS for the Growth class of the SMF dated 4 April 2022 (SQR.0010.0001.3772), p7 (p.3778).

- (j) that the supplementary PDS for the High Growth class of the SMF dated 4 April 2022 (*inter alia*) had changed the long term asset allocation of the High Growth class of the SMF to the following:



#### Asset Categories

Asset Category	Target Exposure Allocation *	Allowable range
Growth Assets	92%	40 - 100%
Defensive Assets	8%	0 - 60%

#### Asset Class Allocation Ranges

Asset Class	Strategy Type	Target Exposure Allocation *	Allowable range
Listed Equities	Active	65%	0 - 100%
Real Assets	Active	7%	0 - 40%
Alternatives	Active	20%	0 - 70%
Fixed Interest	Passive	6%	0 - 35%
Cash	Passive	2%	0 - 20%

\* An indicative representation of the estimated average weighting over the long term as at the date of this PDS. Actual weighting will differ, at times substantially, and potentially for extended periods.

## PARTICULARS

Supplementary PDSs for the High Growth class of the SMF dated 4 April 2022 (SQR.0010.0001.3805), p7 (p.3811).

120. Further, the nature and characteristics of the SMF, which were relevant to the production and publication of the October 2022 Report and which ought to have been known by SQM prior to the publication of the October 2022 Report (had it complied with the Relevant Information Obligation referred to in paragraph 87(a) above and the Analysis Obligation referred to in paragraph 87(c) above) relevantly comprised:

- (a) that there were material inconsistencies and ambiguities arising out of:
  - i. the August 2022 Qualitative Questionnaire and the September 2022 Qualitative Questionnaire;
  - ii. the August 2022 Quantitative Questionnaires, the September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires; and
  - iii. the August 2022 Review Meeting;

## PARTICULARS

- A. With respect to the Conservative class, the August 2022 Qualitative Questionnaire and the September 2022 Qualitative Questionnaire provided that the Conservative class would have 90% allocated to the Conservative class of the Pearl / Watershed Multi-Asset Fund and 10% allocated to the ADPF (see paragraph 119(b)(vii) above), however, the August 2022 Quantitative Questionnaires, the September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires showed that, as at 30 June 2022, between approximately 65% and 76% was allocated to the ADPF and between approximately 35% and 24% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model, and, as at 30 August 2022, approximately 65% was allocated to the ADPF and approximately 35% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model and did not otherwise expressly address fund manager asset allocations for the Conservative class (see paragraphs 119(c), 119(d) and 119(e) above) and at the August 2022 Review Meeting, SQM was informed by Keystone and CF Capital that the SMF was moving away from its 80 / 20 narrative (see paragraph 119(f)(ii) above).
- B. With respect to the Balanced class, the August 2022 Qualitative Questionnaire provided that the Balanced class would have 80% allocated to the Balanced class of the Pearl / Watershed Multi-Asset Fund and 20% allocated to the ADPF (see paragraph 119(b)(viii) above), however, the August 2022 Quantitative Questionnaires, the September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires showed that, as at 30 June 2022, between approximately 65% and 76% was allocated to the ADPF and between approximately 35% and 24% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model, and, as at 30 August 2022, approximately 65% was allocated to the ADPF and

approximately 35% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model and did not otherwise expressly address the Balanced class (see paragraphs 119(c), 119(d) and 119(e) above) and at the August 2022 Review Meeting, SQM was informed by Keystone and CF Capital that the SMF was moving away from its 80 / 20 narrative (see paragraph 119(f)(ii) above).

- C. With respect to the Growth class, the August 2022 Qualitative Questionnaire provided that the Growth class would have 80% allocated to the Growth class of the Pearl / Watershed Multi-Asset Fund and 20% allocated to the ADPF (see paragraph 119(b)(ix) above), however, the August 2022 Quantitative Questionnaires, the September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires showed that, as at 30 June 2022, between approximately 65% and 76% was allocated to the ADPF and between approximately 35% and 24% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model, and, as at 30 August 2022, approximately 65% was allocated to the ADPF and approximately 35% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model and did not otherwise expressly address the Growth class (see paragraphs 119(c), 119(d) and 119(e) above) and at the August 2022 Review Meeting, SQM was informed by Keystone and CF Capital that the SMF was moving away from its 80:20 narrative (see paragraph 119(f)(ii) above).
- D. With respect to the High Growth class, the August 2022 Qualitative Questionnaire provided that the High Growth class would have 80% allocated to the High Growth class of the Pearl / Watershed Multi-Asset Fund and 20% allocated to the ADPF (see paragraph 119(b)(x) above), however, the August 2022 Quantitative Questionnaires, the September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires showed that, as at 30 June 2022, between approximately 65% and 76% was

allocated to the ADPF and between approximately 35% and 24% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model, and, as at 30 August 2022, approximately 65% was allocated to the ADPF and approximately 35% was allocated to the Pearl Balanced Portfolio / Watershed Balanced Portfolio / Pearl Balanced Model and did not otherwise expressly address the High Growth class (see paragraphs 119(c), 119(d) and 119(e) above) and at the August 2022 Review Meeting, SQM was informed by Keystone and CF Capital that the SMF was moving away from its 80:20 narrative (see paragraph 119(f)(ii) above).

E. Further particulars may be provided after the service of expert evidence.

(b) that there were material differences between the Conservative, Balanced, Growth and High Growth classes of the SMF.

#### **PARTICULARS**

A. ASIC refers to and repeats paragraphs 88(i) to 88(k), 89(c) and 91(d) above.

B. Further particulars may be provided after the service of expert evidence.

(with subparagraphs (a) to (b) together, the **October 2022 Inconsistencies and Differences**).

#### **E5. SQM's section 912A(1) contraventions with respect to the October 2022 Report**

121. SQM produced and published the October 2022 Report in circumstances where it had not considered, assessed, verified and analysed the October 2022 Inconsistencies and Differences, as referred to in paragraph 120 above.

122. In the premises pleaded in paragraph 121 above, SQM breached the Analysis Obligation pleaded in paragraph 87(c) above.

123. By reason of the breach of obligation pleaded in paragraph 122 above, SQM did not do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.

**E6. SQM's section 12DB contraventions with respect to the October 2022 Report**

***I. The October 2022 Report Rating Representation and the October 2022 Report Rating Components Representations***

124. Between 26 October 2022 and 18 December 2023, by publishing and continuing to make available to subscribers the October 2022 Report, SQM made a representation that:

- (a) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as '3¾ stars, Favourable, Consider for APL inclusion, Approved' (**October 2022 Report Rating**); and
  - (b) the October 2022 Report Rating was SQM's opinion:
    - i. for which opinion it had reasonable grounds; and
    - ii. in coming to which opinion it had exercised reasonable care and skill,
- (with (a) and (b) above, together, the **October 2022 Report Rating Representation**).

**PARTICULARS**

- A. The October 2022 Report Rating Representation was partly express and partly implied.
- B. Paragraph 124(a) was express and was contained in the October 2022 Report (SQR.0010.0001.2855), cover page, introduction page, pp2, 3 (pp.2855, .2856, .2858, .2859).
- C. Paragraph 124(b) was implied and was implied from: (1) the existence and content of the October 2022 Report; (2) the fact that SQM was a privately owned investment research house that specialised in producing research, data and ratings reports on (*inter alia*) managed funds (see paragraph 3 above); (3) the fact that SQM was the holder of an AFSL (see paragraph 2(b) above);

(4) the fact that SQM charged a fee to CF Capital for the preparation of the October 2022 Report (see paragraph 53 above); (5) the terms of RG 79, and in particular, paragraphs 79.39, 79.41, 79.85, 79.86 (table 3, row 2) and 79.90 (see paragraphs 84(a), 84(b), 84(e), 84(f), 84(i), 85 and 86 above); (6) the fact that the October 2022 Report was uploaded to SQM's website and made available on SQM's website to subscribers for SQM's services (see paragraph 75 above); and (7) the fact that, pursuant to s 12ED(1) of the ASIC Act, SQM's contracts with subscribers who were consumers (within the meaning of s 12BC of the ASIC Act) included an implied warranty that the services provided by SQM to those subscribers would be rendered with due care and skill.

125. Further or in the alternative to paragraph 124 above, between 26 October 2022 and 18 December 2023, by publishing and continuing to make available to subscribers the October 2022 Report, SQM made representations that:

- (a) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as 3¾ stars out of a possible 5 stars;
- (b) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as 'favourable', which was defined to mean:
  - i. a fund that could be 'considered for inclusion' on an APL; and
  - ii. that SQM had concluded that:
    - I. each of the Conservative, Balanced, Growth and High Growth classes of the SMF had a moderate potential to outperform over the medium-to-long term;
    - II. the past performance of each of the Conservative, Balanced, Growth and High Growth classes of the SMF has tended to be reasonable;
    - III. management of the SMF was experienced and displays investment-grade quality; and
    - IV. there were no corporate governance concerns with the SMF, or they were of a minor nature;

- (c) SQM had rated each of the Conservative, Balanced, Growth and High Growth classes of the SMF as having an Investment Grading of 'Approved', being a grading that placed the SMF below an Investment Grading of 'High Investment Grade' but above an Investment Grading of 'Low Investment Grade' and 'Unapproved',
- (with (a) to (c) above, together, the **October 2022 Report Rating Components**); and
- (d) each of the October 2022 Report Rating Components was SQM's opinion:
- i. for which opinion it had reasonable grounds; and
  - ii. in coming to which opinion it had exercised reasonable care and skill,
- (with (a) to (d) above, together, the **October 2022 Report Rating Components Representations**).

## PARTICULARS

- A. The October 2022 Report Rating Components Representations were partly express and partly implied.
- B. Paragraphs 125(a) to 125(c) were express and were contained in the October 2022 Report (SQR.0010.0001.2855), introduction page, p 3 (p. 2856, .2859).
- C. Paragraph 125(d) was implied and was implied from: (1) the existence and content of the October 2022 Report; (2) the fact that SQM was a privately owned investment research house that specialised in producing research, data and ratings reports on (*inter alia*) managed funds (see paragraph 3 above); (3) the fact that SQM was the holder of an AFSL (see paragraph 2(b) above); (4) the fact that SQM charged a fee to CF Capital for the preparation of the October 2022 Report (see paragraph 53 above); (5) the terms of RG 79, and in particular, paragraphs 79.39, 79.41, 79.85, 79.86 (table 3, row 2) and 79.90 (see paragraphs 84(a), 84(b), 84(e), 84(f), 84(i), 85 and 86 above); (6) the fact that the October 2022 Report was uploaded to SQM's website and made available on SQM's website to subscribers for SQM's services (see paragraph 75 above); and (7) the fact that, pursuant to s

12ED(1) of the ASIC Act, SQM's contracts with subscribers who were consumers (within the meaning of s 12BC of the ASIC Act) included an implied warranty that the services provided by SQM to those subscribers would be rendered with due care and skill.

126. Each of the October 2022 Report Rating Representation and the October 2022 Report Rating Components Representations was:

- (a) made in trade or commerce;
- (b) made in connection with the supply or possible supply of financial services;
- (c) further or in the alternative to paragraph 126(b) above, made in connection with the promotion of the supply or use of financial services;
- (d) a representation that services are of a particular standard, quality, value or grade; and
- (e) further or in the alternative to paragraph 126(d) above, a representation that services have approval, performance characteristics, uses or benefits,

within the meaning of s 12DB of the ASIC Act.

#### **PARTICULARS**

As to paragraphs 126(b) and 126(c), ASIC refers to and repeats paragraph 10(b) above and the particulars thereto.

127. Each of the October 2022 Report Rating Representation and the October 2022 Report Rating Components Representations was false or misleading, because:

- (a) SQM did not have reasonable grounds for its opinions as to each of the October 2022 Report Rating and the October 2022 Report Rating Components; and/or
- (b) SQM did not exercise reasonable care and skill in forming its opinions as to each of the October 2022 Report Rating and the October 2022 Report Rating Components.

#### **PARTICULARS**

A. ASIC refers to and repeats paragraph 121 above.

B. Further particulars may be provided after the service of expert evidence.



128. By reason of the matters pleaded in paragraphs 124 to 127 above, SQM contravened each of ss 12DB(1)(a) and 12DB(1)(e) of the ASIC Act.

**II. The October 2022 Report Asset Allocation Representations**

129. Between 26 October 2022 and 18 December 2023, by publishing and continuing to make available to subscribers the October 2022 Report, SQM made representations that:

- (a) the SMF presently had a target asset allocation of 80% to multi-assets externally managed by Pearl / Watershed and would continue to have a target asset allocation of 80% to multi-assets externally managed (the **October 2022 Report Pearl / Watershed Asset Allocation Representation**);
- (b) the SMF presently had and would continue to have a target asset allocation of 20% to direct property managed by CF Capital and invested in the ADPF (the **October 2022 Report CF Capital Asset Allocation Representation**); and
- (c) the SMF's target asset allocations as between fund managers as at the date of the October 2022 Report were not materially different from the data as to actual asset allocations as between fund managers that was provided to SQM as part of SQM producing the October 2022 Report (the **October 2022 Report Actual Asset Allocation Representation**),

(with subparagraphs (a), (b) and (c) together, the **October 2022 Report Asset Allocation Representations**).

**PARTICULARS**

A. The October 2022 Report Pearl / Watershed Asset Allocation Representation was express and was contained in the October 2022 Report (SQR.0010.0001.2855):

- a. at page 3 (p.2859), which provided (*inter alia*) that the SMF 'has a target allocation of 80% to multi-asset';
- b. at pages 4 to 5 (pp.2860-.2861), which provided (*inter alia*) that 'the Manager has to date invested all of its multi-asset allocations with one external fund manager, Watershed Funds Management. Watershed, in turn, invests across a

variety of equities and fixed-income asset classes. While this has served investors well, the Manager is in the process of transitioning to a wider selection of external fund managers.’; and

- c. at page 9 (p.2865), which provided (*inter alia*) that ‘the 80% / 20% split of investment between the multi-asset and property components of the Fund is largely static’.

B. The October 2022 Report CF Capital Asset Allocation Representation was express and was contained in the October 2022 Report (SQR.0010.0001.2855):

- a. at page 3 (p.2859), which provided (*inter alia*) that the SMF ‘has a target allocation of ... 20% to property’;
- b. at page 5 (p.2861), which provided (*inter alia*) that ‘The direct property component invests in the Advantage Diversified Property Fund (“ADPF”), a wholesale fund also managed by CF Capital Investments Pty Ltd. The ADPF, in turn, invests in individual property development and financing projects, which have historically been highly concentrated in the residential property sector and have been managed by a related party (Chiodo Corporation).’; and
- c. at page 9 (p.2865), which provided (*inter alia*) that ‘the 80% / 20% split of investment between the multi-asset and property components of the Fund is largely static’.

C. The October 2022 Report Actual Asset Allocation Representation was implied from the content of the October 2022 Report including the facts that the October 2022 Report:

- a. did not contain any information regarding the actual asset allocations as between fund managers as at the date of the October 2022 Report; and

- b. did not state that the SMF's target asset allocations as between fund managers as at the date of the October 2022 Report were materially different from the data as to actual asset allocations as between fund managers that was provided to SQM as part of SQM producing the October 2022 Report.

130. Each of the October 2022 Report Asset Allocation Representations was:

- (a) made in trade or commerce;
- (b) made in connection with the supply or possible supply of financial services;
- (c) further or in the alternative to paragraph 130(b) above, made in connection with the promotion of the supply or use of financial services;
- (d) a representation that services are of a particular standard, quality, value or grade; and
- (e) further or in the alternative to paragraph 130(d) above, a representation that services have approval, performance characteristics, uses or benefits.

#### **PARTICULARS**

As to paragraphs 130(b) and 130(c), ASIC refers to and repeats paragraph 10(b) above and the particulars thereto.

131. The October 2022 Report Pearl / Watershed Asset Allocation Representation was false or misleading because:

- (a) the August 2022 Quantitative Questionnaires, September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires provided (*inter alia*) that between approximately 76% and 65% of total funds invested in the SMF were managed by CF Capital and had been invested in the ADPF, as referred to in paragraphs 119(c) to 119(e) above;
- (b) the August 2022 Quantitative Questionnaires, September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires did not show that the SMF had an asset allocation of 80% to multi-assets externally managed by Pearl / Watershed, as referred to in paragraphs 119(c) to 119(e) above; and

- (c) the SMF was moving away from a target allocation of 80% to multi-assets managed by Pearl / Watershed and held an end objective to be a multi manager with meaningful allocation to direct property and those matters had been disclosed to SQM, as referred to in paragraphs 119(b)(v) and 119(f) above.
132. The October 2022 Report CF Capital Asset Allocation Representation was false or misleading because:
- (a) the August 2022 Quantitative Questionnaires, September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires provided (*inter alia*) that between approximately 76% and 65% of total funds invested in the SMF were managed by CF Capital and had been invested in the ADPF, as referred to in paragraphs 119(c) to 119(e) above;
  - (b) the August 2022 Quantitative Questionnaires, September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires did not show that the SMF had an asset allocation of 20% to direct property managed by CF Capital, as referred to in paragraphs 119(c) to 119(e) above; and
  - (c) the SMF was moving away from a target allocation of 80% to multi-assets managed by Pearl / Watershed and held an end objective to be a multi manager with meaningful allocation to direct property, and those matters had been disclosed to SQM, as referred to in paragraphs 119(b)(v) and 119(f) above.
133. The October 2022 Report Actual Asset Allocation Representation was false or misleading because:
- (a) the August 2022 Quantitative Questionnaires, September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires provided (*inter alia*) that between approximately 76% and 65% of total funds invested in the SMF were managed by CF Capital and had been invested in the ADPF, as referred to in paragraphs 119(c) to 119(e) above;
  - (b) the August 2022 Quantitative Questionnaires, September 2022 Quantitative Questionnaire and the October 2022 Quantitative Questionnaires did not show that the SMF had an asset allocation of 80% to multi-assets externally managed by Pearl / Watershed and an asset allocation of 20% to direct property managed by CF Capital, as referred to in paragraphs 119(c) to 119(e) above; and

- (c) the SMF was moving away from a target allocation of 80% to multi-assets and held an end objective to be a multi manager with meaningful allocation to direct property, and those matters had been disclosed to SQM, as referred to in paragraphs 119(b)(v) and 119(f) above.
134. Further or alternatively, if and insofar as any of the October 2022 Report Asset Allocation Representations is a representation with respect to future matters within the meaning of s 12BB of the ASIC Act:
- (a) SQM did not have reasonable grounds for making the October 2022 Report Asset Allocation Representations; and
  - (b) each of the October 2022 Report Asset Allocation Representations is taken to be misleading by reason of s 12BB of the ASIC Act.

### **PARTICULARS**

ASIC refers to and repeats paragraphs 131 to 133 above.

135. By reason of the matters pleaded in paragraphs 129 to 134 above, SQM contravened each of ss 12DB(1)(a) and 12DB(1)(e) of the ASIC Act.

### **F. RELIEF**

136. ASIC seeks the relief sought in its originating process dated 12 November 2025, comprising declarations, pecuniary penalty orders and costs orders.

Dated: 12 November 2025

### **HWL EBSWORTH**

Solicitors for the plaintiff

This pleading was prepared by L E Hulmes and A Mobrici, counsel, and settled by S H Parmenter KC.

## ANNEXURE A – GLOSSARY

**1 October 2021 Report** means the SQM report titled 'Shield Master Fund – Balanced Class' sent by Mr Rieth to Mr Frolov by email on 1 October 2021 (SQR.0016.0001.0713), as defined in paragraph 33(a) of the Statement of Claim.

**3¾ Star Rating Description** means the description afforded to the rating of 3.75 by SQM, as defined in paragraph 9(b) of the Statement of Claim.

**6 October 2021 Report** means the report published on SQM's website on or about 6 October 2021 on the Conservative, Balanced and Growth classes of the SMF (SQR.0016.0001.0115), as defined in paragraph 5(a) of the Statement of Claim.

**6 October 2021 Report 80:20 Representation** means the representation in the 6 October 2021 Report that the Conservative and Balanced classes of the SMF are each medium-high risk investments that provide exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets, as defined in paragraph 110(a) of the Statement of Claim.

**6 October 2021 Report Asset Allocation Representations** means the 6 October 2021 Report 80:20 Representation and the 6 October 2021 Report Growth Portion Representation, as defined in paragraph 110 of the Statement of Claim.

**6 October 2021 Report Growth Portion Representation** means the representation in the 6 October 2021 Report that the growth portion (80%) of each of the Conservative, Balanced and Growth classes of the SMF is managed by Pearl / Watershed, as defined in paragraph 110(b) of the Statement of Claim.

**6 October 2021 Report Rating** means the rating of '3¾ stars, Favourable, Consider for APL inclusion, Approved' provided by SQM in the 6 October 2021 Report, as defined in paragraph 100(a) of the Statement of Claim.

**6 October 2021 Report Rating Components** means the components of the 6 October 2021 Report Rating, as defined in paragraph 101 of the Statement of Claim.

**6 October 2021 Report Rating Components Representations** means the representations set out in paragraphs 101(a) to 101(d) of the Statement of Claim made by SQM in publishing and continuing to make available the 6 October 2021 Report, as defined in paragraph 101 of the Statement of Claim.

**6 October 2021 Report Rating Representation** means the representation by SQM that the 6 October 2021 Report Rating was SQM's opinion which SQM held on reasonable grounds and that it had exercised reasonable care and skill in reaching that opinion, as defined in paragraph 100 of the Statement of Claim.

**2021 FAQ Document** means the FAQ Document dated on or about 12 December 2021 (SQR.0016.0008.1688), as defined in Particular A to paragraph 6 of the Statement of Claim .

**2021 Inconsistencies, Missing Information and Differences** means the matters set out in paragraphs 89(a) to 89(c) of the Statement of Claim, as defined in paragraph 89 of the Statement of Claim.

**2021 Qualitative Questionnaire** means the document titled 'CF Capital Shield - SQM Multi-Asset Questionnaire QUAL – IF' sent by Mr Frolov to Mr Rieth by email on 10 September 2021 (SQR.0016.0001.0500), as defined in paragraph 26(a)(i) of the Statement of Claim.

**2021 Quantitative Questionnaire** means the document titled 'CF Capital Shield - SQM Multi-Asset Questionnaire QUANT' sent by Mr Frolov to Mr Rieth by email on 10 September 2021 (SQR.0016.0001.0519), as defined in paragraph 26(a)(ii) of the Statement of Claim.

**2021 Quantitative Questionnaire Template** means the quantitative (Excel) questionnaire provided by Mr Rieth to Mr Frolov by email on 18 August 2021 (SQR.0016.0001.0710), as defined in paragraph 24(a) of the Statement of Claim.

**2022 FAQ Document** means the FAQ Document dated on or about 8 August 2022 (SQR.0013.0001.0057), as defined in Particular B to paragraph 6 of the Statement of Claim.

**2022 Quantitative Questionnaire Template** means the quantitative (Excel) RFI document attached to the email from Mr Lindsay to Mr Frolov on 23 June 2022 (SQR.0016.0002.1287), as defined in paragraph 51(c) of the Statement of Claim.

**Activus** means Activus Investment Advisors Pty Ltd (ACN 612 295 280), as defined in paragraph 63(a) of the Statement of Claim.

**ADPC** means the Advantage Diversified Property Class of the SMF, as defined in paragraph 12(c) of the Statement of Claim.

**ADPF** means the Advantage Diversified Property Fund, as defined in paragraph 12(b) of the Statement of Claim.

**AFSL** means Australian Financial Services Licence, as defined in paragraph 2(b) of the Statement of Claim.

**Analysis Obligation** means the obligation of SQM to review, consider, assess, verify and analyse the information obtained pursuant to the Relevant Information Obligation and the Meeting Obligation, as defined in paragraph 87(c) of the Statement of Claim.

**APL** means Approved Product List, as defined in paragraph 101(b)(i) of the Statement of Claim.

**ARSN** means Australian Registered Scheme Number, as defined in paragraph 10(a) of the Statement of Claim.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth), as defined in paragraph 1(a) of the Statement of Claim.

**August 2022 Review Meeting** means the review meeting held between SQM, CF Capital, Keystone and Pearl/Watershed on or about 30 August 2022, as defined in paragraph 58 of the Statement of Claim.

**August 2022 Review Meeting Presentation** means the presentation provided by Keystone and Pearl/Watershed during the August 2022 Review Meeting (SQR.0016.0001.0100), as defined in paragraph 59 of the Statement of Claim.

**August 2022 Qualitative Questionnaire** means the document titled 'Shield Master Fund 2022 - SQM Multi-Asset Questionnaire - IF' sent by Mr Ou to Mr Lindsay by email dated 5 August 2022 (SQR.0016.0002.2267), as defined in paragraph 54(b)(i) of the Statement of Claim.

**August 2022 Quantitative Questionnaires** means the First August 2022 Quantitative Questionnaire and the Second August 2022 Quantitative Questionnaire, as defined in paragraph 119(c) of the Statement of Claim.

**BDO** means BDO Audit Pty Ltd (ACN 134 022 870), as defined in paragraph 56(b) of the Statement of Claim.

**CDPD** means the Chiodo Diversified Property Development Class, as defined in paragraph 19 of the Statement of Claim.

**CDPF** means the Chiodo Diversified Property Fund, as defined in paragraph 12(a) of the Statement of Claim.

**CF Capital** means CF Capital Investments Pty Ltd (ACN 633 394 751), as defined in paragraph 11(b) of the Statement of Claim.



**Chiodo Corporation** means Chiodo Corporation Pty Ltd (ACN 611 404 909), as defined in paragraph 14(d) of the Statement of Claim.

**Corporations Act** means the *Corporations Act 2001* (Cth), as defined in paragraph 2(a) of the Statement of Claim.

**FAQ Document** means the document titled 'SQM Research – Frequently Asked Questions' which set out in summary, information regarding the ratings methodology used by SQM to produce a research, data and ratings report, as defined in paragraph 6 of the Statement of Claim.

**First August 2022 Quantitative Questionnaire** means the document titled 'Shield Master Fund 2022 - SQM Multi-Asset Review' sent by Mr Ou to Mr Lindsay by email dated 5 August 2022 (SQR.0016.0002.2285), as defined in paragraph 54(b)(ii) of the Statement of Claim.

**First October 2022 Quantitative Questionnaire** means the excel quantitative questionnaire sent by Mr Frolov to Mr Lindsay by email on 19 October 2022 (SQR.0016.0002.2524), as defined in paragraph 64(a) of the Statement of Claim.

**FSC** means Financial Services Council, as defined in paragraph 7(c)(i) of the Statement of Claim.

**January 2024 Report** means the report published on SQM's website on or about 17 January 2024 with a rating of 3.5 stars (SQR.0010.0002.0002), as defined in paragraph 80 of the Statement of Claim.

**Keystone** means Keystone Asset Management Ltd (ACN 612 443 008), as defined in paragraph 11(a) of the Statement of Claim.

**Malana** means Malana Management Pty Ltd (ACN 633 213 948), as defined in paragraph 14(c) of the Statement of Claim.

**March 2022 Inconsistencies, Missing Information and Differences** means the matters set out in paragraphs 91(a) to 91(e) of the Statement of Claim, as defined in paragraph 91 of the Statement of Claim.

**March 2022 Report** means the report published on SQM's website on or about 18 March 2022 on the Conservative, Balanced, Growth and High Growth classes of the SMF (SQR.0016.0001.0156), as defined in paragraph 5(b) of the Statement of Claim.

**March 2022 Report Asset Allocation Representations** means the 6 October 2021 Report 80:20 Representation (as made by the March 2022 Report between 18 March 2022 and 25

October 2022), the 6 October 2021 Report Growth Portion Representation (as made by the March 2022 Report between 18 March 2022 and 25 October 2022), the March 2022 Report High Growth Class 80:20 Representation and the March 2022 Report High Growth Class Growth Portion Representation, as defined in paragraph 111 of the Statement of Claim.

**March 2022 Report High Growth Class 80:20 Representation** means the representation in the March 2022 Report that the High Growth class of the SMF is a medium-high risk investment that provides exposure to an actively managed portfolio of an 80:20 allocation between growth assets and defensive assets, as defined in paragraph 111(c) of the Statement of Claim.

**March 2022 Report High Growth Class Growth Portion Representation** means the representation in the March 2022 Report that the growth portion (80%) of the High Growth class of the SMF is managed by Pearl / Watershed, as defined in paragraph 111(d) of the Statement of Claim.

**March 2022 Report Rating** means the rating of '3¾ stars, Favourable, Consider for APL inclusion, Approved' provided by SQM in the March 2022 Report, as defined in paragraph 105(a) of the Statement of Claim.

**March 2022 Report Rating Components** means the components of the March 2022 Report Rating, as defined in paragraph 106 of the Statement of Claim.

**March 2022 Report Rating Components Representations** means the representations set out in paragraphs 106(a) to 106(d) of the Statement of Claim made by SQM in publishing and continuing to make available the March 2022 Report, as defined in paragraph 106 of the Statement of Claim.

**March 2022 Report Rating Representation** means the representation by SQM that the March 2022 Report Rating was SQM's opinion which SQM held on reasonable grounds and that it had exercised reasonable care and skill in reaching that opinion, as defined in paragraph 105 of the Statement of Claim.

**Meeting Obligation** means the obligation of SQM to hold at least one meeting, to be held after, rather than before, SQM had received and reviewed all of the Relevant Information, to be attended by SQM and representatives of each of the responsible entity of the SMF, the investment manager of the SMF and each manager of the underlying funds of the SMF that the SMF invested in or would be investing in, as defined in paragraph 87(b) of the Statement of Claim.

**October 2020 CDPD Report** means the report published on SQM's website on the CDPD on or about 14 October 2020 (SQR.0016.0001.0188), as defined in paragraph 19 of the Statement of Claim.

**October 2022 Inconsistencies and Differences** means the matters set out in paragraphs 120(a) and 120(b) of the Statement of Claim, as defined in paragraph 120 of the Statement of Claim.

**October 2022 Quantitative Questionnaires** means the First October 2022 Quantitative Questionnaire, the Second October 2022 Quantitative Questionnaire and the Third October 2022 Quantitative Questionnaire, as defined in paragraph 119(e) of the Statement of Claim.

**October 2022 Report** means the report published on SQM's website on or about 26 October 2022 on the Conservative, Balanced, Growth and High Growth classes of the SMF (SQR.0010.0001.2855), as defined in paragraph 5(c) of the Statement of Claim.

**October 2022 Report Actual Asset Allocation Representation** means the representation that the SMF's target asset allocations as between fund managers as at the date of the October 2022 Report, were not materially different from the data as to actual asset allocations as between fund managers that was provided to SQM as part of SQM producing the October 2022 Report, as defined in paragraph 129(c) of the Statement of Claim.

**October 2022 Report Asset Allocation Representations** means the October 2022 Report Pearl / Watershed Asset Allocation Representation, the October 2022 Report CF Capital Asset Allocation Representation and the October 2022 Report Actual Asset Allocation Representation, as defined in paragraph 129 of the Statement of Claim.

**October 2022 Report CF Capital Asset Allocation Representation** means the representation that the SMF presently had and would continue to have a target asset allocation of 20% to direct property managed by CF Capital and invested in the ADPF, as defined in paragraph 129(b) of the Statement of Claim.

**October 2022 Report Pearl / Watershed Asset Allocation Representation** means the representation that the SMF presently had a target asset allocation of 80% to multi-assets externally managed by Pearl / Watershed and would continue to have a target asset allocation of 80% to multi-assets externally managed, as defined in paragraph 129(a) of the Statement of Claim.

**October 2022 Report Rating** means the rating of '3¾ stars, Favourable, Consider for APL inclusion, Approved' provided by SQM in the October 2022 Report, as defined in paragraph 124(a) of the Statement of Claim.

**October 2022 Report Rating Components** means the components of the October 2022 Report Rating set out in paragraphs 125(a) to 125(c) of the Statement of Claim, as defined in paragraph 125 of the Statement of Claim.

**October 2022 Report Rating Components Representations** means the representations set out in paragraphs 125(a) to 125(d) of the Statement of Claim made by SQM in publishing and continuing to make available the October 2022 Report, as defined in paragraph 125 of the Statement of Claim.

**October 2022 Report Rating Representation** means the representation by SQM that the October 2022 Report Rating was SQM's opinion which SQM held on reasonable grounds and that it had exercised reasonable care and skill in reaching that opinion, as defined in paragraph 124(b) of the Statement of Claim.

**PDS** means product disclosure statement, as defined in paragraph 7(a)(i) of the Statement of Claim.

**Pearl** means Pearl Funds Management Pty Ltd (ACN 616 471 580), as defined in paragraph 38(g) of the Statement of Claim.

**Pearl / Watershed** means Pearl and Watershed, as defined in paragraph 38(g) of the Statement of Claim.

**Pearl / Watershed Multi-Asset Funds** means the multi-asset listed portfolios managed by Pearl / Watershed, as defined in paragraph 88(e)(ii) of the Statement of Claim.

**Pure Development & Project Management** means Pure Development & Project Management Pty Ltd (ACN 141 910 581), as defined in paragraph 14(e) of the Statement of Claim.

**Rating** means the overall star rating given by SQM to a fund with a maximum of five stars, based on the appraisal of each of the assessment categories, as defined in paragraph 23(f) of the Statement of Claim.

**Relevant Information** means the up-to-date information relevant to and necessary for SQM to rate each class of the SMF the subject of the report, as defined in paragraph 87(a) of the Statement of Claim.

**Relevant Information Obligation** means the requirement for SQM to obtain the Relevant Information, as defined in paragraph 87(a) of the Statement of Claim.

**Relevant Period** means the period from 1 August 2021 to 31 December 2023, as defined in paragraph 2 of the Statement of Claim.

**RFI** means request for information, as defined in paragraph 7(c)(v) of the Statement of Claim.

**RG 79** means the Regulatory Guide titled 'Research report providers: Improving the quality of investment research' issued by ASIC on 10 December 2012, as defined in paragraph 23(b) of the Statement of Claim.

**Scorecard** means the document containing the scoring of qualitative and quantitative factors on a 37-point checklist, as defined in paragraph 7(f)(i) of the Statement of Claim.

**Second August 2022 Quantitative Questionnaire** means the excel spreadsheet sent by Mr Ou to Mr Lindsay by email on 8 August 2022 (SQR.0016.0002.2289), as defined in paragraph 55(c) of the Statement of Claim.

**Second October 2022 Quantitative Questionnaire** means the excel quantitative questionnaire sent by Mr Frolov to Mr Lindsay by email on 20 October 2022 (SQR.0010.0001.3176), as defined in paragraph 66(b) of the Statement of Claim.

**September 2021 Review Meeting** means the review meeting between CF Capital and SQM on or about 16 September 2021, as defined in paragraph 28 of the Statement of Claim.

**September 2022 Qualitative Questionnaire** means the document titled 'Shield Master Fund 2022 - SQM Multi-Asset Questionnaire IF 09092022' sent by Mr Frolov to Mr Lindsay by email on 12 September 2022 (SQR.0016.0001.0082), as defined in paragraph 60(b) of the Statement of Claim.

**September 2022 Quantitative Questionnaire** means the document titled 'Shield Master Fund 2022 - SQM Multi-Asset Review 31082022' sent by Mr Frolov to Mr Lindsay by email on 12 September 2022 (SQR.0016.0001.0081), as defined in paragraph 60(a) of the Statement of Claim.

**SMF** means the Shield Master Fund, as defined in paragraph 5(a) of the Statement of Claim.

**SQM** means SQM Research Pty Ltd (ACN 122 592 036), as defined in paragraph 2 of the Statement of Claim.

**SQM Disclaimer** means the document titled 'SQM Disclaimer' sent by Mr Rieth to Mr Frolov by email on 1 October 2021 (SQR.0016.0001.0736), as defined in paragraph 33(b) of the Statement of Claim.

**SQM / Keystone Agreement** means the agreement between Keystone and SQM entered into on about 16 August 2021 (SQR.0010.0001.0003), as defined in paragraph 22(b) of the Statement of Claim.

**SQM Ratings Methodology** means the document titled 'SQM Research, Overview- Funds Research and Data, June 2022' dated June 2022 (SQR.0013.0001.0347), as defined in paragraph 8 of the Statement of Claim.

**TAA** means Tactical Asset Allocations, as defined in paragraph 62(c) of the Statement of Claim.

**Third October 2022 Quantitative Questionnaire** means the excel quantitative questionnaire sent by Mr Frolov to Mr Lindsay by email on 25 October 2022 (SQR.0010.0001.3202), as defined in paragraph 70(b) of the Statement of Claim.

**TMD** means Target Market Determinations, as defined in paragraph 47(h) of the Statement of Claim.

**Watershed** means Watershed Funds Management Pty Ltd (ACN 166 324 858), as defined in paragraph 38(g) of the Statement of Claim.