

## NOTICE OF FILING

### Details of Filing

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CHIODO & ORS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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 17  
Rule 8.05(1)(a)

## Statement of claim

No VID of 2026

Federal Court of Australia  
District Registry: Victoria  
Division: General

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

### PAUL CHIODO and others named in the Schedule

Defendants

### OVERVIEW OF THE PROCEEDING

- A. Paragraphs B to P below are provided as an overview of the proceeding and do not require any of the Defendants to plead a response. Terms defined in paragraphs B to P below are defined only for the purposes of the overview of the proceeding.
- B. Between April 2022 and November 2024, more than \$530 million was invested in a registered managed investment scheme known as the Shield Master Fund (**SMF**). The investments were made primarily by superannuation trustees, on behalf of about 5,800 members. Almost \$304.95 million of those funds were transferred by the responsible entity of the SMF (**Keystone** Asset Management Ltd) to bank accounts also controlled by Keystone, but in its capacity as trustee of a wholesale unregistered property fund, known as the Advantage Diversified Property Fund (**ADPF**). Those funds were, in turn, transferred as 'loans' to entities and persons associated with the first defendant (**Chiodo**) and the second defendant (**Frolov**), who were officers and directors of Keystone. These funds were ostensibly for, and were represented by Keystone as being for, investments in property development projects (such as apartment buildings and resorts). Chiodo and Frolov authorised, over time, the payment of \$303 million from the ADPF without Keystone having any security, and without any or any adequate prior due diligence. Substantial funds were also transferred to, or for the benefit of, people or entities that were unrelated to the intended property development projects.
- C. This proceeding concerns the arrangements and circumstances surrounding these payments, and in particular the involvement and conduct of Chiodo, Frolov and the third defendant (**Yorston**) as officers and directors of Keystone, as well as Frolov and the fourth defendant (**Danon**) as members of the SMF's compliance committee.

- D. The mismanagement of Keystone by its directors, and the misapplication of investor funds, led to the Federal Court, on 27 August 2024, appointing receivers and managers over the property of Keystone including the SMF. On 2 December 2024, Keystone was placed into liquidation.
- E. The plaintiff (**ASIC**) alleges that Chiodo, Frolov and Yorston breached their duties as directors of Keystone under ss 180 to 182 of the **Corporations Act 2001** (Cth); that they breached their duties as officers of Keystone (as the responsible entity of the SMF) under s 601FD of the Corporations Act; and that they contravened s 209 of the Corporations Act by their involvement in Keystone's contraventions of s 208 of the Corporations Act (for unauthorised related party transactions). ASIC also alleges that Frolov and Danon breached their duties as members of the SMF's compliance committee under s 601JD of the Corporations Act.
- F. This statement of claim has eight sections (Sections A to H).
- G. **Section A** introduces each of the parties and relevant entities, including by identifying the association between many of the entities and Chiodo and, to a lesser but still significant extent, Frolov.
- H. **Section B** concerns the establishment of the SMF and its compliance committee (B.1) and the ADPF (B.5); the investments made in the SMF (B.3); the agreements entered into by Keystone (including relevant terms of those agreements) (B.4, B.6-B.8, B.10, B.12 and B.14); and the transfer of funds into entities or to or for the benefit of persons or entities associated with Chiodo and/or Frolov (B.13). Some of the relevant agreements entered into by Keystone, which are addressed in Section B, included:
- (i) Loan agreements entered into by Keystone, as trustee of the ADPF, with companies (many of which were known as special purpose vehicles or SPVs) responsible for various property development projects, including in Fiji and Italy, and all of which Chiodo, and to some extent Frolov, had a direct or indirect financial interest in, and which were controlled by Chiodo (B.7, B.10 and B.12).
  - (ii) A development management agreement between Keystone (as trustee for the ADPF) and **Chiodo Corporation** Pty Ltd (an entity controlled by Chiodo and in which he had a financial interest), by which Chiodo Corporation would provide development services to the special purpose vehicles for a fee (B.8).
  - (iii) A reconciliation agreement between Keystone, Chiodo and Chiodo Corporation which, in June 2024, purported to authorise previous payments made to Chiodo and Chiodo Corporation as management fees (B.14).

- I. **Section C** includes allegations that Chiodo, Frolov and Yorston breached their duties as officers of Keystone (as responsible entity of the SMF) and as directors of Keystone. This section concerns:
- (i) the identification of inappropriate and/or inadequate terms of and circumstances relating to the central agreements entered into by Keystone (C.1.1-C.1.4, C.1.6);
  - (ii) the payment of funds to third parties without security, without a commitment to or the receipt of ongoing payments of interest, and for unauthorised purposes (C.1.5);
  - (iii) allegations that:
    - (a) Chiodo had relevant knowledge or constructive knowledge of the identified issues (C.2.1) and that his conduct involved contraventions of his duties imposed by the Corporations Act (C.2.2-C.2.7);
    - (b) Frolov had relevant knowledge or constructive knowledge of many of the identified issues (C.3.1) and that his conduct involved contraventions of his duties imposed by the Corporations Act (C.3.2-C.3.6);
    - (c) Yorston had relevant knowledge or constructive knowledge of some of the identified issues (C.4.1) and that his conduct involved contraventions of his duties imposed by the Corporations Act (C.4.2-C.4.7).
- J. A reason for the structure adopted in Section C (which commences by identifying the issues associated with each of the relevant agreements and payments, before then making allegations of knowledge in respect of those issues, and then finally turning to the associated contraventions) is that the conduct and evolving knowledge of the directors is informed by prior events and their conduct and knowledge of those events. For example, the decision of Chiodo and Frolov to execute a loan agreement with Keystone (as trustee for the ADPF) to fund Chiodo Corporation's purchase of the JW Marriott Resort & Spa in Venice, Italy, in December 2023, is informed in part by their knowledge of previous transactions and prior payments by Keystone for inappropriate and/or unauthorised purposes.
- K. **Section D** of the statement of claim concerns unauthorised related party transactions: financial benefits that were given to Keystone or related parties of Keystone without

the prior approval of SMF members (as required by ss 217 to 227 of the Corporations Act, and as modified by s 601LA).

- L. ASIC's primary case on unauthorised related party transactions, in D.1, is that the funds received by Chiodo Corporation, which came from the scheme property of the SMF, involved the giving of financial benefits to a related party. Keystone failed to obtain the prior approval of members of the SMF and, in the circumstances, contravened s 208 of the Corporations Act (as modified by s 601LC). ASIC relies on the broad meaning of 'giving a financial benefit' in s 229 of the Corporations Act. ASIC further alleges that Chiodo, Frolov and Yorston knew of the circumstances of the payments out of scheme property, were involved in Keystone's contraventions, and therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).
- M. ASIC's alternative case, in D.2, is that:
- (i) Payments made from the SMF to the ADPF involved a financial benefit given by Keystone as responsible entity of the SMF, out of scheme property, to Keystone as trustee of the ADPF, without the prior approval of members of the SMF as required by the Corporations Act. This involved contraventions by Keystone of s 208 (as modified by s 601LC), and by Chiodo, Frolov and Yorston pursuant to s 209 (as modified by s 601LA) (D.2.1); and
  - (ii) Further, payments made from the ADPF to Chiodo Corporation by Keystone (when it was the responsible entity of the SMF), and without the prior approval of members of the SMF as required by the Corporations Act, involved a contravention by Keystone of s 208 (as modified by s 601LC), and by Chiodo and Frolov pursuant to s 209 (as modified by s 601LA) (D.2.2); or
  - (iii) Alternatively to (ii), payments made from the ADPF to Chiodo Corporation by Keystone (when it was a public company), without the prior approval of members of Keystone as required by the Corporations Act, involved a contravention by Keystone of s 208, and by Chiodo and Frolov pursuant to s 209 (D.2.3).
- N. **Section E** concerns failures by Keystone to ensure that valuations of the assets of the SMF were obtained, including valuations of the loans entered into by Keystone as trustee of the ADPF with third parties (including the SPVs). These failures involved a breach of s 601FC(1)(j), a breach of the SMF constitution (itself a breach of s 601FC(1)(m)), and a failure to comply with the SMF's compliance plan (itself a breach of s 601FC(1)(h)). Chiodo, Frolov and Yorston contravened s 601FD(1)(f) by failing to

take all reasonable steps that a reasonable person in their position would take to ensure that Keystone (as responsible entity of the SMF) complied with the Corporations Act, the constitution and the compliance plan. Further, Frolov and Danon, as members of the SMF compliance committee, failed to exercise the degree of care and diligence that a reasonable person would exercise in their position, in contravention of s 601JD(1)(b) of the Corporations Act.

- O. **Section F** of the statement of claim addresses conflicts of interest involving Chiodo and Frolov in their positions as directors of Keystone. Chiodo's conflicts of interest are pleaded in F.1.1, and Frolov's conflicts of interest are pleaded in F.1.2. The arrangements made to manage these conflicts, and inadequacies of those arrangements, are pleaded in F.2. It is alleged that the failures by Keystone constituted contraventions of s 912A(1)(aa) of the Corporations Act. Having regard to their positions, and knowledge at relevant times, Chiodo, Frolov and Yorston breached their obligations as officers of Keystone under s 601FD(1)(f) of the Corporations Act. Further, as members of the SMF compliance committee, Frolov and Danon breached their obligations under s 601JD(1)(b) of the Corporations Act (F.4).
- P. **Section G** addresses the harm suffered by investors, and **Section H** refers to the relief sought by ASIC (as set out in the Originating Process).

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## A. PARTIES AND RELEVANT ENTITIES

### A.1 The Plaintiff

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**):
  - (a) was established by s 7 of the *Australian Securities Commission Act 1989* (Cth);
  - (b) continues in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
  - (c) is a body corporate entitled to commence and maintain this proceeding in its corporate name under s 8 of the ASIC Act.

### A.2 Keystone

2. Keystone Asset Management Ltd (Receivers & Managers Appointed) (In Liquidation) (**Keystone**):
  - (a) is, and has since 17 May 2016 been, a public company registered under the *Corporations Act 2001* (Cth) (**Corporations Act**);
  - (b) has since 14 April 2021 been the trustee for the Chiodo Diversified Property Fund (**CDPF**), a wholesale unregistered property fund;
  - (c) has since 20 April 2017 held an Australian Financial Services Licence, numbered 491 477;
  - (d) has since 24 May 2021 been the responsible entity (**RE**) for the Shield Master Fund (**SMF**), a managed investment scheme registered in accordance with s 601EB of the Corporations Act;
  - (e) has since 18 October 2021 been the trustee for the Advantage Diversified Property Fund (**ADPF**), a wholesale unregistered property fund;
  - (f) on 26 June 2024 had Jason Tracy and Lucica Palaghia of Deloitte Financial Advisory Pty Ltd (**Deloitte**) appointed to it to perform the steps required by the Court's orders made on that date;
  - (g) on 27 August 2024 had joint and several receivers and managers appointed to it by the Court;
  - (h) on 2 December 2024 was placed into liquidation by a creditors' voluntary winding up.

### A.3 Paul Chiodo

3. In respect of Keystone, the First Defendant, Mr Paul Chiodo (**Chiodo**):
  - (a) was an executive director from 27 April 2020 to 27 May 2024;
  - (b) was a member of the SMF investment committee from at least 9 June 2021 to 20 September 2023;

- (c) was a member of the CDPF/ADPF investment committee from at least 28 June 2021 to 4 December 2023; and
- (d) from at least 1 July 2021, had an indirect interest.

**Particulars**

From at least 1 July 2021, the sole shareholder in Keystone was Malana Management Pty Ltd (**Malana Management**). From 2 March 2023, Pure Development and Project Management Pty Ltd (**Pure Development**) was a 50% shareholder in Malana Management, and Chiodo was the sole shareholder of Pure Development. Prior to 2 March 2023, The Chiodo Family Trust was a 50% shareholder in Malana Management, and Pure Development was the trustee of The Chiodo Family Trust with its primary beneficiaries being Chiodo and his wife, **Julie Chiodo**.

4. From at least 24 May 2021:
  - (a) as an officer of Keystone, Chiodo was required to comply with the duties imposed by s 601FD(1) of the Corporations Act;
  - (b) as a director or other officer of Keystone, Chiodo was required to comply with the duties imposed by ss 180 to 182 of the Corporations Act; and
  - (c) Chiodo had experience in property development.
5. In respect of CF Capital Investments Pty Ltd (**CF Capital**), Chiodo:
  - (a) was a director from 10 May 2019 to 17 June 2024; and
  - (b) from 10 May 2019, was a shareholder.

**Particulars**

Since CF Capital's incorporation, Chiodo has owned 595 of the 1000 issued ordinary shares in CF Capital.

6. In respect of Chiodo Corporation Pty Ltd (**Chiodo Corporation**), Chiodo:
  - (a) is, and has since 18 March 2016 been, a director; and
  - (b) has, since 4 December 2018, had an indirect interest.

**Particulars**

Since Chiodo Corporation's incorporation, its sole shareholder was Pure Development; and Chiodo was the sole shareholder in Pure Development.

7. In respect of Chiodo Corporation Operations Pty Ltd (**Chiodo Operations**), Chiodo:
  - (a) is, and has since 24 May 2017 been, a director; and
  - (b) has, since 24 May 2017, had an indirect interest.

**Particulars**

Since Chiodo Operation's incorporation, its sole shareholder was Pure Development; and Chiodo was the sole shareholder in Pure Development.

8. In respect of Chiodo Holdings Pty Ltd (**Chiodo Holdings**), Chiodo:

- (a) is, and has since 29 October 2018 been, a director; and
- (b) has, since 29 October 2018, been the sole shareholder.

9. In respect of Malana Management, Chiodo:

- (a) is, and has since 2 May 2019 been, a director; and
- (b) has, since 2 May 2019, had an indirect interest.

**Particulars**

Prior to 2 March 2023: The Chiodo Family Trust was a 50% shareholder in Malana Management, and Pure Development was the trustee of The Chiodo Family Trust with its primary beneficiaries being Chiodo and Julie Chiodo. From 2 March 2023: Pure Development was a 50% shareholder in Malana Management, and Chiodo was the sole shareholder in Pure Development.

10. In respect of Pure Development, Chiodo:

- (a) is, and has since 8 February 2010 been, a director; and
- (b) has, since 8 February 2010, been the sole shareholder.

11. In respect of (each an **SPV**, and collectively the **SPVs**):

- (a) 33 Davidson Port Douglas Pty Ltd:
  - (i) Chiodo is, and has since 2 May 2017 been, a director; and
  - (ii) Chiodo has, since 2 May 2017, had an indirect interest;

**Particulars**

Since 33 Davidson Port Douglas Pty Ltd's incorporation, its sole shareholder was Chiodo Corporation; the sole shareholder in Chiodo Corporation was Pure Development; and Chiodo was the sole shareholder in Pure Development.

- (b) 75 Port Douglas Road Pty Ltd:
  - (i) Chiodo is, and has since 19 December 2018 been, a director; and
  - (ii) Chiodo has, since at least 20 November 2019, had an indirect interest;

**Particulars**

Since 20 November 2019, Malana Management was a 51% shareholder in 75 Port Douglas Road Pty Ltd and Keystone was a 49% shareholder in 75 Port Douglas Road Pty Ltd; from at least 1 July 2021, the sole shareholder in Keystone was Malana Management. From 2 March 2023, Pure Development was a 50% shareholder in Malana Management, and Chiodo was the sole shareholder of Pure Development. Prior to 2 March 2023, The Chiodo Family Trust was a 50% shareholder in Malana Management, and Pure Development was the trustee of The Chiodo Family Trust with its primary beneficiaries being Chiodo and Julie Chiodo.

- (c) Augustine Terrace Glenroy Pty Ltd:
  - (i) Chiodo is, and has since 7 May 2018 been, a director; and

- (ii) Chiodo has, since at least 12 July 2021, had an indirect interest;

**Particulars**

Since 12 July 2021, the sole shareholder in Augustine Terrace Glenroy Pty Ltd was Chiodo Corporation; the sole shareholder in Chiodo Corporation was Pure Development; and Chiodo was the sole shareholder in Pure Development.

- (d) Chiodo K'Gari Pty Ltd:

- (i) Chiodo is, and has since 16 June 2022 been, a director; and
- (ii) Chiodo has, since 16 June 2022, had an indirect interest;

**Particulars**

Since Chiodo K'Gari Pty Ltd's incorporation, its sole shareholder was Malana Management. From 2 March 2023, Pure Development was a 50% shareholder in Malana Management, and Chiodo was the sole shareholder in Pure Development. Prior to 2 March 2023, The Chiodo Family Trust was a 50% shareholder in Malana Management, and Pure Development was the trustee of The Chiodo Family Trust with its primary beneficiaries being Chiodo and Julie Chiodo.

- (e) Nicholson Street Bentleigh Pty Ltd:

- (i) Chiodo is, and has since 28 November 2017 been, a director; and
- (ii) Chiodo has, since 28 November 2017, had an indirect interest;

**Particulars**

Since Nicholson Street Bentleigh Pty Ltd's incorporation, its sole shareholder was Pure Development; and Chiodo was the sole shareholder in Pure Development.

- (f) Norwood Ponds (Land) Pty Ltd:

- (i) Chiodo was from 30 January 2017 to 15 April 2025 a director; and
- (ii) Chiodo has, since 20 January 2017, had an indirect interest;

**Particulars**

Since Norwood Ponds (Land) Pty Ltd incorporation, its sole shareholder was Pure Development; and Chiodo was the sole shareholder in Pure Development.

- (g) Red Hill Terraces (Land) Pty Ltd:

- (i) Chiodo is, and has since 28 September 2016 been, a director; and
- (ii) Chiodo, since at least 4 December 2018, had an indirect interest;

**Particulars**

Since 4 December 2018, the sole shareholder in Red Hill Terraces (Land) Pty Ltd was Pure Development; and Chiodo was the sole shareholder in Pure Development.

- (h) Warrigal Road Ashburton Pty Ltd:

- (i) Chiodo is, and has since 12 September 2017 been, a director; and

- (ii) Chiodo has, since 12 September 2017, had an indirect interest;

**Particulars**

Since Warrigal Road Ashburton Pty Ltd's incorporation, its sole shareholder was Pure Development; and Chiodo was the sole shareholder in Pure Development.

- (i) Chiodo has, since 27 April 2023, had an indirect interest in 417 Bellmere Road Pty Ltd;

**Particulars**

Since 417 Bellmere Road Pty Ltd's incorporation, Chiodo Holdings was a 20% shareholder in 417 Bellmere Road Pty Ltd; and Chiodo was the sole shareholder in Chiodo Holdings. Further particulars may be provided prior to trial.

- (j) since 23 October 2023, Chiodo has been a director of Luxurious Resort (Fiji) Pte Ltd.

12. In respect of Luxuria IT Project Poseidon LLC-FZ (**Luxuria IT**):

- (a) Chiodo is, and has since 5 July 2023 been, a director and shareholder; and  
 (b) Chiodo is, and has since 9 February 2024 been, a manager.

**Particulars**

From its incorporation on 5 July 2023 until 8 February 2024, Chiodo was a director and a 50% shareholder in Luxuria IT. From 9 February 2024, Chiodo was the sole director, manager and shareholder in Luxuria IT.

13. In respect of Poseidon Luxury Italy S.P.A. (**Poseidon Luxury**):

- (a) Chiodo is, and has since 19 February 2024 been, a director;  
 (b) Chiodo has, since 19 February 2024, had an indirect interest.

**Particulars**

Since its incorporation, the sole shareholder in Poseidon Luxury was Poseidon Lux 002 S.à.r.l (B283249) (a company registered in Luxembourg); the sole shareholder of Poseidon Lux 002 was Poseidon Lux 001 S.à.r.l. (B8283177) (a company registered in Luxembourg), of which Chiodo was a shareholder. Chiodo was a director of Poseidon Lux 002.

14. In respect of Global Opportunity Investments Pty Ltd (**Global Opportunity Investments**), Chiodo:

- (a) is, and has since 16 February 2023 been, a director; and  
 (b) has, since 16 February 2023, had an indirect interest.

**Particulars**

Since Global Opportunity Investments' incorporation, Chiodo Holdings was a 50% shareholder; and Chiodo was the sole shareholder in Chiodo Holdings.

15. In respect of Aquatica (CK) Holdings Pty Ltd (**Aquatica (CK)**), Chiodo:

- (a) is, and has since 4 January 2024 been, a director; and
- (b) has, since 4 January 2024, had an indirect interest.

**Particulars**

Since Aquatica (CK)'s incorporation, Chiodo Holdings was a 75% shareholder; and Chiodo was the sole shareholder in Chiodo Holdings.

16. In respect of 24Calibre Pty Ltd (**24Calibre**), from 6 December 2022, Chiodo had an indirect interest.

**Particulars**

From 6 December 2022 to 16 February 2023, Malana Management was the sole shareholder in 24Calibre. From 2 March 2023, Pure Development was a 50% shareholder in Malana Management, and Chiodo was the sole shareholder in Pure Development. Prior to 2 March 2023, The Chiodo Family Trust was a 50% shareholder in Malana Management, and Pure Development was the trustee of The Chiodo Family Trust with its primary beneficiaries being Chiodo and Julie Chiodo.

From 17 February 2023: Global Opportunity Investments was the sole shareholder in 24Calibre; Chiodo Holdings was a 50% shareholder in Global Opportunity Investments; and Chiodo was the sole shareholder in Chiodo Holdings.

#### **A.4 Ilya Frolov**

17. In respect of Keystone, the Second Defendant, Mr Ilya Frolov (**Frolov**):
- (a) was an executive director and company secretary from 27 April 2020 to 29 December 2023;
  - (b) was a member of the SMF investment committee from at least 9 June 2021 to 29 December 2023;
  - (c) was a member of the CDPF/ADPF investment committee from at least 28 June 2021 to 4 December 2023;
  - (d) was a member of the compliance committee for the SMF from 18 February 2021 to 29 December 2023;
  - (e) was the compliance officer from 18 February 2021 to 7 June 2022; and
  - (f) from at least 1 July 2021, had an indirect interest.

**Particulars**

From at least 1 July 2021, the sole shareholder in Keystone was Malana Management; from 2 March 2023, Malik Investments was a 50% shareholder in Malana Management; and Frolov was the sole shareholder of Malik Investments. Prior to 2 March 2023, the Frolov Family Trust was a 50% shareholder in Malana Management; Frolov was the Trustee of the Frolov Family Trust with its primary beneficiaries being Frolov and his wife, **Marina Frolov**.

18. From at least 24 May 2021 until 29 December 2023, Frolov:

- (a) as an officer of Keystone, was required to comply with the duties imposed by s 601FD(1) of the Corporations Act;
- (b) as a director or other officer of Keystone, was required to comply with the duties imposed by ss 180 to 182 of the Corporations Act;
- (c) as a member of the SMF's compliance committee, owed duties pursuant to s 601JD(1) of the Corporations Act; and
- (d) had experience in fund management and the construction sector.

19. In respect of CF Capital, Frolov:

- (a) was a director from 10 May 2019 to 29 December 2023; and
- (b) was, from at least 10 May 2019, a shareholder.

**Particulars**

From 10 May 2019 to 25 May 2021, Frolov owned 255 of the 925 ordinary shares in CF Capital.

Since 26 May 2021, Frolov has owned 405 of the 1000 issued ordinary shares in CF Capital.

20. In respect of Malana Management, Frolov:

- (a) is, and has since 2 May 2019 been, a director; and
- (b) has, since 2 May 2019, had an indirect interest.

**Particulars**

Prior to 2 March 2023, the Frolov Family Trust was a 50% shareholder in Malana Management, and Frolov was the Trustee of Frolov Family Trust with its primary beneficiaries being Frolov and Marina Frolov. From 2 March 2023, Malik Investments was a 50% shareholder in Malana Management, and Frolov was the sole shareholder in Malik Investments.

21. In respect of Malik Investments Pty Ltd (**Malik Investments**), Frolov:

- (a) is, and has since 6 February 2023 been, a director; and
- (b) was, since 6 February 2023, the sole shareholder.

22. In respect of Aleksim Investments Pty Ltd (**Aleksim Investments**), Frolov:

- (a) is, and has since 15 February 2023 been, a director; and
- (b) was, since 15 February 2023, the sole shareholder.

23. In respect of Marsi Group Pty Ltd (**Marsi Group**), Frolov:

- (a) is, and has since 7 November 2019 been, a director; and
- (b) has, since at least 27 June 2016, had a direct or indirect interest.

**Particulars**

From 13 October 2021, the Frolov Family Trust was the sole shareholder in Marsi Group; Frolov was the Trustee of the Frolov Family Trust with its primary beneficiaries being Frolov and Marina Frolov. Prior to 13 October 2021, Studio Mint Pty Ltd (**Studio Mint**) was a 50% shareholder in Marsi Group; and Frolov was a 50% shareholder in Studio Mint. At the time of its incorporation, Frolov was a 50% shareholder in Marsi Group.

24. In respect of the following SPVs:

- (a) Frolov has, since 20 November 2019, had an indirect interest in 75 Port Douglas Road Pty Ltd;

**Particulars**

Since 20 November 2019, Malana Management was a 51% shareholder in 75 Port Douglas Road Pty Ltd and Keystone was a 49% shareholder in 75 Port Douglas Road Pty Ltd; since at least 1 July 2021, the sole shareholder in Keystone was Malana Management. From 2 March 2023, Malik Investments was a 50% shareholder in Malana Management, and Frolov was the sole shareholder in Malik Investments. Prior to 2 March 2023, the Frolov Family Trust was a 50% shareholder in Malana Management, and Frolov was the Trustee of Frolov Family Trust with its primary beneficiaries being Frolov and Marina Frolov.

- (b) Frolov has, since 16 June 2022, had an indirect interest in Chiodo K'Gari Pty Ltd; and

**Particulars**

Since Chiodo K'Gari Pty Ltd's incorporation, its sole shareholder was Malana Management. From 2 March 2023, Malik Investments was a 50% shareholder in Malana Management, and Frolov was the sole shareholder in Malik Investments. Prior to 2 March 2023, the Frolov Family Trust was a 50% shareholder in Malana Management, and Frolov was the Trustee of Frolov Family Trust with its primary beneficiaries being Frolov and Marina Frolov.

- (c) Frolov has, since 27 April 2023, had an indirect interest in 417 Bellmere Road Pty Ltd.

**Particulars**

Since 417 Bellmere Road Pty Ltd's incorporation, Aleksim Investments was a 20% shareholder in 417 Bellmere Road Pty Ltd; and Frolov was the sole shareholder in Aleksim Investments. Further particulars may be provided prior to trial.

25. In respect of Luxuria IT, Frolov was, since 5 July 2023 until 8 February 2024, a director, manager and shareholder.

**Particulars**

From its incorporation on 5 July 2023 until 8 February 2024, Frolov was a 50% shareholder in Luxuria IT.

26. In respect of Global Opportunity Investments:

- (a) Frolov is, and has since 16 February 2023 been, a director; and
- (b) Frolov has, since 16 February 2023, had an indirect interest.

**Particulars**

Since Global Opportunity Investments' incorporation, Aleksim Investments was a 50% shareholder; and Frolov was the sole shareholder in Aleksim Investments.

27. Frolov has, since 6 December 2022, had an indirect interest in 24Calibre.

**Particulars**

From 6 December 2022 to 16 February 2023: Malana Management was the sole shareholder in 24Calibre; the Frolov Family Trust was a 50% shareholder in Malana Management; Frolov was the Trustee of Frolov Family Trust with its primary beneficiaries being Frolov and Marina Frolov. Since 17 February 2023: Global Opportunity Investments was the sole shareholder in 24Calibre; Aleksim Investments was a 50% shareholder in Global Opportunity Investments; and Frolov was the sole shareholder in Aleksim Investments.

**A.5 Mark Yorston**

28. In respect of Keystone, the Third Defendant, Mr Mark Yorston (**Yorston**):

- (a) was a non-executive director and the board Chairperson from 27 April 2020 to 24 April 2025; and
- (b) was appointed as a member of the SMF's compliance committee on about 18 March 2024.

29. Yorston:

- (a) from at least 24 May 2021:
  - (i) as an officer of Keystone, was required to comply with the duties imposed by s 601FD(1) of the Corporations Act;
  - (ii) as a director or other officer of Keystone, was required to comply with the duties imposed by ss 180 to 182 of the Corporations Act; and
- (b) was a qualified legal practitioner with extensive experience in the legal industry who, from at least 10 July 2020 to around February 2025, provided legal advice to Chiodo, Chiodo Corporation, Chiodo Operations and the SPVs.

**A.6 Jeremy Danon**

30. The Fourth Defendant, Mr Jeremy Danon (**Danon**):

- (a) was a member (and the Chair) of the compliance committee for the SMF from 7 June 2022 to 29 August 2024; and
- (b) was the compliance officer from 7 June 2022 to 29 August 2024.

31. From 7 June 2022 to 29 August 2024, Danon, as a member of the SMF's compliance committee, owed duties pursuant to s 601JD(1) of the Corporations Act.



## **B. BACKGROUND**

### **B.1 Establishment of the SMF**

#### ***B.1.1 The SMF Constitution***

32. On 28 April 2021, Keystone entered into a deed establishing a constitution for the SMF (**Original SMF Constitution**).

#### **Particulars**

The Original SMF Constitution was in writing [SQR.0010.0001.3563].

33. The Original SMF Constitution was executed by:
- (a) Chiodo in his capacity as a director of Keystone; and
  - (b) Frolov in his capacity as a director of Keystone.
34. On 22 May 2021, Keystone entered into a deed of amendment in relation to the Original SMF Constitution (**Deed of Amendment**).

#### **Particulars**

The Deed of Amendment was in writing [S9Z.0014.0001.0306].

35. The Deed of Amendment was executed by:
- (a) Chiodo in his capacity as a director of Keystone; and
  - (b) Frolov in his capacity as a director of Keystone.
36. On or after 22 May 2021, Keystone entered into a deed consolidating the Original SMF Constitution with the Deed of Amendment (**SMF Constitution**).

#### **Particulars**

The SMF Constitution was in writing [KAM.1006.0001.0842].

37. The SMF Constitution was executed by:
- (a) Chiodo in his capacity as a director of Keystone; and
  - (b) Frolov in his capacity as a director of Keystone.
38. There were express terms of the SMF Constitution, including to the effect that:
- (a) the RE might create and issue units in the SMF under the SMF Constitution [cl 2.1];
  - (b) scheme property vested in the RE, and the RE would hold scheme property on trust for unitholders on the terms of the SMF Constitution [cl 2.2];
  - (c) the SMF was established for, and must be maintained for, the benefit of the unitholders, on the terms of the SMF Constitution [cl 2.3];
  - (d) the RE's powers to invest or apply scheme property were subject to its obligations pursuant to Ch 5C of the Corporations Act [cl 3.12]; and

- (e) once the SMF is registered, the RE must cause all or any scheme property to be valued on the last business day of each quarter, and as and when required by the Corporations Act [cl 12.1].

### **B.1.2 The Compliance Plan**

- 39. On 28 April 2021, Keystone adopted a compliance plan for the SMF (**Compliance Plan**).

#### **Particulars**

The Compliance Plan was in writing [S9Z.0014.0001.1904].

- 40. The Compliance Plan was signed by:
  - (a) Chiodo in his capacity as a director of Keystone;
  - (b) Frolov in his capacity as a director of Keystone; and
  - (c) Yorston in his capacity as a director of Keystone.

### **B.1.3 The Compliance Committee**

- 41. Keystone was required to establish a compliance committee.

#### **Particulars**

Corporations Act, s 601JA(1). From at least 27 April 2020 to 29 December 2023, less than half of the directors of Keystone were external directors within the meaning of s 601JA(2).

- 42. On 18 February 2021, Keystone established a compliance committee (**Compliance Committee**).
- 43. The functions of the Compliance Committee included:
  - (a) monitoring the extent to which Keystone complied with the SMF Compliance Plan and reporting on its findings to Keystone;
  - (b) reporting to Keystone any breach of the Corporations Act involving the SMF of which the committee became aware or that it suspected; and
  - (c) reporting to ASIC if the committee was of the view that Keystone had not taken, or did not propose to take, appropriate action to deal with a matter reported under subparagraph (b) above.

#### **Particulars**

Corporations Act, s 601JC(1).

Compliance Plan, cls 4, 4.1.

- 44. The members of the Compliance Committee were:
  - (a) from 18 February 2021 to 7 June 2022: Frolov, Mr Andrew Ludekens and Ms Maadhvi Patel (**Patel**);
  - (b) from 7 June 2022 to 26 December 2023: Frolov, Danon and Patel;

- (c) from 26 December 2023 to about 18 March 2024: Danon and Patel; and
- (d) from about 18 March 2024 to 29 August 2024: Yorston, Danon and Patel.

45. The Compliance Plan provided that the members of the Compliance Committee were to have unfettered rights of access to all books and records of Keystone.

**Particulars**

Compliance Plan, cl 4.

**B.1.4 The Compliance Officer**

46. The Compliance Plan required that Keystone nominate one person as Compliance Officer.

**Particulars**

Compliance Plan, cl 4.

47. The Compliance Officer was:

- (a) from 18 February 2021 to 7 June 2022: Frolov; and
- (b) from 7 June 2022 to 29 August 2024: Danon.

48. The responsibilities of the Compliance Officer were identified in the Compliance Plan, and included:

- (a) monitoring the obligations of the RE under the Compliance Plan;
- (b) day-to-day oversight of the RE's compliance scheme; and
- (c) the responsibilities listed in section 6 of the Compliance Plan.

**B.1.5 Registration of the SMF**

49. On 11 May 2021, Keystone lodged an application for the registration of the SMF as a registered managed investment scheme.

50. On 24 May 2021, the SMF was registered as a managed investment scheme pursuant to s 601EB of the Corporations Act, with Keystone as the RE.

**B.2 Product disclosure statements in 2021**

51. From on or around 16 June 2021, Keystone as RE of the SMF issued product disclosure statements (**PDSs**) in respect of the following nominal asset classes:

- (a) Conservative class:
  - (i) 16 June 2021 [S9Z.0014.0001.3862];
  - (ii) 5 July 2021 [S9Z.0014.0001.0673];
  - (iii) 8 September 2021 [KSS.0032.0002.0460];
- (b) Balanced class:
  - (i) 16 June 2021 [S9Z.0014.0001.3832];

- (ii) 5 July 2021 [S9Z.0014.0001.0629];
- (iii) 8 September 2021 [S9Z.0014.0001.2085];
- (c) Growth class:
  - (i) 16 June 2021 [S9Z.0014.0001.3798];
  - (ii) 5 July 2021 [S9Z.0014.0001.0718];
  - (iii) 8 September 2021 [S9Z.0014.0001.2059]; and
- (d) High Growth class: 12 October 2021 [S9Z.0014.0001.0762],  
(collectively, the **2021 PDSs**).

52. The 2021 PDSs included statements to the effect that:

- (a) the principal elements of the investment strategy of the investment manager (being CF Capital) included:
  - (i) asset allocation of the SMF class broadly across public markets, or private markets and related asset classes;
  - (ii) sourcing investment opportunities;
  - (iii) selecting the investments that were believed to offer superior relative value;
  - (iv) seeking to manage the SMF class's investment level and liquidity; and
  - (v) seeking to manage risk through ongoing monitoring of the portfolio;
- (b) the investment manager, promotor (being CF Capital) and the RE all had common shareholders and common directors;
- (c) the applicable SMF class might, without limit, be invested in other funds of which Keystone as RE of the SMF, or a related entity, was trustee, responsible entity or manager;
- (d) Keystone might appoint any of its related entities to provide services or perform functions in relation to the fund or the SMF class;
- (e) Keystone might also enter into financial or other transactions with related entities in relation to the assets of the SMF class and might sell assets or purchase assets from or through a related entity;
- (f) the related entity (or entities) referred to in (d)-(e) was entitled to earn fees, commissions or other benefits in relation to any such appointment or transaction and to retain them for its own account;
- (g) the arrangements referred to in (f) would be based on arm's length commercial terms;

- (h) in the course of managing the SMF class, Keystone might face conflicts in respect of its duties in relation to the SMF class, related funds and its own interests;
- (i) Keystone had policies and procedures in place to manage the conflicts referred to in (h) appropriately; and
- (j) Keystone would resolve such conflicts fairly and reasonably and in accordance with the law, ASIC policy and its policy.

### **B.3 Investments in the SMF**

- 53. Investments in the SMF could be made directly or through superannuation choice platforms associated with Macquarie Investments Management Ltd (**Macquarie**) and Equity Trustee Superannuation Ltd (**Equity Trustees**).
- 54. Between around 6 April 2022 to 1 June 2023, Macquarie as trustee of the Macquarie Superannuation Plan, and between around 16 June 2023 to 1 March 2024, Equity Trustees as trustee of the AMG Superannuation Fund and Super Simplifier Fund, invested their members' funds in the SMF and were issued units in the SMF.
- 55. From on or around 12 October 2021 to 22 November 2024:
  - (a) approximately \$530,736,295 was invested in the SMF;
  - (b) there were \$48,703,623 in redemptions from the SMF.

### **B.4 The Fund Management Agreement**

- 56. On 12 July 2021, Keystone and CF Capital entered into a written agreement appointing CF Capital as investment manager of the SMF (**Fund Management Agreement**) [S9Z.0017.0001.0021].
- 57. The Fund Management Agreement was executed by:
  - (a) Chiodo in his capacity as a director of Keystone;
  - (b) Chiodo in his capacity as a director of CF Capital;
  - (c) Frolov in his capacity as a director of Keystone; and
  - (d) Frolov in his capacity as a director of CF Capital;
- 58. There were express terms of the Fund Management Agreement, including to the effect that:
  - (a) Keystone appointed CF Capital, for an initial period of five years, to provide the 'Services' (as defined) to Keystone, on the terms and conditions set out in the agreement and in accordance with the directions from time to time of the Keystone board of directors and the Keystone investment committee [cls 1.1, 2.2 and 7.1];
  - (b) the 'Services' included:

- (i) making recommendations, advising on and facilitating investments and managing the Portfolio in accordance with the directions of the Keystone board of directors and the Keystone investment committee [cl 2.2.1];
  - (ii) identifying, investigating, researching, analysing and evaluating investment opportunities for Keystone, including any matters or investment opportunities identified or requested by the Keystone board or the Keystone investment committee [cl 2.2.2];
  - (iii) facilitating and monitoring the acquisition and disposal of investments within the Portfolio [cl 2.2.3];
  - (iv) supervising the management of the Portfolio and the day-to-day administration of the Portfolio [cl 2.2.4];
  - (v) distributing at the end of each month portfolio values and market data to Keystone to enable it to prepare a report on the value of net assets monthly and for the purposes of making reports to the compliance and investment committees [cl 2.2.9];
- (c) the 'Portfolio' meant all monies, investments, additions or borrowings which may from time to time be paid to or received or held by Keystone, or CF Capital on behalf of Keystone (whether or not pending investment) and any investments for the time being representing them, any income derived from them and any capital accretions to them regardless of how they arose [Definitions and Interpretation page]; and
- (d) notwithstanding the appointment of CF Capital, the Keystone Board and Investment Committee continued to be responsible for reviewing investments, setting the investment strategy and making investment decisions [cl 2.3.1; Recital D].

## **B.5 Establishment of the ADPF**

59. The ADPF was established as a trust pursuant to a deed executed by Keystone (**ADPF Trust Deed**).

### **Particulars**

The ADPF Trust Deed was in writing, stated to be executed on 7 May 2021 [S9Z.0014.0001.0899].

60. The ADPF Trust Deed was executed by:

- (a) Chiodo in his capacity as a director of Keystone; and
- (b) Frolov in his capacity as a director of Keystone.

61. The ADPF commenced on the day on which the Application Money (as defined in cl 16.1) was first accepted by the trustee (Keystone), being on or around 11 April 2022 [cl 1.4].

62. There were express terms of the ADPF Trust Deed, including to the effect that:
- (a) Keystone was trustee of the ADPF, and held assets of the trust on trust for unitholders of the trust [cl 1.2];
  - (b) the trustee was required to comply with the applicable requirements of the Corporations Act, subject to any relief granted by ASIC [cl 6.1.1];
  - (c) in relation to the ADPF, the trustee had all the powers of a natural person including to:
    - (i) advance or lend the assets of the ADPF [cl 6.4.3];
    - (ii) secure by mortgage or otherwise the payment of money, securities and interests in managed investment schemes to any person, firm, company, corporation or association and upon terms with or without security or interest as the trustee sees fit and to join with any of those persons in executing any mortgage or other document for the purposes of securing the payment of money to any or more of them [cl 6.4.4];
  - (d) the trustee would appoint an adviser or service provider to review the value of ADPF assets at various intervals during the project [cl 3.2]; and
  - (e) the trustee might determine, or instruct an adviser or service provider to determine, the value of a class of units or the ADPF at such times as it considered necessary or desirable, but no less frequently than once a month [cl 3.3].

## **B.6 Borrowing from external lenders**

63. From on or around 2 July 2020 to 27 January 2022, SPVs entered into secured loan agreements with third party lenders as set out in Schedule A (**Secured Loan Agreements**).
64. Each Secured Loan Agreement:
- (a) identified in Schedule A was executed by Chiodo in his capacity as director of the applicable SPV;
  - (b) identified in row 6 of Schedule A, was executed by Frolov in his capacity as a director of the applicable SPVs;
  - (c) identified in rows 6, 7 and 9 of Schedule A, was witnessed by Yorston;
  - (d) identified in Schedule A included a personal guarantee given by Chiodo or an entity associated with Chiodo, applicable in the event of default; and
  - (e) identified in at least rows 1, 2, 5, 6 and 9 of Schedule A, included terms to the effect that it might be an event of default if the borrower (at least without written consent) granted a further security interest over the Subject Property.

## **B.7 The ADPF and the March 2022 ADPF Loan Agreements**

### **B.7.1 The ADPF**

65. On 1 March 2022:
- (a) Chiodo, Frolov and Yorston, as directors of Keystone, resolved to establish the ADPF wholesale fund;
  - (b) Keystone atf the ADPF issued an Information Memorandum offering units in the ADPF [S9Z.0014.0001.0945].
66. The Information Memorandum included statements to the effect that:
- (a) the ADPF was an Australian unregistered managed investment scheme, operated as an unregistered open ended unit trust, open to wholesale clients [front cover and [2]];
  - (b) the ADPF would provide investors with an opportunity to access returns from exposure to a portfolio of Australian property and trade assets diversified by sector, predominately the residential, commercial and accommodation sectors, and also by geographical location, predominantly Australian capital cities and leading regional centres [2];
  - (c) the ADPF invests in real property development projects and trade financing via special purpose vehicles [2];
  - (d) the ADPF gave effect to its investment strategy by investing in real property development projects via special purpose vehicles through convertible debt, senior or junior debt property financing opportunities [2];
  - (e) Keystone had delegated its investment management functions to CF Capital which will make asset allocation and investment decisions in relation to the ADPF [4.1];
  - (f) CF Capital was also the promoter of the ADPF [4.3];
  - (g) Chiodo Corporation was the developer retained in relation to the assets of the ADPF [4.4];
  - (h) Keystone, CF Capital and Chiodo Corporation had common shareholders and directors, and this structure ensured strong alignment between the project delivery, with the returns to investors [4.5];
  - (i) Keystone might also enter into other financial or other transactions with related entities in relation to the assets of the ADPF, and such arrangements would be based on arm's length commercial terms [4.5];
  - (j) Keystone would resolve conflicts of interest fairly and reasonably and in accordance with the law, ASIC policy and Keystone's policy [4.5].
67. Since 1 March 2022 to at least 27 May 2024, the sole unitholder of the ADPF has been Keystone as RE of the SMF.

**Particulars**

ASIC refers to and repeats paragraph 97 below.

**B.7.2 The March 2022 ADPF Loan Agreements**

68. Also on 1 March 2022, Keystone atf the ADPF entered into written development loan agreements with:
- (a) 33 Davidson Port Douglas Road Pty Ltd (**Davidson Loan Agreement**) [KAM.1007.0001.0042];
  - (b) 75 Port Douglas Pty Ltd (**Port Douglas Road Loan Agreement**) [KSS.0013.0002.0583]
  - (c) Augustine Terrace Glenroy Pty Ltd (**Augustine Terrace Loan Agreement**) [KAM.1007.0001.0267];
  - (d) Nicholson Street Bentleigh Pty Ltd (**Nicholson Street Loan Agreement**) [KAM.1007.0001.0192];
  - (e) Norwood Ponds (Land) Pty Ltd (**Norwood Ponds Loan Agreement**) [KAM.1007.0001.0167];
  - (f) Red Hill Terrace (Land) Pty Ltd (**Red Hill Loan Agreement**) [KAM.1007.0001.0142]; and
  - (g) Warrigal Road Ashburton Pty Ltd (**Warrigal Road Loan Agreement**) [KAM.1007.0001.0117]
- (collectively, the **March 2022 ADPF Loan Agreements**).

**Particulars**

That Keystone entered into the loan agreements atf the ADPF was confirmed by the following Side Letters, entered into by Keystone on in its own behalf and atf the ADPF, on 6 February 2024, with:

- 33 Davidson Port Douglas Road Pty Ltd [KAM.1007.0001.0327];
  - 75 Port Douglas Pty Ltd [KSS.0018.0002.0551];
  - Augustine Terrace Glenroy Pty Ltd [KAM.1007.0001.0317];
  - Nicholson Street Bentleigh Pty Ltd [KAM.1007.0001.0307];
  - Norwood Ponds (Land) Pty Ltd [KAM.1007.0001.0302];
  - Red Hill Terrace (Land) Pty Ltd [KAM.1007.0001.0297]; and
  - Warrigal Road Ashburton Pty Ltd [KAM.1007.0001.0292].
69. The March 2022 ADPF Loan Agreements were each executed:
- (a) by Frolov in his capacity as a director of Keystone atf the ADPF;
  - (b) by Yorston in his capacity as a director of Keystone atf the ADPF; and
  - (c) by Chiodo in his capacity as a director of the applicable SPV.

70. The March 2022 ADPF Loan Agreements each included express terms to the effect that:
- (a) Keystone atf the ADPF was the lender [Schedule 3];
  - (b) the SPV counterparty was the borrower [Schedule 3];
  - (c) subject to the terms of the agreement, Keystone would lend the borrower the 'Loan Amount' [cl 2];
  - (d) the Loan Amount was defined as 'Ongoing until Development is complete' [cl 1.1 and Schedule 1];
  - (e) the Loan Amount was to be used for the 'Approved Purpose' [cl 3];
  - (f) the 'Approved Purpose' was 'Development Costs' [cl 1.1 and Schedule 1];
  - (g) the borrower was to pay Keystone accrued interest 'Upon Development Completion' [cl 6.1 and Schedule 1];
  - (h) Keystone was not obligated to provide the borrower the Loan Amount unless Keystone had received and registered an executed:
    - (1) ranking mortgage over the land (as particularised below);
    - (2) ranking security interest over all the assets and undertakings of Keystone pursuant to a General Security Deed to be entered into between the borrower and Keystone on or about the date of the agreement (as particularised below),
 (being, together with the agreement, 'Finance Documents') [cls 1.1, 5(a) and (b), and Schedule 2];
  - (i) the borrower was required to repay Keystone the amount owing in full 'Upon Development Completion' [cl 7.1 and Schedule 1];
  - (j) interest was payable at the rate(s) as particularised below [cl 6.1(b) and Schedule 1]; and
  - (k) it would be an 'Event of Default' where the borrower failed to pay an amount that was due and owing under the Finance Documents when due [cl 11.1(a)].

#### **Particulars**

##### Davidson Loan Agreement:

- Security: a second ranking mortgage over 33 Davidson Street, Port Douglas 4877; a second ranking security interest.
- Interest: 15% p.a.

##### Port Douglas Road Loan Agreement:

- Security: a second ranking mortgage over 75-85 Port Douglas Road, Port Douglas 4877; a second ranking security interest.
- Interest: 15% p.a.

Augustine Terrace Loan Agreement:

- Security: a second ranking mortgage over 141-145 Augustine Terrace, Glenroy 3046; a second ranking security interest.
- Interest: 15% p.a.

Nicholson Street Loan Agreement:

- Security: a second ranking mortgage over 33 & 35 Nicholson Street, Bentleigh 3204; a second ranking security interest.
- Interest: 15% p.a.

Norwood Ponds Loan Agreement:

- Security: a second ranking mortgage over 21-23 Norwood Crescent, Moonee Ponds 3039; a second ranking security interest.
- Interest: 15% p.a.

Red Hill Terrace Loan Agreement:

- Security: a second ranking mortgage over 12-14 Red Hill Terrace, East Doncaster 3109; a second ranking security interest.
- Interest: 15% p.a.

Warrigal Road Loan Agreement:

- Security: a second ranking mortgage over 348-350 Warrigal Road, Ashburton 3147; a second ranking security interest.
- Interest: 15% p.a.

## **B.8 Chiodo Development Management Agreement**

71. On 10 May 2022, Keystone atf the ADPF and Chiodo Corporation entered into a written development management agreement (**Chiodo Development Management Agreement**) [KSS.0061.0001.0004].
72. The Chiodo Development Management Agreement was executed by:
  - (a) Chiodo in his capacity as a director of Keystone atf the ADPF;
  - (b) Yorston in his capacity as a director of Keystone atf the ADPF; and
  - (c) Chiodo in his capacity as a director of Chiodo Corporation and/or Chiodo Operations.
73. There were express recitals and terms of the Chiodo Development Management Agreement including to the effect that:
  - (a) Keystone atf the ADPF was proposing to carry out the 'Projects' and had appointed Chiodo Corporation as its agent to do so [Recital A];
  - (b) 'Projects' referred to:

- (i) the development at 33 Davidson Road, Port Douglas QLD 4877 (held by 33 Davidson Port Douglas Pty Ltd);
  - (ii) the development at 71-85 Port Douglas Road, Port Douglas QLD 4877 (held by 75 Port Douglas Road Pty Ltd);
  - (iii) the development at 21-23 Norwood Crescent, Moonee Ponds VIC 3039 (held by Norwood Ponds (Land) Pty Ltd);
  - (iv) the development at 348-350 Warrigal Road, Ashburton VIC 3147 (held by Warrigal Road Ashburton Pty Ltd);
  - (v) the development at 12-14 Red Hill Terrace, Doncaster East VIC 3109 (held by Red Hill Terrace (Land) Pty Ltd);
  - (vi) the development at 33-35 Nicholson Street, Bentleigh VIC 3204 (held by Nicholson Street Bentleigh Pty Ltd);
  - (vii) 145 Augustine Terrace, Glenroy VIC 3046 (held by Augustine Terrace Glenroy Pty Ltd); and
  - (viii) Ritz Carton, Fiji (held by Luxurious Resort (Fiji) Pte Limited);
- (c) Chiodo Corporation agreed to undertake the 'Development Services' in consideration of the granting of the Development Rights (undefined) and the payment of the 'Developments Services Fee' [cl 2.1(b)];
- (d) Development Services meant all the services related to undertaking the development of land in accordance with the Project Proposal and Plans, the Project Objectives and all Laws and Requirements and any other services required to deliver a Project, including [cl 1.1 and Annexure A]:
- (i) the fulfilment of the following reporting obligations [Annexure A at (f)]:
    - (1) providing Keystone atf the ADPF with reports of all matters that the Development Manager considered should be brought to the attention of the trustee on a timely basis;
    - (2) advising Keystone atf the ADPF on a timely basis of any matter that might have a material adverse effect on the Project; and
    - (3) on a quarterly basis providing a written report to Keystone atf the ADPF of: details of actual receipts and payments for the preceding quarter; details of any departure from the Project Budget; details of any variation required to the Project Budget for the coming quarter; details of accounts receivable, including an aged debtors report; recommendations as to collection of aged debtors; and details of anticipated cash distributions; and
  - (ii) maintaining all records and registers arising from or in connection with the Project [Annexure A at (g)];

- (e) 'Project Proposal and Plans' was defined as 'the Project Proposal and Plans to be prepared by the Development Manager or the Project Manager in respect of the Land, as amended from time to time and includes the Project Programme and the Feasibility as amended from time to time' [cl 1.1];
- (f) 'Project Objective' was defined as '(a) managing the Projects; (b) implementing the Projects in an efficient and timely manner; (c) utilising the most effective project funding on the most commercially advantageous terms; [each] in accordance with all Laws and Requirements, the Approvals, the Project Programme and this Agreement' [cl 1.1];
- (g) the Development Services Fee would be an amount of 3.75% (plus GST) of the 'gross realisation value and [sic] each project' [cl 2.4(c)];
- (h) the Development Services Fee would be payable monthly with a reconciliation to be effected on completion of each Project [cl 2.4(e)];
- (i) Chiodo Corporation was required to perform the 'Development Services' in accordance with the terms of the Chiodo Development Management Agreement [cl 3.1(a)];
- (j) subject to its obligations to Keystone at the ADPF contained in the Chiodo Development Management Agreement, Chiodo Corporation would have unfettered discretion in carrying out the Project and was authorised to do all things necessary or desirable in relation to the Land which were consistent with the appointment of Chiodo Corporation to deliver the Development Services [cl 3.2];
- (k) Chiodo Corporation was required to, as soon as practicable after the date of the agreement, create the:
  - (i) 'Project Programme' (being a programme prepared by Chiodo Corporation for the execution of a Project that includes setting out in detail the sequence and duration of the Approvals, design and construction phases of each stage of the Project);
  - (ii) 'Feasibility' (meaning the technical, physical and financial analysis in relation to the design and construction and operation of the Project to be prepared by Chiodo Corporation (or the project manager on behalf of Chiodo Corporation) and approved by Keystone at the ADPF and as varied from time to time); and
  - (iii) 'Project Budget' (being a detailed budget of Project Costs required to implement each part of the Project Programme prepared and amended from time to time by the Chiodo Corporation – where Project Costs means the aggregate of all costs, expenses, outgoings, losses and liabilities incurred in connection with a Project accounted for in accordance with generally accepted accounting principles in Australia),

(collectively, the **Project Documents**) [cls 1.1 and 8(a)];

- (l) the Project Documents were required to be submitted to and approved by Keystone atf the ADPF (acting reasonably) [cl 8(b)]; and
- (m) Chiodo Corporation was required to provide monthly reports to Keystone atf the ADPF on the progress of the Project [cl 12].

## **B.9 Product disclosure statements in 2023**

74. On or around 1 July and 21 November 2023, Keystone as RE of the SMF issued further PDSs in respect of the following nominal asset classes of the SMF:

- (a) Conservative class:
  - (i) 1 July 2023 [KSS.0032.0002.0299];
  - (ii) 21 November 2023 [KSS.0032.0002.0380];
- (b) Balanced class:
  - (i) 1 July 2023 [KSS.0032.0002.0106];
  - (ii) 21 November 2023 [KSS.0032.0002.0213];
- (c) Growth class:
  - (i) 1 July 2023 [KSS.0032.0002.0492];
  - (ii) 21 November 2023 [KSS.0003.0001.0081];
- (d) High Growth class:
  - (i) 1 July 2023 [KSS.0032.0002.0685]; and
  - (ii) 21 November 2023 [KSS.0003.0001.0001],

(collectively, the **2023 PDSs**).

75. The 2023 PDSs included statements to the effect that:

- (a) when SMF class funds were invested through arrangements with related entities, the terms were always at least arm's length;
- (b) Keystone as RE of the SMF had policies and procedures in place to manage, resolve and/or avoid conflicts in accordance with the law and ASIC policy;
- (c) the investment manager was a related body corporate of Keystone as RE of the SMF, with some common directors and also common ownership;
- (d) the investment manager (being CF Capital) and Keystone as RE of the SMF each always dealt with the other on at least arm's length terms, and Keystone as RE took its responsibilities under law, including in relation to the management of conflicts, very seriously;

- (e) the SMF might invest in other investment projects (often through special purpose vehicles) managed by Keystone and/or CF Capital or other group members;
- (f) when the SMF was invested in the way referred to in (e), arrangements were always on terms that were at least arm's length;
- (g) Keystone as RE of the SMF might also enter into financial or other transactions with related entities and/or associates when managing the SMF;
- (h) any such arrangement as referred to in (g) was always on terms that were at least arm's length.

#### **B.10 July 2023 ADPF Loan Agreements**

76. On or about 7 July 2023, Keystone atf the ADPF entered into written loan agreements with:

- (a) Luxurious Resort (Fiji) Pte Limited (**Fiji Loan Agreement**) [KAM.1007.0001.0217], backdated to 1 April 2022;
- (b) Chiodo K'Gari Pty Ltd (**K'Gari Loan Agreement**) [KAM.1007.0001.0242], backdated to 20 May 2022;
- (c) 417 Bellmere Road Pty Ltd (**Bellmere Road Loan Agreement**) [KAM.1007.0001.0067], backdated to 1 May 2023,

(collectively, the **July 2023 ADPF Loan Agreements**).

##### **Particulars**

That Keystone entered into the loan agreements atf the ADPF was confirmed by the following Side Letters, entered into Keystone in its personal capacity and atf the ADPF:

- on 6 February 2024, with Luxurious Resort (Fiji) Pte Limited [KAM.1007.0001.0312];
- on 24 March 2024, with Chiodo K'Gari Pty Ltd [KSS.0210.0019.8292];
- on 27 February 2024, with 417 Bellmere Road Pty Ltd [KAM.1007.0001.0922].

77. The July 2023 ADPF Loan Agreements were each executed:

- (a) by Frolov in his capacity as a director of Keystone atf the ADPF;
- (b) by Yorston in his capacity as a director of Keystone atf the ADPF; and
- (c) by, and/or upon the procurement of, Chiodo in his capacity as a director of the applicable SPV.

78. The July 2023 ADPF Loan Agreements each included express terms to the same effect as the March 2022 ADPF Loan Agreements, and ASIC refers to and repeats subparagraphs 70(a)-(k) above.

##### **Particulars**

Fiji Loan Agreement:

- Security: a first mortgage over land at Numuka Bay, Fiji (TLTB Ref Nos: 4/11/39403, 4/11/50037898, 4/11/41543); a first ranking security interest;
- Interest: 7% p.a. between \$0 to \$30,000,000; 15% p.a. from \$30,000,001 onwards.

K’Gari Loan Agreement:

- Security: a first mortgage over Lot 1 on CP FS92, Title Reference TL 0/232981; a first ranking security interest;
- Interest: 7% p.a. between \$0 to \$3,000,000; 15% p.a. from \$3,000,001 onwards.

Bellmere Road Loan Agreement:

- Security: a first mortgage over 417 Bellmere Road, Bellmere QLD 4510; a first ranking security interest;
- Interest: 7% p.a. between \$0 to \$1,500,000; 15% p.a. from \$1,500,001 onwards.

## B.11 The ADPF Developments

79. The March 2022 ADPF Loan Agreements and the July 2023 Loan Agreements (collectively, the **ADPF Loan Agreements**), were each concerned with a development project on land held by the applicable SPV (collectively, the **ADPF Developments**).

### Particulars

- The Davidson Loan Agreement concerned a development project at 33 Davidson Street, Port Douglas 4877 (**Davidson Street Development**).
- The Port Douglas Road Loan Agreement concerned a development project at 75-85 Port Douglas Road, Port Douglas 4877 (**Port Douglas Road Development**).
- The Augustine Terrace Loan Agreement concerned a development project at 141-145 Augustine Terrace, Glenroy 3046 (**Augustine Terrace Development**).
- The Nicholson Street Loan Agreement concerned a development project at 33 & 35 Nicholson Street, Bentleigh 3204 (**Nicholson Street Development**).
- The Norwood Ponds Loan Agreement concerned a development project at 21-23 Norwood Crescent, Moonee Ponds 3039 (**Norwood Ponds Development**).
- The Red Hill Terrace Loan Agreement concerned a development project at 12-14 Red Hill Terrace, East Doncaster 3109 (**Red Hill Terrace Development**).
- The Warrigal Road Loan Agreement concerned a development project at 348-350 Warrigal Road, Ashburton 3147 (**Warrigal Road Development**).
- The Fiji Loan Agreement concerned a development project at land at Numuka Bay, Fiji (TLTB Ref Nos: 4/11/39403, 4/11/50037898, 4/11/41543) (**Fiji Development**).
- The K’Gari Loan Agreement concerned a development project at Lot 1 on CP FS92, Title Reference TL 0/232981 (**K’Gari Development**).
- The Bellmere Road Loan Agreement concerned a development project at 417 Bellmere Road, Bellmere QLD 4510 (**Bellmere Road Development**).

## B.12 The Venice Loans

### B.12.1 The Venice Purchase Agreement

80. On 21 December 2023, Chiodo Corporation and Luxuria IT entered into a written Preliminary Sale and Purchase Agreement with Aareal Immobilien Beteiligungen GmbH (**Aareal**), a German registered entity, for the purchase of the JW Marriott Venice Resort & Spa in Venice, Italy (**Venice Purchase Agreement**) [KSS.0013.0008.1224], [KSS.0454.0033.7941].
81. The Venice Purchase Agreement was executed by, among others:
- (a) Chiodo as sole director and sole company secretary of Chiodo Corporation; and
  - (b) Frolov as manager of Luxuria IT.
82. The Venice Purchase Agreement included express recitals and terms to the effect that:
- (a) Aareal held 100% of the registered share capital in La Sessola Holding GmbH (**Sessola Holding**) (**Sessola Holding Share**) [Recital A];
  - (b) Sessola Holding held:
    - (i) 100% of the issued share capital in La Sessola S.r.l. (**Sessola**), an Italian registered entity; and
    - (ii) 100% of the issued share capital in La Sessola Service S.r.l (**Sessola Services**), an Italian registered entity,
 [Recital B];
  - (c) Sessola had the full and exclusive title to:
    - (i) the Island of Sacca Sessola in Venice, Italy (**Island**); and
    - (ii) the hotel resort business known as the 'JW Marriott Venice Resort & Spa', located on the Island (**Hotel**),
 [Recital C];
  - (d) Sessola had leased the Hotel to Sessola Services [Recital D];
  - (e) Aareal agreed to sell the Sessola Holding Share to Chiodo Corporation on the terms of the agreement [cl 2.1(a)];
  - (f) the consideration for the Sessola Holding Share was €152,000,000, as adjusted in accordance with the terms of the agreement [cl 3.1];
  - (g) in order to secure Chiodo Corporation's obligation to pay the Completion Amount on the Closing Date, Chiodo Corporation had simultaneously deposited €7,600,000 (**Earnest Money**) in the Escrow Agent's Bank Account [cl 3.3];
  - (h) the Closing Date was to occur by no later than 29 February 2024 [cl 4.2];

- (i) Chiodo Corporation could nominate an affiliate as a substitute purchaser to accept the transfer of the Sessola Holding Share, in accordance with the terms of the agreement [cl 11.1(d)];
- (j) in the event of any nomination under cl 11.1(d), Chiodo Corporation remained liable for its obligations under the Venice Purchase Agreement [cl 11.1(e)]; and
- (k) Luxuria IT guaranteed the fulfillment of Chiodo Corporation's obligations under the agreement [cl 11.7].

### **B.12.2 The Venice Loan (Purchase Money) Agreement**

83. On 21 December 2023, Keystone atf the ADPF entered into a written loan agreement with Chiodo Corporation and Luxuria IT (**Venice Loan (Purchase Money) Agreement**) [KSS.0013.0005.1110].
84. The Venice Loan (Purchase Money) Agreement was executed by:
- (a) Yorston in his capacity as a director of Keystone atf the ADPF;
  - (b) Chiodo in his capacity as director of Chiodo Corporation; and
  - (c) Frolov in his capacity as a manager of Luxuria IT.
85. Prior to the execution of the Venice Loan (Purchase Money) Agreement, Yorston, Chiodo and Frolov unanimously resolved to authorise Yorston to sign the agreement on behalf of Keystone atf the ADPF.

#### **Particulars**

Minutes of the 21 December 2023 Meeting of Directors of Keystone [KSS.0224.0101.0001].

86. There were express terms of the Venice Loan (Purchase Money) Agreement, including to the effect that:
- (a) Keystone atf the ADPF agreed to lend Chiodo Corporation and Luxuria IT (the **Venice Borrowers**) the 'Loan Amount' less the 'Third Party Financier Amount' [cl 3.1];
  - (b) Loan Amount meant €152,000,000 (or its AUD equivalent), or such higher amount, if any, to accommodate any upward adjustments to the Purchase Price within the Venice Purchase Agreement up to a maximum of €154,000,000 (or its AUD equivalent) [cl 1];
  - (c) Third Party Financier Amount meant the maximum principal amount of any debt or equity financing committed to be made available to Chiodo Corporation and/or any entity nominated by Chiodo Corporation (in accordance with the agreement) by any debt or equity financier (other than Keystone) for the purposes of paying or refinancing the Debt Pay-Out Amount in accordance with the Venice Purchase Agreement and/or funding any payment obligations under the Venice Purchase Agreement [cl 1];

- (d) each Borrower agreed to use the proceeds of any loans under the agreement only for a Permitted Purpose [cl 3.4];
- (e) the Permitted Purposes were:
  - (i) Chiodo Corporation paying or refinancing the Debt Pay-Out Amount in accordance with the Venice Purchase Agreement [cl 2.1(b)(i)];
  - (ii) where Chiodo Corporation had designated a nominee to accept the transfer of the Sessola Holding Share, the nominee paying the required amounts under the Venice Purchase Agreement [cl 2.1(b)(ii)];
  - (iii) Luxuria IT making payments under the Venice Purchase Agreement if Chiodo Corporation defaulted on its own obligations under the Venice Purchase Agreement [cl 2.1(b)(iii)]; and
  - (iv) where Chiodo Corporation or its nominee had nominated any direct or indirect parent company of the nominee as an additional Borrower under the agreement pursuant to cl 12, the additional Borrower could use the proceeds to provide the nominee with sufficient capital to meet its payment obligations under the Venice Purchase Agreement [cl 2.1(c)];
- (f) despite anything else in the agreement, Keystone atf the ADPF was not required to lend any money to the Borrowers until and unless it had received such additional documentation as Keystone atf the ADPF reasonably considered necessary for a long-term loan facility which was provided to achieve one or more of the Permitted Purposes, including, without limitation, requiring security from the Borrowers or their related entities [cls 3.2 and 3.5];
- (g) Chiodo Corporation agreed to pay Keystone atf the ADPF interest on amounts not repaid at:
  - (i) 20% p.a. until the date satisfactory documentation was entered into under cl 3.5; and
  - (ii) thereafter 'such lesser rate as is reasonable (in the opinion of the Lender) having regard to the risk profile of the financing under this agreement',

[cl 4].

### ***B.12.3 The Venice Loan (Earnest Money) Agreement***

- 87. On 21 December 2023, Keystone atf the ADPF entered into a written loan agreement with Chiodo Corporation (**Venice Loan (Earnest Money) Agreement**) [KSS.0013.0005.1127]. The Venice Loan (Purchase Money Agreement and the Venice Loan (Earnest Money) Agreement are referred to together as the **Venice Loan Agreements**).
- 88. The Venice Loan (Earnest Money) Agreement was executed by:

- (a) Yorston as director of Keystone atf the ADFP; and
  - (b) Chiodo as director of Chiodo Corporation.
89. Prior to the execution of the Venice Loan (Earnest Money) Agreement, Yorston, Chiodo and Frolov unanimously resolved to authorise Yorston to sign the agreement on behalf of Keystone atf the ADFP.

**Particulars**

Minutes of the 21 December 2023 Meeting of Directors of Keystone [KSS.0224.0101.0001].

90. There were express terms of the Venice Loan (Earnest Money) Agreement, including to the effect that:
- (a) Keystone atf the ADFP agreed to lend Chiodo Corporation the Earnest Money as a single borrowing [cl 2.1];
  - (b) Chiodo Corporation agreed to use the loan amount only for the purpose of making payment of the Earnest Money in accordance with cl 3.3 of the Venice Purchase Agreement [cl 2.4];
  - (c) despite anything else in the agreement, Keystone atf the ADFP was not required to lend any money to Chiodo Corporation until and unless it had received such additional documentation as the Keystone atf the ADFP reasonably considered necessary for a long-term loan facility which is provided to fund payment of the Earnest Money, including, without limitation, requiring security from Chiodo Corporation or their related entities [cls 2.2(a) and 2.5(a)];
  - (d) Chiodo Corporation agreed to pay Keystone atf the ADFP interest on amounts not repaid at:
    - (i) 17.5% p.a. until the date satisfactory documentation was entered into under cl 2.5; and
    - (ii) thereafter 'such lesser rate as is reasonable (in the opinion of the Lender) having regard to the risk profile of the financing under this agreement',
- [cl 3].

**B.12.4 The Venice Side Letter**

91. On or around 28 February 2024, Chiodo Corporation, Luxuria IT, Poseidon Luxury and Aareal entered into a written side letter agreement to the Venice Purchase Agreement (**Venice Side Letter**) [KSS.0013.0008.1207], [KAM.1001.0001.3820].
92. The Venice Side Letter was executed by, among others:
- (a) Chiodo as sole director and sole company secretary of Chiodo Corporation;
  - (b) Chiodo as manager for and on behalf of Luxuria IT;

(c) Chiodo as a director of Poseidon Luxury.

93. The Venice Side Letter included express recitals and terms to the effect that:

- (a) the Closing Date provided for by cl 4.2 of the Venice Purchase Agreement was extended to no later than 29 March 2024 [cl 7.1(d)(ii)]; and
- (b) further to cl 11.1(d) of the Venice Purchase Agreement, Chiodo Corporation nominated Poseidon Luxury as its Nominee under the Venice Purchase Agreement and to be the transferee of the Sessola Holding Share under the Venice Purchase Agreement [Recital B; cl 9.1].

## **B.13 Transfers of funds**

### ***B.13.1 The SMF-ADPF Payments***

94. In the period from 11 April 2022 to 27 May 2024, Keystone in its capacity as RE of the SMF made payments totalling \$304,948,415.85 from bank accounts held by the SMF to a bank account held by Keystone in its capacity atf the ADPF, for the purchase of units in the ADPF (together, the **SMF-ADPF Payments**).

#### **Particulars**

The bank accounts held by the SMF, for which Certane was custodian, had account numbers ending in:

- a) 2759 (SMF High Growth Account);
- b) 1345 (SMF Growth Account);
- c) 1361 (SMF Balanced Account); and
- d) 1396 (SMF Conservative Account).

The bank account held by Keystone in its capacity atf the ADPF had an account number ending in 3679 (**ADPF Bank Account**).

95. Each of the SMF-ADPF Payments was authorised by:

- (a) in the period from 11 April 2022 to 29 December 2023: Chiodo and Frolov; and
- (b) in the period from 2 January 2024 to 27 May 2024: Chiodo and Yorston.

#### **Particulars**

- In the period from 11 April 2022 to 27 May 2024, Chiodo signed every Instruction Form authorising a transfer from bank accounts held by the SMF to the ADPF Bank Account.
- In the period from 11 April 2022 to 29 December 2023, Frolov signed every Instruction Form authorising a transfer from bank accounts held by the SMF to the ADPF Bank Account.
- In the period from 5 January 2024 to 27 May 2024, Yorston signed every Instruction Form authorising a transfer from bank accounts held by the SMF to the ADPF Bank Account.

96. In the period from 11 April 2022 to 27 May 2024, more than 99% of the funds received by the ADPF were the result of the SMF-ADPF Payments.
97. In the period from 11 April 2022 to 27 May 2024, the SMF acquired a total of 251,312,029.66 units in the ADPF.

### ***B.13.2 The Chiodo Corporation Payments***

98. In the period from 11 April 2022 to 27 May 2024, Keystone in its capacity as trustee for the ADPF made payments totalling \$303,003,496.72 from the ADPF Bank Account to bank accounts held by Chiodo Corporation (together, the **Chiodo Corporation Payments**).

#### **Particulars**

The bank accounts held by Chiodo Corporation had account numbers ending in 6970 and 2882 (together, the **Chiodo Corporation Accounts**).

99. Each of the Chiodo Corporation Payments was authorised by:
- (a) in the period from 11 April 2022 to 17 July 2023, on 10 October 2023, and in the period from 23 December 2023 to 27 May 2024: Chiodo; and
- (b) in the period from 18 July 2023 to 22 December 2023 (except for one transaction on 10 October 2023): Frolov.

#### **Particulars**

Chiodo made each of the Chiodo Corporation Payments that occurred in the period from 11 April 2022 to 17 July 2023, on 10 October 2023, and in the period from 23 December 2023 to 27 May 2024.

Frolov made each of the Chiodo Corporation Payments that occurred in the period from 18 July 2023 to 22 December 2023 (except for one transaction on 10 October 2023).

100. In the period from 11 April 2022 to 27 May 2024:
- (a) all amounts received in the Chiodo Corporation Account ending in 2882 came from the ADPF Bank Account; and
- (b) of the amounts received in the Chiodo Corporation Account ending in 6970:
- (i) approximately 85% came from the ADPF Bank Account;
- (ii) approximately 3% came from the Chiodo Corporation Account ending in 2882; and
- (iii) approximately 9% came from the ATO.
101. In the period from 11 April 2022 to 27 May 2024, Keystone recorded the Chiodo Corporation Payments in the general ledger for the ADPF (**ADPF General Ledger**) as amounts drawn down under the Loan Agreements.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024  
[KSS.0071.0002.0005].

102. In the period from 11 April 2022 to 27 May 2024, the total amount recorded in the ADPF General Ledger as having been drawn down under the:
- (a) Davidson Loan Agreement was \$1,591,656.08;
  - (b) Port Douglas Road Loan Agreement was \$148,230,354.77;
  - (c) Augustine Terrace Loan Agreement was \$2,039,600.39;
  - (d) Nicholson Street Loan Agreement was \$7,716,184.56;
  - (e) Norwood Ponds Loan Agreement was \$16,975,553.49;
  - (f) Red Hill Loan Agreement was \$2,960,170.16;
  - (g) Warrigal Road Loan Agreement was \$1,704,092.92;
  - (h) Fiji Loan Agreement was \$76,576,935.42;
  - (i) K’Gari Loan Agreement was \$3,251,522.58;
  - (j) Bellmere Road Loan Agreement was \$1,681,631.05; and
  - (k) Venice Loan Agreements was \$29,583,819.25.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024  
[KSS.0071.0002.0005].

**B.13.3 Payments to third parties**

*Filippini Payments*

103. In the period from 11 April 2022 to 27 May 2024, Chiodo Corporation made payments totalling \$154,998,382.53 from the Chiodo Corporation Accounts to bank accounts held by City Built Pty Ltd (**City Built**) and Robert Filippini (together, the **Filippini Payments**).

**Particulars**

Particulars of the Filippini Payments will be provided in a separate schedule.

104. From 21 July 2014, Robert Filippini has been the sole director and shareholder of City Built.
105. Each of the Filippini Payments was authorised by Chiodo.

**Particulars**

From 29 March 2016 to 25 March 2024, Chiodo was the only signatory to the Chiodo Corporation Accounts. From 26 March 2024: Chiodo remained the only signatory to the Chiodo Corporation Account ending in 2882; and Chiodo made each of the Filippini

Payments. [KSS.0028.0001.1567] [KSS.0028.0001.1563] [KSS.0737.0001.0007]  
[KSS.0737.0001.0005].

#### *Lead Generator Payments*

106. In the period from 12 April 2022 to 8 December 2023, Chiodo Corporation made payments totalling \$64,920,788.03 from the Chiodo Corporation Accounts to lead generators (together, the **Lead Generator Payments**).

#### **Particulars**

Lead generators were entities providing services directed to the generation of referrals to financial advisers who could give financial product advice inter alia involving the recommendation of the SMF.

Particulars of the Lead Generator Payments will be provided in a separate schedule.

107. Each of the Lead Generator Payments was authorised by Chiodo.

#### **Particulars**

From 29 March 2016 to 25 March 2024 Chiodo was the only signatory to the Chiodo Corporation Accounts. [KSS.0028.0001.1567] [KSS.0028.0001.1563]  
[KSS.0737.0001.0007] [KSS.0737.0001.0005].

#### *Malana Payments*

108. In the period from 9 May 2022 to 21 December 2023, Chiodo Corporation made payments totalling \$5,649,512 from the Chiodo Corporation Accounts to Malana Management (**Malana Payments**).

#### **Particulars**

Particulars of the Malana Payments will be provided in a separate schedule.

109. Each of the Malana Payments was authorised by Chiodo.

#### **Particulars**

From 29 March 2016 to 25 March 2024, Chiodo was the only signatory to the Chiodo Corporation Accounts. [KSS.0028.0001.1567] [KSS.0028.0001.1563]  
[KSS.0737.0001.0007] [KSS.0737.0001.0005].

#### *Marsi Payments*

110. In the period from 26 August 2022 to 21 December 2023, Chiodo Corporation made payments totalling \$7,984,000 from the Chiodo Corporation Accounts to Marsi Group Pty Ltd (**Marsi Payments**).

#### **Particulars**

Particulars of the Marsi Payments will be provided in a separate schedule.

111. Each of the Marsi Payments was authorised by Chiodo.

**Particulars**

From 29 March 2016 to 25 March 2024, Chiodo was the only signatory to the Chiodo Corporation Accounts. [KSS.0028.0001.1567] [KSS.0028.0001.1563] [KSS.0737.0001.0007] [KSS.0737.0001.0005].

*24Calibre Payments*

112. In the period from 21 March 2023 to 13 February 2024, Chiodo Corporation made payments totalling \$2,958,000.00 from the Chiodo Corporation Accounts to 24Calibre.

**Particulars**

Particulars of these payments will be provided in a separate schedule.

113. In the period from 2 December 2022 to 20 July 2023, Chiodo Corporation made payments totalling \$3,324,787.59 from the Chiodo Corporation Accounts to third parties on behalf of, or in respect of liabilities of, 24Calibre.

**Particulars**

Particulars of these payments will be provided in a separate schedule.

114. Each of the payments referred to in paragraphs 112 and 113 above, totalling \$6,282,787.59 (together, the **24Calibre Payments**), was authorised by Chiodo.

**Particulars**

From 29 March 2016 to 25 March 2024, Chiodo was the only signatory to the Chiodo Corporation Accounts. [KSS.0028.0001.1567] [KSS.0028.0001.1563] [KSS.0737.0001.0007] [KSS.0737.0001.0005].

*Queens Road Property*

115. On 13 July 2023, 17A/29 Queens Road, Melbourne (**Queens Road Property**) was sold for \$4,500,000.
116. On 17 July 2023, Chiodo Corporation paid \$450,000 from the Chiodo Corporation Account ending 6970 in respect of the purchase of the Queens Road Property.

**Particulars**

The transaction description for the payment was 'WITHDRAWAL-OSKO PAYMENT 1962152 RT Edgar 17A/29 Queens Road, Melbourne 17A/29 Queens Road, Melbourne 15 JUL 2023'. [KSS.0010.0002.0276].

117. On 20 December 2023, Chiodo Corporation paid \$4,365,857.48 from the Chiodo Corporation Account ending 6970 in respect of the purchase of the Queens Road Property.

**Particulars**

The transaction description for the payment was 'WITHDRAWAL-OSKO PAYMENT 1630954 Genesis Law Trust Account Paul Chiodo Paul Chiodo'. [KSS.0012.0001.0023].

The conveyancer for the purchase of the Queens Road Property was Genesis Law Pty Ltd. [KSS.0003.0002.0465], [KSS.0003.0002.0467], [KSS.0003.0002.0469].

118. Each of the payments referred to in paragraphs 116 and 117 above (together, the **Queens Road Property Payments**), was authorised by Chiodo.

**Particulars**

From 29 March 2016 to 25 March 2024, Chiodo was the only signatory to the Chiodo Corporation Accounts. [KSS.0028.0001.1567] [KSS.0028.0001.1563] [KSS.0737.0001.0007] [KSS.0737.0001.0005].

*Global Aquatica Payments*

119. In the period from 10 January 2024 to 14 May 2024, Chiodo Corporation made payments totalling \$1,750,000 from the Chiodo Corporation Accounts to Global Aquatica Pty Ltd (the **Global Aquatica Payments**).

**Particulars**

Particulars of the Global Aquatica Payments will be provided in a separate schedule.

120. Each of the Global Aquatica Payments was authorised by Chiodo.

**Particulars**

From 29 March 2016 to 25 March 2024, Chiodo was the only signatory to the Chiodo Corporation Accounts. From 26 March 2024: Chiodo remained the only signatory to the Chiodo Corporation Account ending in 2882; and Chiodo made each of the Global Aquatica Payments. [KSS.0028.0001.1567] [KSS.0028.0001.1563] [KSS.0737.0001.0007] [KSS.0737.0001.0005].

**B.14 The Reconciliation Agreement**

121. On 18 June 2024, Keystone atf the ADPF, Chiodo, Chiodo Corporation and the SPVs (save for 417 Bellmere Road Pty Ltd) entered into a written Development Management Fees Reconciliation Agreement (**Reconciliation Agreement**) [KSS.0070.0001.0006].

122. The Reconciliation Agreement was executed by:

- (a) Chiodo in his personal capacity;
- (b) Chiodo in his capacity as the sole director and company secretary of Chiodo Corporation;
- (c) Chiodo in his capacity as the sole director and company secretary of 33 Davidson Port Douglas Pty Ltd;
- (d) Chiodo in his capacity as the sole director and company secretary of 75 Port Douglas Road Pty Ltd;
- (e) Chiodo in his capacity as the sole director and company secretary of Augustine Terrace Glenroy Pty Ltd;
- (f) Chiodo in his capacity as a director of Chiodo K'Gari Pty Ltd;

- (g) Chiodo in his capacity as the sole director and company secretary of Nicholson Street Bentleigh Pty Ltd;
- (h) Chiodo in his capacity as the sole director and company secretary of Norwood Ponds (Land) Pty Ltd;
- (i) Chiodo in his capacity as the sole director and company secretary of Red Hill Terraces (Land) Pty Ltd;
- (j) Chiodo in his capacity as the sole director and company secretary of Warrigal Road Ashburton Pty Ltd;
- (k) Chiodo in his capacity as a director of Luxurious Resort (Fiji) Pte Limited;
- (l) Yorston in his capacity as a director of Keystone atf the ADPF; and
- (m) Louis Kortesis in his capacity as a director of Keystone atf the ADPF.

123. There were express terms of the Reconciliation Agreement, including to the effect that:

- (a) each of:
  - (i) 33 Davidson Port Douglas Pty Ltd, 75 Port Douglas Road Pty Ltd, Augustine Terrace Glenroy Pty Ltd, Chiodo K’Gari Pty Ltd, Nicholson Street Bentleigh Pty Ltd, Norwood Ponds (Land) Pty Ltd, Red Hill Terraces (Land) Pty Ltd, Warrigal Road Ashburton Pty Ltd and Luxurious Resort (Fiji) Pte Limited, as borrowers pursuant to the ADPF Loan Agreements;
  - (ii) Keystone atf the ADPF; and
  - (iii) Chiodo Corporation,

agreed that pursuant to the terms of the Chiodo Development Management Agreement, Chiodo Corporation was entitled to payment of the Development Management Fees as at 29 February 2024 in the amount of \$15,580,000 (**Payable Development Management Fees**) [cl 2.1];
- (b) Chiodo Corporation acknowledged and agreed that the Development Management Fees which had been drawn by the Chiodo Corporation as at the date of the agreement in respect of the each of the projects by way of the use of funds in Chiodo Corporation’s bank account from time to time for Chiodo Corporation’s own purposes or the personal use of Chiodo was as follows:
  - (i) Chiodo personal expenses: \$6,650,449;
  - (ii) Chiodo Corporation costs: \$802,800,

(**Drawn Development Management Fees**) [cl 2.2]; and
- (c) the parties acknowledged and agreed that Chiodo Corporation had applied the Drawn Development Management Fees in partial discharge of the Payable Development Management Fees [cl 2.3].

## C. AGREEMENTS AND TRANSACTIONS CONTRAVENTIONS

### C.1 Issues

#### C.1.1 *The ADPF Loan Agreements*

124. Prior to the execution of each ADPF Loan Agreement, Keystone atf the ADPF did not request, obtain and consider, in respect of the development project the subject of the loan any, or any recent and adequate:

- (a) project programme (being a programme prepared for the execution of a project that includes setting out in detail the sequence and duration of the approvals, design and construction phases of each stage of the project);
- (b) feasibility (meaning the technical, physical and financial analysis in relation to the design and construction and operation of the project);
- (c) project budget (being a detailed budget of project costs required to implement each part of the project programme – where project costs means the aggregate of all costs, expenses, outgoings, losses and liabilities incurred in connection with a project accounted for in accordance with generally accepted accounting principles in Australia);
- (d) contracts with third parties as to the design and construction of the project;
- (e) risk analysis as to:
  - (i) planning and approvals;
  - (ii) delivery risks such as builder failure and costs overruns; and
  - (iii) counterparty risks such as builder solvency,

whether as required by cl 8(a) of the Chiodo Development Management Agreement (referred to in paragraph 73(k) above), or otherwise.

125. Further or alternatively, prior to and upon the execution of each ADPF Loan Agreement, Keystone atf the ADPF did not:

- (a) receive and register the securities referred to in paragraphs 70(h) and 78 above;
- (b) consider or adequately consider:
  - (i) the recoverability of funds lent pursuant to the applicable ADPF Loan Agreement;
  - (ii) the value and ranking of the applicable securities as referred to in paragraphs 63, 64, 70(h) and 78 above.

126. Further or alternatively, each ADPF Loan Agreement was:

- (a) not at arm's length; and/or
- (b) not on commercial terms.

### Particulars

- The parties to each ADPF Loan Agreements were:
  - related entities within the meaning of s 9 of the Corporations Act; and
  - related parties within the meaning of s 228 of the Corporations Act.
- The parties to each ADPF Loan Agreement did not act severally and independently in forming the agreement.
- ASIC refers to and repeats paragraphs 124-125 above.
- The Loan Amount was defined as ‘Ongoing until Development is complete’.
- As to security:
  - there was only an optional condition precedent that the SPV borrower provide security before Keystone atf the ADPF advanced loan proceeds; and
  - Keystone atf the ADPF had not determined to require that the SPV borrower provide security before Keystone atf the ADPF advanced loan proceeds.
- There was no effective requirement that the SPV borrower:
  - pay accrued interest; or
  - repay the principal,

where ‘until Development is complete’ and ‘Development Completion’ were not defined.
- There was no relevantly effective ‘Event of Default’ provision.
- In view of the matters referred to above, the rate of interest was inadequate.

127. In the premises pleaded in paragraphs 124-126 above, each ADPF Loan Agreement directly or indirectly conferred an advantage on the applicable SPV, Chiodo Corporation, Chiodo Operations and/or Chiodo.

128. In the premises pleaded in paragraphs 124-127 above, the execution of each ADPF Loan Agreement was detrimental to and/or was not in the best interests of:

- (a) unit holders in the ADPF;
- (b) members of the SMF, where the SMF held units in the ADPF; and/or
- (c) Keystone.

### Particulars

The matters referred to:

- exposed the ADPF to unreasonable risks as to the delivery and quality of the projects, an open-ended liability to lend funds, and significant risks of non-recovery of lent funds, jeopardising and/or diminishing the Net Asset Value (**NAV**) of units in the ADPF;

- where the SMF held units in the ADPF, jeopardised and/or diminished the NAV of units in the SMF by exposing the SMF to the ADPF's exposure as referred to above.

By reason of the matters referred to:

- Keystone atf the ADPF was thereby exposed to a risk of liability for breaches of general law duties of care, diligence, best interests and the avoidance of conflicts.
- Keystone as RE of the SMF was thereby exposed to a risk of civil penalties and/or liability in respect of breaches of s 601FC(1)(b) and/or (c) of the Corporations Act.

### **C.1.2 The Chiodo Development Management Agreement**

129. Prior to the execution of the Chiodo Development Management Agreement, Keystone atf the ADPF did not request, and consider, in respect of the Development Services (as defined in paragraph 73(d) above), any, or any recent and adequate:

- tender process;
- analysis of alternative providers of Development Services;
- counterparty credentials; and
- counterparty risk analysis.

130. Further or alternatively, the Chiodo Development Management Agreement was:

- not arm's length; and/or
- not on commercial terms.

#### **Particulars**

- The parties to the Chiodo Development Management Agreement were:
  - related entities within the meaning of s 9 of the Corporations Act; and
  - related parties within the meaning of s 228 of the Corporations Act.
- The parties to the Chiodo Development Management Agreement did not act severally and independently in forming the agreement.
- ASIC refers to and repeats paragraph 129 above.
- The Development Services Fee, of 3.75% (plus GST) of the 'gross realisation value and [sic] each project', payable monthly, was excessive and/or unreasonable in that:
  - gross realisation value was not defined;
  - monthly payability assumed a final gross realisation value; and
  - monthly payability was not conditional on any progress, or completion, of each project.

131. In the premises pleaded in paragraphs 129-130 above, the Chiodo Development Management Agreement directly or indirectly conferred an advantage on Chiodo Corporation, Chiodo Operations and/or Chiodo.

132. In the premises pleaded in paragraphs 129-131 above, the execution of the Chiodo Development Management Agreement was detrimental to and/or was not in the best interests of:

- (a) unit holders in the ADPF;
- (b) members of the SMF, where the SMF held units in the ADPF; and/or
- (c) Keystone.

#### **Particulars**

The matters referred to:

- exposed Keystone atf the ADPF to:
  - unreasonable risks in respect of pricing, delivery and quality of the Development Services; and
  - a liability to pay the Development Services Fee, on a monthly basis, despite the gross realisation value being indeterminate, and irrespective of the progress of each project,

thereby also exposing the ADPF to Keystone's rights of indemnity and jeopardising and/or diminishing the NAV of units in the ADPF;
- where the SMF held units in the ADPF, jeopardised and/or diminished the NAV of units in the SMF by exposing the SMF to the ADPF's exposure as referred to above.

By reason of the matters referred to:

- Keystone atf the ADPF was thereby exposed to a risk of liability for breaches of general law duties of care, diligence, best interests and the avoidance of conflicts.
- Keystone as RE of the SMF was thereby exposed to a risk of civil penalties and/or liability in respect of breaches of s 601FC(1)(b) and/or (c) of the Corporations Act.

#### **C.1.3 The Venice Loan Agreements**

133. Prior to the execution of each Venice Loan Agreement, Keystone atf the ADPF did not request, obtain and consider, in respect of the property and business the subject of the loan any, or any recent and adequate:

- (a) feasibility (relevantly meaning the technical, physical and financial analysis in relation to the operation of the project);
- (b) project budget (being a detailed budget of project costs required to implement each part of the project programme – where project costs means the aggregate of all costs, expenses, outgoings, losses and liabilities incurred in connection with a project accounted for in accordance with generally accepted accounting principles in Australia);
- (c) market analysis; and
- (d) counterparty credentials;

whether as required by cl 8(a) of the Chiodo Development Management Agreement (referred to in paragraph 73(k) above), or otherwise.

134. Further or alternatively, prior to and upon the execution of each Venice Loan Agreement, Keystone atf the ADPF did not:
- (a) receive and register the securities referred to in paragraphs 86(f) and 90(c) above;
  - (b) consider or adequately consider:
    - (i) the terms of the Venice Purchase Agreement as referred to in paragraph 82 above;
    - (ii) the recoverability of funds lent pursuant to the Venice Loan Agreements; and
    - (iii) the value and availability of any applicable security.
135. Further or alternatively, each Venice Loan Agreement was:
- (a) not at arm's length; and/or
  - (b) not on commercial terms.

#### **Particulars**

- The parties to each Venice Loan Agreement were:
  - related entities within the meaning of s 9 of the Corporations Act; and
  - related parties within the meaning of s 228 of the Corporations Act.
- The parties to each Venice Loan Agreement did not act severally and independently in forming the agreement.
- ASIC refers to and repeats paragraphs 133-134 above.
- The Loan Amounts were as referred to in paragraphs 86(b) and 90(a) (with 82(g)) above.
- In respect of the Venice Loan (Purchase Money) Agreement, the recoverability of funds advanced would be adversely affected by the Permitted Purposes (which allowed for the designation of a nominee purchaser).
- As to security:
  - there was only an optional condition precedent that the borrower or borrowers provide security before Keystone atf the ADPF advanced loan proceeds; and
  - Keystone atf the ADPF had not determined to require that the borrower or borrowers provide security before Keystone atf the ADPF advanced loan proceeds.
- In view of the matters referred to above, the rates of interest were inadequate.

136. In the premises pleaded in paragraphs 133-135 above, each Venice Loan Agreement directly or indirectly conferred an advantage on Luxuria IT, Chiodo Corporation and/or Chiodo.
137. In the premises pleaded in paragraphs 133-136 above, the execution of each Venice Loan Agreement was detrimental to and/or was not in the best interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

#### **Particulars**

The matters referred to:

- exposed the ADPF to unreasonable risks in respect of the purchase and the viability of the business, an open-ended liability to lend funds, and significant risks of non-recovery of lent funds, jeopardising and/or diminishing the NAV of units in the ADPF;
- where the SMF held units in the ADPF, jeopardised and/or diminished the NAV of units in the SMF by exposing the SMF to the ADPF's exposure as referred to above.

By reason of the matters referred to:

- Keystone atf the ADPF was thereby exposed to a risk of liability for breaches of general law duties of care, diligence, best interests and the avoidance of conflicts.
- Keystone as RE of the SMF was thereby exposed to a risk of civil penalties and/or liability in respect of breaches of s 601FC(1)(b) and/or (c) of the Corporations Act.

#### **C.1.4 The Venice Side Letter**

138. By nominating Poseidon Luxury as the Nominee purchaser for the purposes of the Venice Purchase Agreement, the Venice Side Letter adversely affected the ability of Keystone atf the ADPF, as lender pursuant to the Venice Loan Agreements, to recover funds lent to Chiodo Corporation and Luxuria IT pursuant to those loan agreements.
139. In the premises pleaded in paragraphs 133-138 above, the execution of the Venice Side Letter was detrimental to and/or was not in the best interests of:
- (a) unit holders in the ADPF; and/or
  - (b) members of the SMF, where the SMF held units in the ADPF.

#### **Particulars**

The matters referred to:

- exposed the ADPF to unreasonable risks as to the purchase, and significant risks of non-recovery of lent funds, jeopardising and/or diminishing the NAV of units in the ADPF;

- where the SMF held units in the ADPF, jeopardised and/or diminished the NAV of units in the SMF by exposing the SMF to the ADPF's exposure as referred to above.

### **C.1.5 Transfers of funds**

#### *Lack of analysis*

140. In the period from 6 April 2022 to 27 May 2024, Keystone did not produce or receive, and the directors of Keystone did not consider any, or any adequate, analysis of:
- (a) the likely returns to the SMF associated with the acquisition of units in the ADPF; or
  - (b) the likely risks to the SMF associated with the acquisition of units in the ADPF.

#### *Lack of security*

141. Prior to February 2024, Keystone did not register any mortgage or other security interest pursuant to any of the ADPF Loan Agreements.
142. Prior to 27 May 2024, Keystone did not register any mortgage or other security interest pursuant to the Venice Loan Agreements.

#### *Lack of interest payments*

143. Prior to 27 May 2024, Keystone did not receive any payment of interest pursuant to any of the ADPF Loan Agreements.
144. Prior to 27 May 2024, Keystone did not receive any payment of interest pursuant to the Venice Loan Agreements.

#### *Filippini Payments*

145. In the period from 11 April 2022 to 27 May 2024, there were no written contracts between Chiodo Corporation and City Built or Robert Filippini with respect to any of the ADPF Developments.
146. In the period from 11 April 2022 to 27 May 2024, City Built was not required to and did not in fact submit any tenders or quotes for any work it undertook (or purported to undertake) on the ADPF Developments.
147. In the period from 11 April 2022 to 27 May 2024, City Built did not adequately itemise or substantiate its invoices to Chiodo Corporation in respect of work it undertook (or purported to undertake) on the ADPF Developments.

### **Particulars**

ASIC refers to the following examples:

- Email from City Built to Chiodo on 16 August 2022 enclosing Invoice-5544 and a bundle of underlying invoices and/or receipts [KAM.1000.0043.8072]. Invoice-5544 issued to Chiodo Corporation was purportedly for the Nicholson Street Development, with an invoice amount of \$170,590.00 [KAM.1000.0043.8095]. The bundle included invoices for \$25,531.00 and \$3,608.00 for works unrelated to the

ADPF Developments, and appeared to relate to a property at 143 Canterbury Road, Toorak VIC 3142 (**Toorak Property**).

- Email from City Built to Chiodo on 31 August 2023 enclosing Invoice-6072 and a bundle of underlying invoices and/or receipts [KAM.1000.0042.6821]. City Built Invoice-6072 issued to Chiodo Corporation was purportedly for the Norwood Ponds Development, with an invoice amount of \$461,515.00 [KAM.1000.0042.6848]. The bundle included an invoice for \$262,983.09 for works unrelated to the ADPF Developments, and appeared to relate to the Toorak Property.
- Email from City Built to Chiodo on 25 October 2023 enclosing Invoice-6172 and a bundle of underlying invoices and/or receipts [KAM.1000.0042.5260]. City Built Invoice-6172 issued to Chiodo Corporation was purportedly for the Augustine Terrace Development, with an invoice amount of \$420,287.00 [KAM.1000.0042.5275]. The total value of the invoices and/or receipts in the bundle was \$311,998.28 [KAM.1000.0042.5262]. The bundle included invoices for work that did not relate to any of the ADPF Developments and instead appeared to relate to Chiodo's residential property. The bundle also included various invoices with no descriptions of goods/services nor details of the vendor.
- Email from City Built to Chiodo on 26 October 2023 enclosing Invoice-6173 and a bundle of underlying invoices and/or receipts [KAM.1000.0042.5243]. City Built Invoice-6173 issued to Chiodo Corporation was purportedly for the Norwood Ponds Development, with an invoice amount of for \$231,163.00 [KAM.1000.0042.5257]. The total value of the invoices and/or receipts in the bundle was \$174,897.29 [KAM.1000.0042.5245]. The bundle included an invoice for works that did not relate to any of the ADPF Developments and instead related to the Toorak Property. The bundle also included invoices with no description of any goods or services, nor details of the vendor.
- Email from City Built to Chiodo on 21 February 2024 enclosing Invoice-6346 [KAM.1000.0042.1788]. City Built Invoice-6346 issued to Chiodo Corporation dated 21 February 2024, purportedly for the 33 Davidson Development, with an invoice amount of \$426,932.00 [KAM.1000.0042.1790]. No supporting invoices or receipts were enclosed.

Further particulars may be provided prior to trial.

148. Robert Filippini did not hold a building licence until 29 May 2024.

149. In respect of the Davidson Street Development:

- (a) in the period from about April 2017 to about March 2024, Chiodo received or created estimates for the construction costs that ranged from \$3.5 million to approximately \$4 million;

#### **Particulars**

Feasibility studies dated 4 April 2017 [KAM.1017.0001.0001], 21 March 2024 [KAM.1021.0001.0430].

Independent market valuation dated 14 June 2019 [KAM.1017.0001.1305].

- (b) in the period from 11 April 2022 to 27 May 2024, payments totalling approximately \$21.67 million were made from the Chiodo Corporation Accounts to bank accounts held by City Built or Filippini;

**Particulars**

Payments totalling this amount were identified in emails sent by Robert Filippini to Chiodo as being attributable to the Davidson Street Development.

- (c) in the period from 11 April 2022 to 27 May 2024, payments totalling \$150,000.00 were recorded in the ADPF General Ledger as having been drawn down under the Davidson Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024 [KSS.0071.0002.0005].

150. In respect of the Port Douglas Road Development, in the period from 11 April 2022 to 27 May 2024:

- (a) no development approval was obtained;
- (b) there was no construction;
- (c) payments totalling approximately \$4.14 million were made from the Chiodo Corporation Accounts to bank accounts held by City Built or Filippini;

**Particulars**

Payments totalling this amount were identified in emails sent by Robert Filippini to Chiodo as being attributable to the Port Douglas Road Development.

- (d) payments totalling \$40,067,933.06 were recorded in the ADPF General Ledger as having been drawn down under the Port Douglas Road Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024 [KSS.0071.0002.0005].

151. In respect of the Augustine Terrace Development:

- (a) in about September 2018, Chiodo received or created an estimate for the construction costs of approximately \$1.5 million;

**Particulars**

Feasibility study dated 17 September 2018 [KAM.1017.0001.2997].

- (b) in the period from 11 April 2022 to 27 May 2024, payments totalling approximately \$13.15 million were made from the Chiodo Corporation Accounts to bank accounts held by City Built or Filippini.

**Particulars**

Payments totalling this amount were identified in emails sent by Robert Filippini to Chiodo as being attributable to the Augustine Terrace Development.

152. In respect of the Nicholson Street Development:

- (a) in the period from about March 2022 to about March 2024, Chiodo received or created estimates for the construction costs that ranged from approximately to approximately \$6 million to \$9 million;

**Particulars**

ASIC refers to:

- Progress assessment reports dated 10 March 2022 [KAM.1000.0041.9177]; 11 April 2022 [KAM.1000.0031.2155], 17 June 2022 [KAM.1000.0028.9790]; 15 July 2022 [KAM.1000.0028.0062]; 23 August 2022 [KAM.1000.0026.3950], 26 September 2022 [KAM.1000.0024.9897], 8 November 2022 [KAM.1000.0023.2847], 30 November 2022 [KAM.1000.0022.5310], 18 December 2022 [KAM.1000.0021.8583], 23 February 2023 [KAM.1000.0019.9226], 14 April 2023 [KAM.1000.0018.5100], 24 May 2023 [KAM.1000.0017.1307], 26 July 2023 [KAM.1000.0014.7067], 29 August 2023 [KAM.1000.0013.3486].
  - Feasibility study dated 21 March 2024 [KAM.1017.0001.2773].
- (b) in the period from 11 April 2022 to 27 May 2024, payments totalling approximately \$28.77 million were made from the Chiodo Corporation Accounts to bank accounts held by City Built or Filippini;

**Particulars**

Payments totalling this amount were identified in emails sent by Robert Filippini to Chiodo as being attributable to the Nicholson Street Development.

- (c) in the period from 11 April 2022 to 27 May 2024, payments totalling \$2,648,759.36 were recorded in the ADPF General Ledger as having been drawn down under the Nicholson Street Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024 [KSS.0071.0002.0005].

153. In respect of the Norwood Ponds Development:

- (a) in the period from about June 2022 to about March 2024, Chiodo received or created estimates for the construction costs that ranged from approximately \$5.5 million to approximately \$8.5 million;

**Particulars**

ASIC refers to:

- Quantity surveyor reports dated 19 May 2022 [KAM.1000.0029.1406], 16 June 2022 [KAM.1000.0029.0017], 18 July 2022 [KAM.1000.0027.7242], 26 August 2022 [KAM.1000.0026.1686], 30 September 2022 [KAM.1000.0023.6173], 4 November 2022 [KAM.1000.0023.3121], 9 December 2022 [KAM.1000.0021.7342], 23 December 2022 [KAM.1000.0021.5607], 21 September 2023 [KAM.1000.0011.8546].

- Feasibility studies dated 5 December 2023 [KAM.1000.0033.8106], 21 March 2024 [KAM.1021.0001.0429].

- (b) in the period from 11 April 2022 to 27 May 2024, payments totalling approximately \$36.53 million were made from the Chiodo Corporation Accounts to bank accounts held by City Built or Filippini;

**Particulars**

Payments totalling this amount were identified in emails sent by Robert Filippini to Chiodo as being attributable to the Norwood Ponds Development.

- (c) in the period from 11 April 2022 to 27 May 2024, payments totalling \$10,179,931.72 were recorded in the ADPF General Ledger as having been drawn down under the Norwood Ponds Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024 [KSS.0071.0002.0005].

154. In respect of the Warrigal Road Development:

- (a) in the period from about March 2021 to about December 2022, Chiodo received or created estimates for the construction costs that ranged from approximately \$4.5 million to \$5 million;

**Particulars**

ASIC refers to:

- Cost to complete report dated 23 March 2021 [BOW.0001.0001.0284], 5 July 2021 [BOW.0001.0001.0352], 21 July 2021 [BOW.0001.0001.0386], 3 September 2021 [BOW.0001.0001.0422], 2 December 2021 [BOW.0001.0001.0487], 2 December 2022 [BOW.0001.0001.0524].
- Feasibility study dated 17 May 2020 [KAM.1017.0001.2029].

- (b) in the period from 11 April 2022 to 27 May 2024, payments totalling approximately \$15.83 million were made from the Chiodo Corporation Accounts to bank accounts held by City Built or Filippini;

**Particulars**

Payments totalling this amount were identified in emails sent by Robert Filippini to Chiodo as being attributable to the Warrigal Road Development.

- (c) in the period from 11 April 2022 to 27 May 2024, payments totalling \$566,280.00 were recorded in the ADPF General Ledger as having been drawn down under the Warrigal Road Loan Agreement;

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024 [KSS.0071.0002.0005].

*Lack of construction*

155. In respect of the Fiji Development, in the period from 11 April 2022 to 27 May 2024:
- (a) there was no construction;
  - (b) payments totalling \$30,939,266.32 were recorded in the ADPF General Ledger as having been drawn down under the Fiji Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024 [KSS.0071.0002.0005].

156. In respect of the K’Gari Development, in the period from 11 April 2022 to 27 May 2024:
- (a) there was no construction;
  - (b) payments totalling \$723,832.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the K’Gari Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024 [KSS.0071.0002.0005].

157. In respect of the Bellmere Road Development, in the period from 11 April 2022 to 27 May 2024, there was no construction.

*Lead Generator Payments*

158. The Lead Generator Payments were made for the purpose of sourcing new investors in the SMF.

**Particulars**

The purpose is to be inferred from the following written agreements:

- Heads of Agreement between Chiodo Corporation and NOHAP Pty Ltd dated 11 April 2022 [NOH.000001] (as amended on 27 July 2022) [NOH.000278].
- Agreement between Chiodo Operations and NOHAP Pty Ltd dated 8 February 2023 [KSS.0013.0005.0019]
- Agreement between Chiodo Operations and National EQTY Partners Pty Ltd dated 1 June 2023 [KSS.0013.0005.1158]
- Agreement between Chiodo Corporation and Empire Property Group (Aust) Pty Ltd dated 6 July 2021 [KSS.0454.0045.5715]
- Agreement between Chiodo Corporation and Levitate Pty Ltd dated 23 August 2022 [KAM.1000.0025.3255]
- Agreement between Chiodo Corporation and JDX Capital Pty Ltd dated 8 February 2022 [KSS.0013.0005.0006]

159. Of the Lead Generator Payments, in the period from 11 April 2022 to 27 May 2024:

- (a) payments totalling \$650,571.93 were recorded in the ADPF General Ledger as having been drawn down under the Davidson Loan Agreement;
- (b) payments totalling \$38,314,023.47 were recorded in the ADPF General Ledger as having been drawn down under the Port Douglas Road Loan Agreement;
- (c) payments totalling \$133,942 were recorded in the ADPF General Ledger as having been drawn down under the Augustine Terrace Loan Agreement;
- (d) payments totalling \$1,379,810.80 were recorded in the ADPF General Ledger as having been drawn down under the Norwood Ponds Loan Agreement;
- (e) payments totalling \$3,711,404.23 were recorded in the ADPF General Ledger as having been drawn down under the Fiji Loan Agreement; and
- (f) payments totalling \$235,433.58 were recorded in the ADPF General Ledger as having been drawn down under the K’Gari Loan Agreement.

#### Particulars

ADPF General Ledger for the period 1 July 2021 to 26 June 2024  
[KSS.0071.0002.0005].

160. The Lead Generator Payments:

- (a) were not made for:
  - (i) an Approved Purpose under any of the ADPF Loan Agreements; or
  - (ii) a Permitted Purpose or agreed purpose under the Venice Loan Agreements; and
- (b) did not constitute bona fide:
  - (i) development costs in connection with any of the ADPF Developments; or
  - (ii) purchase costs in connection with the Venice Purchase Agreement.

#### *Malana Payments*

161. On 10 May 2019, Chiodo Corporation and Malana Management entered into a written agreement pursuant to which Malana Management agreed to provide certain advice services to Chiodo Corporation in exchange for the payment of fees (**Malana Agreement**) [KSS.0026.0002.0148].

162. Malana Management:

- (a) did not provide services under the Malana Agreement entitling it to receive the Malana Payments, or to direct Chiodo Corporation to make payments to Marsi Group; and
- (b) did not provide any other consideration to Chiodo Corporation in respect of the Malana Payments.

163. Of the Malana Payments, in the period from 11 April 2022 to 27 May 2024:

- (a) payments totalling \$3,201,300.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the Port Douglas Road Loan Agreement;
- (b) payments totalling \$220,212.14 were amounts recorded in the ADPF General Ledger as having been drawn down under the Augustine Terrace Loan Agreement;
- (c) payments totalling \$525,000.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the Norwood Ponds Loan Agreement;
- (d) payments totalling \$785,000.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the Fiji Loan Agreement; and
- (e) payments totalling \$278,000.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the K’Gari Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024.  
[KSS.0071.0002.0005].

164. The Malana Payments:

- (a) were not made for:
  - (i) an Approved Purpose under any of the ADPF Loan Agreements; or
  - (ii) a Permitted Purpose or agreed purpose under the Venice Loan Agreements; and
- (b) did not constitute bona fide:
  - (i) development costs in connection with any of the ADPF Developments; or
  - (ii) purchase costs in connection with the Venice Purchase Agreement.

*Marsi Payments*

165. Marsi Group:

- (a) did not provide any services to Chiodo Corporation in respect of the ADPF Developments or the Venice Purchase Agreement;
- (b) did not have any contractual entitlement to receive the Marsi Payments under the Malana Agreement; and
- (c) did not provide any other consideration to Chiodo Corporation in respect of the Marsi Payments.

166. Of the Marsi Payments, in the period from 11 April 2022 to 27 May 2024:

- (a) payments totalling \$280,843.49 were amounts recorded in the ADPF General Ledger as having been drawn down under the Port Douglas Road Loan Agreement;
- (b) payments totalling \$1,037,156.51 were amounts recorded in the ADPF General Ledger as having been drawn down under the Norwood Ponds Loan Agreement;
- (c) payments totalling \$6,462,000.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the Fiji Loan Agreement; and
- (d) payments totalling \$204,000.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the K’Gari Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024  
[KSS.0071.0002.0005].

167. The Marsi Payments:

- (a) were not made for:
  - (i) an Approved Purpose under any of the ADPF Loan Agreements; or
  - (ii) a Permitted Purpose or agreed purpose under the Venice Loan Agreements; and
- (b) did not constitute bona fide:
  - (i) development costs in connection with any of the ADPF Developments; or
  - (ii) purchase costs in connection with the Venice Purchase Agreement.

*24Calibre Payments*

168. 24Calibre:

- (a) did not provide any services to Chiodo Corporation in respect of the ADPF Developments or the Venice Purchase Agreement;
- (b) did not have any contractual entitlement to receive the 24Calibre Payments; and
- (c) did not provide any other consideration to Chiodo Corporation in respect of the 24Calibre Payments.

169. Of the 24Calibre Payments, in the period from 11 April 2022 to 27 May 2024:

- (a) payments totalling \$727,000.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the Port Douglas Road Loan Agreement;
- (b) payments totalling \$152,700.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the Fiji Loan Agreement; and

- (c) payments totalling \$250,000.00 were amounts recorded in the ADPF General Ledger as having been drawn down under the K’Gari Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024  
[KSS.0071.0002.0005].

170. The 24Calibre Payments:

- (a) were not made for:
- (i) an Approved Purpose under any of the ADPF Loan Agreements; or
  - (ii) a Permitted Purpose or agreed purpose under the Venice Loan Agreements; and
- (b) did not constitute bona fide:
- (i) development costs in connection with any of the ADPF Developments; or
  - (ii) purchase costs in connection with the Venice Purchase Agreement.

*Queens Road Property*

171. On 22 December 2023, Julie Chiodo was registered as registered proprietor of the Queens Road Property.

**Particulars**

Certificates of title for volume 09742 folio 253, volume 11088 folio 072, and volume 09742 folio 254. [KSS.0003.0002.0465], [KSS.0003.0002.0467], [KSS.0003.0002.0469].

172. Julie Chiodo is Chiodo’s wife.

173. The Queens Road Property Payments were made for the purpose of purchasing the Queens Road Property in the name of Julie Chiodo.

**Particulars**

ASIC refers to and repeats paragraphs 115-118 above.

174. The Queens Road Property Payments:

- (a) were not made for:
- (i) an Approved Purpose under any of the ADPF Loan Agreements; or
  - (ii) a Permitted Purpose or agreed purpose under the Venice Loan Agreements; and
- (b) did not constitute bona fide:
- (i) development costs in connection with any of the ADPF Developments; or
  - (ii) purchase costs in connection with the Venice Purchase Agreement.

*Global Aquatica Payments*

175. The Global Aquatica Payments were made by Chiodo Corporation:

- (a) on behalf of Aquatica CK; and
- (b) for the purpose of enabling Aquatica CK to acquire shares in Global Aquatica and/or to provide working capital to Global Aquatica.

**Particulars**

Share Sale Agreement between Global Aquatica, Aquatica CK and others dated 5 January 2024 [KSS.0330.0007.6926].

Share Sale Agreement between Global Aquatica, Aquatica CK and others dated 5 January 2024 [KSS.0330.0007.6976].

Share Sale Agreement between Global Aquatica, Aquatica CK and others dated 5 January 2024 [KSS.0330.0007.6833].

Loan Agreement between Aquatica CK and Global Aquatica dated 5 January 2024 [KSS.0330.0007.6809].

176. Global Aquatica's business was unrelated to the ADPF Developments and the Venice Purchase Agreement.

177. Of the Global Aquatica Payments, payments totalling \$500,000 were amounts recorded in the ADPF General Ledger as having been drawn down under the Port Douglas Road Loan Agreement.

**Particulars**

ADPF General Ledger for the period 1 July 2021 to 26 June 2024. [KSS.0071.0002.0005].

178. The Global Aquatica Payments:

- (a) were not made for:
  - (i) an Approved Purpose under any of the ADPF Loan Agreements; or
  - (ii) a Permitted Purpose or agreed purpose under the Venice Loan Agreements; and
- (b) did not constitute bona fide:
  - (i) development costs in connection with any of the ADPF Developments; or
  - (ii) purchase costs in connection with the Venice Purchase Agreement.

*Other matters*

179. In the premises pleaded in paragraphs 124-178 above, the making of each SMF-ADPF Payment was detrimental to and/or was not in the best interests of:

- (a) members of the SMF; and/or

- (b) Keystone.

**Particulars**

The matters referred to involved the transfer of funds from the SMF, without any or any commensurate benefit to the SMF, jeopardising and/or diminishing the NAV of units in the SMF.

By reason of the matters referred to, Keystone as RE of the SMF was thereby exposed to a risk of civil penalties and/or liability in respect of breaches of s 601FC(1)(b), (c) and/or (m) of the Corporations Act.

180. In the premises pleaded in paragraphs 124-178 above, the making of each Chiodo Corporation Payment was detrimental to and/or was not in the best interests of:

- (a) unit holders in the ADPF;  
 (b) members of the SMF, where the SMF held units in the ADPF; and/or  
 (c) Keystone.

**Particulars**

The matters referred to:

- involved the transfer of funds from the ADPF, without any or any commensurate benefit to the ADPF, jeopardising and/or diminishing the NAV of units in the ADPF.
- Involved the transfer of funds from the ADPF, where the SMF held units in the ADPF, without any or any commensurate benefit to the ADPF or the SMF, jeopardising and/or diminishing the NAV of units in the SMF.

By reason of the matters referred to:

- Keystone atf the ADPF was thereby exposed to a risk of liability for breaches of general law duties of care, diligence, best interests and the avoidance of conflicts.
- Keystone as RE of the SMF was thereby exposed to a risk of civil penalties and/or liability in respect of breaches of s 601FC(1)(b) and/or (c) of the Corporations Act.

181. Each of the Chiodo Corporation Payments conferred an advantage on Chiodo Corporation.

**Particulars**

Each of the Chiodo Corporation Payments was a payment made to Chiodo Corporation.

**C.1.6 The Reconciliation Agreement**

182. Prior to the execution of the Reconciliation Agreement, Keystone atf the ADPF did not have any, or any adequate, basis to conclude that:

- (a) Chiodo Corporation was entitled to payment of the 'Payable Development Management Fees' as referred to in paragraph 123(a) above;

- (b) the 'Drawn Development Management Fees' were in the amounts referred to in paragraph 123(b) above;
  - (c) Chiodo Corporation had applied the 'Drawn Development Management Fees' in partial discharge of the 'Payable Development Management Fees' as referred to in paragraph 123(c) above.
183. Further or alternatively, at the time of the execution of the Reconciliation Agreement, Chiodo Corporation was not entitled to payment of the 'Payable Development Management Fees'.

**Particulars**

ASIC refers to and repeats paragraphs 124-182 above.

Chiodo Corporation had:

- failed to provide, adequately or at all, the Developments Services pursuant to cls 2.1(b) and 3.1(a) of the Chiodo Development Management Agreement, including the requirements as referred to in paragraph 73(c)-(f) and (i) above;
- failed to provide the Project Documents as to each Project as required by cl 8(a) of the Chiodo Development Management Agreement, as referred to in paragraph 73(k) above;
- failed to provide monthly reports to Keystone atf the ADPF on the progress of each Project, as required by cl 12 of the Chiodo Development Management Agreement, as referred to in paragraph 73(m) above.

184. Further or alternatively, the Reconciliation Agreement was:

- (a) not at arm's length; and/or
- (b) not on commercial terms.

**Particulars**

- The parties to the Reconciliation Agreement were:
  - related entities within the meaning of s 9 of the Corporations Act; and
  - related parties within the meaning of s 228 of the Corporations Act.
- The parties to the Reconciliation Agreement did not act severally and independently in forming the agreement.
- ASIC refers to and repeats paragraphs 182-183 above.
- The gross realisation value for each of the projects stated in Schedule 1 Part B of the Reconciliation Agreement was unsubstantiated and/or unreasonable.

185. In the premises pleaded in paragraphs 182-184 above, the Reconciliation Agreement directly or indirectly conferred an advantage on Chiodo Corporation and/or Chiodo.

186. In the premises pleaded in paragraphs 182-185 above, the execution of the Reconciliation Agreement was detrimental to and/or was not in the best interests of:

- (a) unit holders in the ADPF;

- (b) members of the SMF, where the SMF held units in the ADFP; and/or
- (c) Keystone.

#### **Particulars**

The matters referred to:

- involved the payment, and/or an acknowledgment of a liability to make payment, of funds by Keystone atf the ADFP to Chiodo Corporation without entitlement and/or commensurate benefit, thereby exposing the ADFP to Keystone's rights of indemnity, jeopardising and/or diminishing the NAV of units in the ADFP;
- where the SMF held units in the ADFP, jeopardised and/or diminished the NAV of units in the SMF by exposing the SMF to the ADFP's exposure as referred to above.

By reason of the matters referred to:

- Keystone atf the ADFP was thereby exposed to a risk of liability for breaches of general law duties of care, diligence, best interests and the avoidance of conflicts.
- Keystone as RE of the SMF was thereby exposed to a risk of civil penalties and/or liability in respect of breaches of s 601FC(1)(b) and/or (c) of the Corporations Act.

## **C.2 Chiodo – Contraventions**

### **C.2.1 Relevant knowledge**

187. By 1 March 2022, Chiodo:

- (a) knew:
  - (i) the terms of the March 2022 ADFP Loan Agreements as pleaded in paragraph 70 above; and
  - (ii) the deficiencies in relation to the March 2022 ADFP Loan Agreements pleaded in paragraphs 124-128 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

#### **Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of Keystone and each relevant SPV; Chiodo's indirect interest in each SPV; Chiodo's execution of each of the March 2022 ADFP Loan Agreements; and Chiodo's execution each of the Secured Loan Agreements and provision of (personally or through an associated entity) guarantees applicable in the event of default under those Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

188. From on or about 6 April 2022, Chiodo:

- (a) knew:

- (i) (until about February 2024) that Keystone had not registered any mortgage or other security interest pursuant to any of the ADPF Loan Agreements; and
  - (ii) that Keystone had not received payments of interest pursuant to any of the ADPF Loan Agreements;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of Keystone and each relevant SPV; the earlier registration of mortgages or security interests pursuant to Secured Loan Agreements; Chiodo's membership of the CDPF/ADPF investment committee.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

189. From on or about 11 April 2022, Chiodo:

- (a) knew:
  - (i) Chiodo Corporation had used and/or was using amounts sourced from the SMF (via the ADPF) and/or drawn down under the ADPF Loan Agreements to make the Filippini Payments; and
  - (ii) the deficient circumstances as to the Filippini Payments, as referred to in paragraphs 145-154 above, and the further circumstances referred to in paragraphs 155-157 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of both Keystone and Chiodo Corporation; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo Corporation's role as Development Manager under the Chiodo Development Management Agreement; Chiodo having authorised each of the Filippini Payments; Chiodo having received bundles of invoices from City Built in respect of work it undertook (or purported to undertake) on the ADPF Developments; Chiodo having received or created estimates of construction costs in respect of the ADPF Developments; Chiodo having received weekly payment spreadsheets from Robert Filippini in relation to the Filippini Payments.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

190. From on or about 11 April 2022, Chiodo:

- (a) knew:

- (i) Chiodo Corporation had used and/or was using amounts sourced from the SMF (via the ADPF) and/or drawn down under the ADPF Loan Agreements to make the Lead Generator Payments; and
  - (ii) the deficient circumstances as to the Lead Generator Payments, as referred to in paragraphs 158-160 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of both Keystone and Chiodo Corporation; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo having authorised each of the Lead Generator Payments; Chiodo's execution of agreements with lead generators on behalf of Chiodo Corporation; Chiodo's execution and/or procurement of each of the ADPF Loan Agreements; Chiodo's execution of each of the Venice Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

191. From on or about 22 April 2022, Chiodo:

- (a) knew:
  - (i) Chiodo Corporation had used and/or was using amounts sourced from the SMF (via the ADPF) and/or drawn down under ADPF Loan Agreements to make the Malana Payments; and
  - (ii) the deficient circumstances as to the Malana Payments, as referred to in paragraphs 161-164 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of each of Chiodo Corporation and Malana Management; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo Corporation's role as Development Manager under the Chiodo Development Management Agreement; Chiodo's execution of the Malana Agreement; Chiodo having authorised each of the Malana Payments; Chiodo's execution and/or procurement of each of the ADPF Loan Agreements; Chiodo's execution of each of the Venice Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

192. From on or about 22 April 2022, Chiodo:

- (a) knew:

- (i) Chiodo Corporation had used and/or was using amounts sourced from the SMF (via the ADPF) and/or drawn down under ADPF Loan Agreements to make the Marsi Payments; and
- (ii) the deficient circumstances as to the Marsi Payments, as referred to in paragraphs 165-167 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of both Keystone and Chiodo Corporation; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo having authorised each of the Marsi Payments; Chiodo's execution and/or procurement of each of the ADPF Loan Agreements; Chiodo's execution of each of the Venice Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

193. From on or about 10 May 2022, Chiodo:

- (a) knew:
  - (i) the terms of the Chiodo Development Management Agreement as pleaded in paragraph 73 above; and
  - (ii) the deficiencies in relation to the Chiodo Development Management Agreement pleaded in paragraphs 129-132 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of Keystone, Chiodo Corporation, Chiodo Operations and each relevant SPV; Chiodo's execution of the Chiodo Development Management Agreement; Chiodo's membership of the CDPF/ADPF investment committee.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

194. From on or about 2 December 2022, Chiodo:

- (a) knew:
  - (i) Chiodo Corporation had used amounts sourced from the SMF (via the ADPF) and/or drawn down under the ADPF Loan Agreements to make the 24Calibre Payments; and
  - (ii) the matters pleaded in paragraphs 168-170 above;
- (b) alternatively, ought to have known of the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of both Keystone and Chiodo Corporation; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo having authorised each of the 24Calibre Payments; Chiodo's execution and/or procurement of each of the ADPF Loan Agreements; Chiodo's execution of each of the Venice Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

195. By 7 July 2023, Chiodo:

- (a) knew:
  - (i) the terms of the July 2023 ADPF Loan Agreements as pleaded in paragraph 78 above; and
  - (ii) the deficiencies in relation to the July 2023 ADPF Loan Agreements pleaded in paragraphs 124-128 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of Keystone and each relevant SPV; Chiodo's indirect interest in each relevant SPV, Chiodo Corporation and Chiodo Operations; Chiodo's execution and/or procurement of each of the July 2023 ADPF Loan Agreements; Chiodo's membership of the CDPF/ADPF investment committee.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

196. From on or about 17 July 2023, Chiodo:

- (a) knew:
  - (i) Chiodo Corporation had used amounts sourced from the SMF (via the ADPF) and/or drawn down under the ADPF Loan Agreements to make the Queens Road Property Payments; and
  - (ii) the matters pleaded in paragraphs 171-174 above;
- (b) alternatively, ought to have known of the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of both Keystone and Chiodo Corporation; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo being married to Julie Chiodo; Chiodo having authorised each of the Queens Road Property Payments; Chiodo's execution and/or procurement of each of the ADPF Loan Agreements; Chiodo's execution of each of the Venice Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

197. By 21 December 2023, Chiodo:

- (a) knew:
  - (i) the terms of the Venice Loan Agreements as pleaded in paragraphs 86 and 90 above; and
  - (ii) the deficiencies in relation to the Venice Loan Agreements pleaded in paragraphs 133-137 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

#### **Particulars**

As to (a), this can be inferred from: the Minutes of the 21 December 2023 Meeting of Directors of Keystone [KSS.0224.0101.0001]; Chiodo's position as a director of Keystone, Chiodo Corporation, Luxuria IT, and Poseidon Luxury; Chiodo's shareholding in Luxuria IT, and indirect interest in Poseidon Luxury and Chiodo Corporation; Chiodo's execution of each of the Venice Loan Agreements; Chiodo's membership of the CDPF/ADPF investment committee.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

198. From on or about 21 December 2023, Chiodo:

- (a) knew:
  - (i) that Keystone had not registered any mortgage or other security interest pursuant to the Venice Loan Agreements; and
  - (ii) that Keystone had not received payments of interest pursuant to the Venice Loan Agreements;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

#### **Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of Keystone, Chiodo Corporation, Luxuria IT, and Poseidon Luxury; unsuccessful steps taken by Keystone from in or around February 2024 to secure a form of security, including by the engagement of lawyers to prepare an unsecured convertible note.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

199. From on or about 10 January 2024, Chiodo:

- (a) knew:

- (i) Chiodo Corporation had used amounts sourced from the SMF (via the ADPF) and/or drawn down under the ADPF Loan Agreements to make the Global Aquatica Payments; and
  - (ii) the matters pleaded in paragraphs 175-178 above;
- (b) alternatively, ought to have known of the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of Keystone, Chiodo Corporation, each SPV, Luxuria IT and Poseidon Luxury; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo's execution of the share sale agreements and loan agreement referred to in the particulars to paragraph 175(b) above; Chiodo having authorised each of the Global Aquatica Payments; Chiodo's execution and/or procurement of the ADPF Loan Agreements; Chiodo's execution of each of the Venice Loan Agreements; emails between Chiodo and Louie Kortesis in relation to Global Aquatica in December 2023.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

200. By on or around 28 February 2024, Chiodo:

- (a) knew:
  - (i) the terms of the Venice Side Letter as pleaded in paragraph 93 above; and
  - (ii) the deficiencies in relation to the Venice Side Letter pleaded in paragraphs 138-139 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Chiodo's position as a director of Keystone, Chiodo Corporation, Luxuria IT and Poseidon Luxury; Chiodo's membership of the CDPF/ADPF investment committee; Chiodo's execution of the Venice Side Letter; Chiodo's execution of each of the Venice Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

**C.2.2 Chiodo – March 2022 ADPF Loan Agreements**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

201. It was reasonably foreseeable to a person in Chiodo's position as a director of Keystone that the execution of each March 2022 ADPF Loan Agreement might harm the interests of:

- (a) unit holders in the ADPF;

- (b) members of the SMF, where the SMF held units in the ADPF; and/or
- (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 11, 68-70, 124-128 and 187 above.

202. A reasonable person in Chiodo's position, if exercising care and diligence, would not have executed each March 2022 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraph 201 above and its particulars.

203. By executing each March 2022 ADPF Loan Agreement, Chiodo failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position.
204. Therefore, by executing each March 2022 ADPF Loan Agreement, Chiodo contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 181(1)*

205. Exercising his powers and discharging his duties as a director of Keystone in good faith in the best interests of Keystone and for a proper purpose required that Chiodo not execute each March 2022 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 7, 11, 68-70, 124-128, 187 and 201 above.

206. By executing each March 2022 ADPF Loan Agreement, Chiodo failed to exercise his powers and discharge his duties in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 205 above and its particulars.

207. Therefore, by executing each March 2022 ADPF Loan Agreement, Chiodo contravened s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 182(1)*

208. Each time Chiodo executed a March 2022 ADPF Loan Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 7, 11, 68-70, 124-128, 187 and 201 above.

209. Therefore, by executing each March 2022 ADPF Loan Agreement, Chiodo contravened s 182(1) of the Corporations Act.

### **C.2.3 Chiodo – Chiodo Development Management Agreement**

#### *Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

210. It was reasonably foreseeable to a person in Chiodo's position as a director of Keystone that the execution of the Chiodo Development Management Agreement might harm the interests of:

- (a) unit holders in the ADPF;
- (b) members of the SMF, where the SMF held units in the ADPF; and/or
- (c) Keystone.

#### **Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 7, 71-73, 129-132 and 193 above.

211. A reasonable person in Chiodo's position, if exercising care and diligence, would not have executed the Chiodo Development Management Agreement.

#### **Particulars**

ASIC refers to and repeats paragraph 210 above and its particulars.

212. By executing the Chiodo Development Management Agreement, Chiodo failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position.

213. Therefore, by executing the Chiodo Development Management Agreement, Chiodo contravened:

- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
- (b) s 180(1) of the Corporations Act.

#### *Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

214. Exercising his powers and discharging his duties as a director of Keystone:

- (a) in the best interests of the members of the SMF; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose, required that Chiodo not execute the Chiodo Development Management Agreement.

#### **Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 7, 71-73, 129-132, 193 and 210 above.

215. By executing the Chiodo Development Management Agreement, Chiodo failed to exercise his powers and discharge his duties:

- (a) in the best interests of the members of the SMF; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 214 above and its particulars.

216. Therefore, by executing the Chiodo Development Management Agreement, Chiodo contravened:
- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
  - (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

217. When Chiodo executed the Chiodo Development Management Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 7, 71-73, 129-132, 193 and 210 above.

218. Therefore, by executing the Chiodo Development Management Agreement, Chiodo contravened:
- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
  - (b) s 182(1) of the Corporations Act.

**C.2.4 Chiodo – July 2023 ADPF Loan Agreements**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

219. It was reasonably foreseeable to a person in Chiodo's position as a director of Keystone that the execution of each July 2023 ADPF Loan Agreement might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 76-78, 124-128 and 187-195 above.

220. A reasonable person in Chiodo's position, if exercising care and diligence, would not have executed and/or procured the execution of each July 2023 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraph 219 above and its particulars.

221. By executing and/or procuring the execution of each July 2023 ADPF Loan Agreement, Chiodo failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position.

222. Therefore, by executing and/or procuring the execution of each July 2023 ADPF Loan Agreement, Chiodo contravened:

- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
- (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

223. Exercising his powers and discharging his duties as a director of Keystone:

- (a) in the best interests of the members of the SMF; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose, required that Chiodo not execute or procure the execution of each July 2023 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 7, 11, 76-78, 124-128, 187-195 and 219 above.

224. By executing and/or procuring the execution of each July 2023 ADPF Loan Agreement, Chiodo failed to exercise his powers and discharge his duties:

- (a) in the best interests of the members of the SMF pursuant; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 223 and its particulars.

225. Therefore, by executing and/or procuring the execution of each July 2023 ADPF Loan Agreement, Chiodo contravened:

- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
- (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

226. Each time Chiodo executed and/or procured the execution of a July 2023 ADPF Loan Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 7, 11, 76-78, 124-128, 187-195 and 219 above.

227. Therefore, by executing and/or procuring the execution of each July 2023 ADPF Loan Agreement, Chiodo contravened:

- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
- (b) s 182(1) of the Corporations Act.

### **C.2.5 Chiodo – Venice Loan Agreements**

#### *Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

228. It was reasonably foreseeable to a person in Chiodo's position as a director of Keystone that the execution of each Venice Loan Agreement might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

#### **Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 12, 13, 80-90, 133-137 and 197 above.

229. A reasonable person in Chiodo's position, if exercising care and diligence, would not have:
- (a) voted to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF; and
  - (b) executed each Venice Loan Agreement.

#### **Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 12, 13, 80-90, 133-137, 197 and 228 above.

230. By voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing each Venice Loan Agreement, Chiodo failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position.
231. Therefore, by voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing each Venice Loan Agreement, Chiodo contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

#### *Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

232. Exercising his powers and discharging his duties as a director of Keystone:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose,
- required that Chiodo not vote to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and not execute each Venice Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 12, 13, 80-90, 133-137, 197 and 228 above.

233. By voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone at the ADPF, and by executing each Venice Loan Agreement, Chiodo failed to exercise his powers and discharge his duties:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 232 above and its particulars.

234. Therefore, by voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone at the ADPF, and by executing each Venice Loan Agreement, Chiodo contravened:
- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
  - (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

235. Each time Chiodo executed a Venice Loan Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 12, 13, 80-90, 133-137, 197 and 228 above.

236. Therefore, by voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone at the ADPF, and by executing each Venice Loan Agreement, Chiodo contravened:
- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
  - (b) s 182(1) of the Corporations Act.

**C.2.6 Chiodo – Venice Side Letter**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

237. It was reasonably foreseeable to a person in Chiodo's position as a director of Keystone that the execution of the Venice Side Letter might harm the interests of:
- (a) unit holders in the ADPF; and/or
  - (b) members of the SMF, where the SMF held units in the ADPF.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 12, 13, 80-93, 133-139, 197, 198, 200 and 228 above.

238. A reasonable person in Chiodo's position, if exercising care and diligence, would not have executed the Venice Side Letter.

**Particulars**

ASIC refers to and repeats paragraph 237 above and its particulars.

239. By executing the Venice Side Letter, Chiodo failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position.
240. Therefore, by executing the Venice Side Letter, Chiodo contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

241. Exercising his powers and discharging his duties as a director of Keystone:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose, required that Chiodo not execute the Venice Side Letter.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 12, 13, 80-93, 133-139, 197, 198, 200, 228 and 237 above.

242. By executing the Venice Side Letter, Chiodo failed to exercise his powers and discharge his duties:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 241 above and its particulars.

243. Therefore, by executing the Venice Side Letter, Chiodo contravened:
- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
  - (b) s 181(1) of the Corporations Act.

**C.2.7 Chiodo – SMF-ADPF Payments and Chiodo Corporation Payments**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

244. It was reasonably foreseeable to a person in Chiodo's position as a director of Keystone that the making of each SMF-ADPF Payment might harm the interests of:
- (a) members of the SMF; and/or

- (b) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 11, 94-102, 124-181 and 187-200 above.

245. It was reasonably foreseeable to a person in Chiodo's position as a director of Keystone that the making of each Chiodo Corporation Payment might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 11, 94-102, 124-181 and 187-200 above.

246. Exercising the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position, a reasonable person would have:
- (a) not authorised the SMF-ADPF Payments; and
  - (b) not authorised the Chiodo Corporation Payments.

**Particulars**

ASIC refers to and repeats paragraphs 244 and 245 above and their particulars.

247. Each time he authorised a SMF-ADPF Payment, Chiodo failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position.
248. Therefore, each time he authorised a SMF-ADPF Payment, Chiodo contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and
  - (b) s 180(1) of the Corporations Act.
249. Each time he authorised a Chiodo Corporation Payment, Chiodo failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Chiodo's position.
250. Therefore, each time he authorised a Chiodo Corporation Payment, Chiodo contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and
  - (b) s 180(1) of the Corporations Act.

*Duty to act in the best interests of members – s 601FD(1)(c)*

251. Exercising his powers and discharging his duties as a director of Keystone in the best interests of the members of the SMF required that Chiodo:

- (a) not authorise the SMF-ADPF Payments; and
- (b) not authorise the Chiodo Corporation Payments.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 11, 94-102, 124-181, 187-200 and 244-245 above.

252. Each time he authorised a SMF-ADPF Payment, Chiodo failed to exercise his powers and discharge his duties in good faith in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraph 251(a) above and its particulars.

253. Therefore, each time he authorised a SMF-ADPF Payment, Chiodo contravened s 601FD(1)(c) and (3) of the Corporations Act.
254. Each time he authorised a Chiodo Corporation Payment, Chiodo failed to exercise his powers and discharge his duties in good faith in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraph 251(b) above and its particulars.

255. Therefore, each time he authorised a Chiodo Corporation Payment, Chiodo contravened s 601FD(1)(c) and (3) of the Corporations Act.

*Duty to act honestly – s 601FD(1)(a)*

256. In the period from 11 April 2022 to 27 May 2024:

- (a) Chiodo knew that the SMF-ADPF Payments were not in the best interests of members of the SMF;
- (b) alternatively, an intelligent and honest person in the position of Chiodo as a director of Keystone could not reasonably have believed that the SMF-ADPF Payments were in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 11, 94-102, 124-181 and 187-200 above.

257. Each time he authorised a SMF-ADPF Payment, Chiodo failed to act honestly.

**Particulars**

ASIC refers to paragraph 256 above and its particulars.

258. Therefore, each time he authorised a SMF-ADPF Payment, Chiodo contravened s 601FD(1)(a) and (3) of the Corporations Act.

259. In the period from 11 April 2022 to 27 May 2024:

- (a) Chiodo knew that the Chiodo Corporation Payments were not in the best interests of members of the SMF;
- (b) alternatively, an intelligent and honest person in the position of Chiodo could not reasonably have believed that the Chiodo Corporation Payments were in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 11, 94-102, 124-181 and 187-200 above.

260. Each time he authorised a Chiodo Corporation Payment, Chiodo failed to act honestly.

**Particulars**

ASIC refers and repeats paragraph 261 above and its particulars.

261. Therefore, each time he authorised a Chiodo Corporation Payment, Chiodo contravened s 601FD(1)(a) and (3) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

262. Each time Chiodo authorised a Chiodo Corporation Payment, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 3, 4, 6, 11, 94-102, 124-181 and 187-200 above.

263. Therefore, each time he authorised a Chiodo Corporation Payment, Chiodo contravened:

- (a) s 601FD(1)(e) and (3) of the Corporations Act; and
- (b) s 182(1) of the Corporations Act.

### **C.3 Frolov – Contraventions**

#### **C.3.1 Relevant knowledge**

264. By 1 March 2022, Frolov:

- (a) knew:
  - (i) the terms of the March 2022 ADPF Loan Agreements as pleaded in paragraph 70 above; and
  - (ii) the deficiencies in relation to the March 2022 ADPF Loan Agreements pleaded in paragraphs 124-128 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Frolov's position as a director of Keystone; Frolov's execution of each of the March 2022 ADPF Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

265. From on or about 6 April 2022, Frolov:

- (a) knew:
  - (i) (until about February 2024) that Keystone had not registered any mortgage or other security interest pursuant to any of the ADPF Loan Agreements; and
  - (ii) that Keystone had not received payments of interest pursuant to any of the ADPF Loan Agreements;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Frolov's position as a director of Keystone; Frolov's membership of the CDPF/ADPF investment committee; Frolov's execution of each of the March 2022 ADPF Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

266. From on or about 11 April 2022, Frolov:

- (a) knew:
  - (i) Chiodo Corporation had used and/or was using amounts sourced from the SMF (via the ADPF) and/or drawn down under the ADPF Loan Agreements to make the Lead Generator Payments; and
  - (ii) the deficient circumstances as to the Lead Generator Payments, as referred to in paragraphs 158-160 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Frolov's position as a director of Keystone; Frolov having witnessed the execution of agreements with lead generators [KSS.0013.0005.0019]; Frolov's membership of the CDPF/ADPF investment committee; Frolov's receipt of emails from Chiodo identifying that Chiodo sought Frolov's authorisation of SMF-ADPF Payments and/or Chiodo Corporation Payments for the purpose of enabling Chiodo Corporation to make payments to lead generators; Frolov's execution of the ADPF Loan Agreements; Frolov's execution of the Venice Purchase Agreement and Venice Loan (Purchase Money) Agreement.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

267. From on or about 22 April 2022, Frolov:

- (a) knew:
  - (i) Chiodo Corporation had used and/or was using amounts sourced from the SMF (via the ADPF) and/or drawn down under ADPF Loan Agreements to make the Malana Payments; and
  - (ii) the deficient circumstances as to the Malana Payments, as referred to in paragraphs 161-164 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

#### **Particulars**

As to (a), this can be inferred from: Frolov's position as a director of both Keystone and Malana Management; Frolov's membership of the CDPF/ADPF investment committee; Frolov's receipt of emails from Chiodo identifying that Chiodo sought Frolov's authorisation of SMF-ADPF Payments and/or Chiodo Corporation Payments for the purpose of enabling Chiodo Corporation to make payments to Malana Management; Frolov's execution of the ADPF Loan Agreements; Frolov's execution of the Venice Purchase Agreement and Venice Loan (Purchase Money) Agreement.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

268. From on or about 22 April 2022, Frolov:

- (a) knew:
  - (i) Chiodo Corporation had used and/or was using amounts sourced from the SMF (via the ADPF) and/or drawn down under ADPF Loan Agreements to make the Marsi Payments; and
  - (ii) the deficient circumstances as to the Marsi Payments, as referred to in paragraphs 165-167 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

#### **Particulars**

As to (a), this can be inferred from: Frolov's position as a director of both Keystone and Marsi Group; Frolov's membership of the CDPF/ADPF investment committee; Frolov's receipt of emails from Chiodo identifying that Chiodo sought Frolov's authorisation of SMF-ADPF Payments and/or Chiodo Corporation Payments for the purpose of enabling Chiodo Corporation to make payments to Marsi Group; Frolov's execution of the ADPF Loan Agreements; Frolov's execution of the Venice Purchase Agreement and Venice Loan (Purchase Money) Agreement.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

269. From on or about 21 March 2023, Frolov:

- (a) knew:
  - (i) Chiodo Corporation had used amounts sourced from the SMF (via the ADPF) and/or drawn down under the ADPF Loan Agreements to make the 24Calibre Payments; and
  - (ii) the matters pleaded in paragraphs 168-170 above;
- (b) alternatively, ought to have known of the matters referred to in subparagraph (a) above.

#### **Particulars**

As to (a), this can be inferred from: Frolov's position as a director of Keystone; Frolov's indirect interest in 24Calibre; Frolov's membership of the CDPF/ADPF investment committee; Frolov's receipt of emails from Chiodo identifying that Chiodo sought Frolov's authorisation of SMF-ADPF Payments and/or Chiodo Corporation Payments for the purpose of enabling Chiodo Corporation to make payments to 24Calibre; Frolov's execution of each of the ADPF Loan Agreements; Frolov's execution of the Venice Purchase Agreement and Venice Loan (Purchase Money) Agreement.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

270. By 7 July 2023, Frolov:

- (a) knew:
  - (i) the terms of the July 2023 ADPF Loan Agreements as pleaded in paragraph 78 above; and
  - (ii) the deficiencies in relation to the July 2023 ADPF Loan Agreements pleaded in paragraphs 124-128 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

#### **Particulars**

As to (a), this can be inferred from: Frolov's position as a director of Keystone; Frolov's execution of each of the July 2023 ADPF Loan Agreements; Frolov's indirect interests in 75 Port Douglas Road Pty Ltd and Chiodo K'Gari Pty Ltd.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

271. By 21 December 2023, Frolov:

- (a) knew:

- (i) the terms of the Venice Loan Agreements as pleaded in paragraphs 86 and 90 above; and
  - (ii) the deficiencies in relation to the Venice Loan Agreements pleaded in paragraphs 133-137 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: the Minutes of the 21 December 2023 Meeting of Directors of Keystone [KSS.0224.0101.0001]; Frolov's position as a director of Keystone and Luxuria IT; Frolov's shareholding in Luxuria IT; Frolov's execution of the Venice Purchase Agreement and Venice Loan (Purchase Money) Agreement; Frolov's membership of the CDPF/ADPF investment committee.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

272. From on or about 21 December 2023, Frolov:

- (a) knew:
  - (i) that Keystone had not registered any mortgage or other security interest pursuant to the Venice Loan Agreements; and
  - (ii) that Keystone had not received payments of interest pursuant to the Venice Loan Agreements;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Frolov's position as a director of Keystone and Luxuria IT; Frolov's membership of the CDPF/ADPF investment committee.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

**C.3.2 Frolov – March 2022 ADPF Loan Agreements**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

273. It was reasonably foreseeable to a person in Frolov's position as a director of Keystone that the execution of each March 2022 ADPF Loan Agreement might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 68-70, 124-128 and 264 above.

274. A reasonable person in Frolov's position, if exercising care and diligence, would not have executed each March 2022 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraph 273 above and its particulars.

275. By executing each March 2022 ADPF Loan Agreement, Frolov failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Frolov's position.
276. Therefore, by executing each March 2022 ADPF Loan Agreement, Frolov contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 181(1)*

277. Exercising his powers and discharging his duties as a director of Keystone in good faith in the best interests of Keystone and for a proper purpose required that Frolov not execute each March 2022 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 68-70, 124-128, 264 and 273 above.

278. By executing each March 2022 ADPF Loan Agreement, Frolov failed to exercise his powers and discharge his duties in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 277 above and its particulars.

279. Therefore, by executing each March 2022 ADPF Loan Agreement, Frolov contravened s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 182(1)*

280. Each time Frolov executed a March 2022 ADPF Loan Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 68-70, 124-128, 264 and 273 above.

281. Therefore, each time he executed a March 2022 ADPF Loan Agreement, Frolov contravened s 182(1) of the Corporations Act.

### **C.3.3 Frolov – July 2023 ADPF Loan Agreements**

#### *Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

282. It was reasonably foreseeable to a person in Frolov's position as a director of Keystone that the execution of each July 2023 ADPF Loan Agreement might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

#### **Particulars**

ASIC refers to and repeats paragraphs 17-19, 76-78, 124-128 and 264-270 above.

283. A reasonable person in Frolov's position, if exercising care and diligence, would not have executed each July 2023 ADPF Loan Agreement.

#### **Particulars**

ASIC refers to and repeats paragraph 282 above and its particulars.

284. By executing each July 2023 ADPF Loan Agreement, Frolov failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Frolov's position.
285. Therefore, by executing each July 2023 ADPF Loan Agreement, Frolov contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

#### *Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

286. Exercising his powers and discharging his duties as a director of Keystone:
- (a) in the best interests of the members of the SMF pursuant; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose, required that Frolov not execute each July 2023 ADPF Loan Agreement.

#### **Particulars**

ASIC refers to and repeats paragraphs 17-19, 76-78, 124-128, 264-270 and 282 above.

287. By executing each July 2023 ADPF Loan Agreement, Frolov failed to exercise his powers and discharge his duties:
- (a) in the best interests of the members of the SMF pursuant; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose.

#### **Particulars**

ASIC refers to and repeats paragraph 286 above and its particulars.

288. Therefore, by executing each July 2023 ADPF Loan Agreement, Frolov contravened:
- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
  - (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

289. Each time Frolov executed a July 2023 ADPF Loan Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 76-78, 124-128, 264-270 and 282 above.

290. Therefore, by executing each July 2023 ADPF Loan Agreement, Frolov contravened:
- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
  - (b) s 182(1) of the Corporations Act.

**C.3.4 Frolov – Venice Loan Agreements**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

291. It was reasonably foreseeable to a person in Frolov's position as a director of Keystone that the execution of each Venice Loan Agreement might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 25, 80-90, 133-137 and 271 above.

292. A reasonable person in Frolov's position, if exercising care and diligence, would not have:
- (a) voted to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF; and
  - (b) executed the Venice Loan (Purchase Money) Agreement.

**Particulars**

ASIC refers to and repeats paragraph 291 above and its particulars.

293. By voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing the Venice Loan (Purchase Money) Agreement, Frolov failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Frolov's position.

294. Therefore, by voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing the Venice Loan (Purchase Money) Agreement, Frolov contravened:

- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
- (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

295. Exercising his powers and discharging his duties as a director of Keystone:

- (a) in the best interests of the members of the SMF; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose,

required that Frolov not vote to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and not execute the Venice Loan (Purchase Money) Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 25, 80-90, 133-137, 271 and 291 above.

296. By voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing the Venice Loan (Purchase Money) Agreement, Frolov failed to exercise his powers and discharge his duties:

- (a) in the best interests of the members of the SMF; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 295 above and its particulars.

297. Therefore, by voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing the Venice Loan (Purchase Money) Agreement, Frolov contravened:

- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
- (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

298. When he voted to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and he executed the Venice Loan (Purchase Money) Agreement, Frolov made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 25, 80-90, 133-137, 271 and 291 above.

299. Therefore, by voting to authorise Yorston to sign the Venice Loan Agreements on behalf of Keystone at the ADFP, and by executing the Venice Loan (Purchase Money) Agreement, Frolov contravened:

- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
- (b) s 182(1) of the Corporations Act.

### **C.3.6 Frolov – SMF-ADPF Payments and Chiodo Corporation Payments**

#### *Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

300. It was reasonably foreseeable to a person in Frolov's position as a director of Keystone that the making of each SMF-ADPF Payment might harm the interests of:

- (a) members of the SMF; and/or
- (b) Keystone.

#### **Particulars**

ASIC refers to and repeats paragraphs 17-19, 94-102, 124-181 and 264-272 above.

301. It was reasonably foreseeable to a person in Frolov's position as a director of Keystone that the making of each Chiodo Corporation Payment might harm the interests of:

- (a) unit holders in the ADFP;
- (b) members of the SMF, where the SMF held units in the ADFP; and/or
- (c) Keystone.

#### **Particulars**

ASIC refers to and repeats paragraphs 17-19, 94-102, 124-181, 264-272 and 300 above.

302. Exercising the degree of care and diligence that a reasonable person would exercise if they were in Frolov's position, a reasonable person would have:

- (a) not authorised the SMF-ADPF Payments; and
- (b) not authorised the Chiodo Corporation Payments.

#### **Particulars**

ASIC refers to and repeats paragraphs 299 and 300 and their particulars.

303. Each time Frolov authorised a SMF-ADPF Payment, he failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Frolov's position.

304. Therefore, each time Frolov authorised a SMF-ADPF Payment, he contravened:

- (a) s 601FD(1)(b) and (3) of the Corporations Act; and
- (b) s 180(1) of the Corporations Act.

305. Each time Frolov authorised a Chiodo Corporation Payment, he failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Frolov's position.
306. Therefore, each time Frolov authorised a Chiodo Corporation Payment, he contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and
  - (b) s 180(1) of the Corporations Act.

*Duty to act in the best interests of members – s 601FD(1)(c)*

307. Exercising his powers and discharging his duties as a director of Keystone in the best interests of the members of the SMF required that Frolov:
- (a) not authorise the SMF-ADPF Payments; and
  - (b) not authorise the Chiodo Corporation Payments.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 94-102, 124-181, 264-272 and 300-301 above.

308. Each time he authorised a SMF-ADPF Payment, Frolov failed to exercise his powers and discharge his duties in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraph 307(a) above and its particulars.

309. Therefore, each time he authorised a SMF-ADPF Payment, Frolov contravened s 601FD(1)(c) and (3) of the Corporations Act.
310. Each time he authorised a Chiodo Corporation Payment, Frolov failed to exercise his powers and discharge his duties in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraph 307(b) above and its particulars.

311. Therefore, each time he authorised a Chiodo Corporation Payment, Frolov contravened s 601FD(1)(c) and (3) of the Corporations Act.

*Duty to act honestly – s 601FD(1)(a)*

312. In the period from 11 April 2022 to 29 December 2023:
- (a) Frolov knew that the SMF-ADPF Payments were not in the best interests of members of the SMF;
  - (b) alternatively, an intelligent and honest person in the position of Frolov as a director of Keystone could not reasonably have believed that the SMF-ADPF Payments were in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 94-102, 124-181 and 264-272 above.

313. Each time he authorised a SMF-ADPF Payment, Frolov failed to act honestly.

**Particulars**

ASIC refers to and repeats paragraph 312 above and its particulars.

314. Therefore, each time he authorised a SMF-ADPF Payment, Frolov contravened s 601FD(1)(a) and (3) of the Corporations Act.

315. In the period from 11 April 2022 to 29 December 2023:

- (a) Frolov knew that the Chiodo Corporation Payments were not in the best interests of members of the SMF;
- (b) alternatively, an intelligent and honest person in the position of Frolov could not reasonably have believed that the Chiodo Corporation Payments were in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 94-102, 124-181 and 264-272 above.

316. Each time he authorised a Chiodo Corporation Payment, Frolov failed to act honestly.

**Particulars**

ASIC refers to and repeats paragraph 315 above and its particulars.

317. Therefore, each time he authorised a Chiodo Corporation Payment, Frolov contravened s 601FD(1)(a) and (3) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

318. Each time Frolov authorised a Chiodo Corporation Payment, he made an improper use of his position as a director of Keystone to gain an advantage for himself or someone else.

**Particulars**

ASIC refers to and repeats paragraphs 17-19, 94-102, 124-181 and 264-272 above.

319. Therefore, each time he authorised a Chiodo Corporation Payment, Frolov contravened:

- (a) s 601FD(1)(e) and (3) of the Corporations Act; and
- (b) s 182(1) of the Corporations Act.

## **C.4 Yorston – Contraventions**

### **C.4.1 Relevant knowledge**

320. By 1 March 2022, Yorston:

- (a) knew:

- (i) the terms of the March 2022 ADPF Loan Agreements as pleaded in paragraph 70 above; and
  - (ii) the deficiencies in relation to the March 2022 ADPF Loan Agreements pleaded in paragraphs 124-128 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Yorston's position as a director of Keystone; Yorston's execution of each of the March 2022 ADPF Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

321. From on or about 6 April 2022, Yorston:

- (a) knew:
  - (i) (until about February 2024) that Keystone had not registered any mortgage or other security interest pursuant to any of the ADPF Loan Agreements; and
  - (ii) that Keystone had not received payments of interest pursuant to any of the ADPF Loan Agreements;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Yorston's position as a director of Keystone.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

322. From on or about 10 May 2022, Yorston:

- (a) knew:
  - (i) the terms of the Chiodo Development Management Agreement as pleaded in paragraph 73 above; and
  - (ii) the deficiencies in relation to the Chiodo Development Management Agreement pleaded in paragraphs 124-128 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Yorston's position as a director of Keystone; Yorston's execution of the Chiodo Development Management Agreement; Yorston's provision of legal advice to Chiodo, Chiodo Corporation, Chiodo Operations and the SPVs between at least 10 July 2020 to around February 2025.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

323. By 7 July 2023, Yorston:

- (a) knew:
  - (i) the terms of the July 2023 ADPF Loan Agreements as pleaded in paragraph 78 above; and
  - (ii) the deficiencies in relation to the July 2023 ADPF Loan Agreements pleaded in paragraphs 124-128 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Yorston's position as a director of Keystone; Yorston's execution of the July 2023 ADPF Loan Agreements.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

324. By 21 December 2023, Yorston:

- (a) knew:
  - (i) the terms of the Venice Loan Agreements as pleaded in paragraphs 86 and 90 above; and
  - (ii) the deficiencies in relation to the Venice Loan Agreements pleaded in paragraphs 133-137 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: the Minutes of the 21 December 2023 Meeting of Directors of Keystone [KSS.0224.0101.0001]; Yorston's position as a director of Keystone; Yorston's execution of the Venice Loan (Purchase Money) Agreement and Venice Loan (Earnest Money) Agreement.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

325. From on or about 21 December 2023, Yorston:

- (a) knew:
  - (i) that Keystone had not registered any mortgage or other security interest pursuant to the Venice Loan Agreements; and
  - (ii) that Keystone had not received payments of interest pursuant to the Venice Loan Agreements;

- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Yorston's position as a director of Keystone; unsuccessful steps taken by Keystone from in or around February 2024 to secure a form of security, including by the engagement of lawyers to prepare an unsecured convertible note.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

326. By 18 June 2024, Yorston:

- (a) knew:
- (i) the terms of the Reconciliation Agreement as pleaded in paragraph 123 above; and
  - (ii) the deficiencies in relation to the Reconciliation Agreement pleaded in paragraphs 182-186 above;
- (b) alternatively, ought to have known the matters referred to in subparagraph (a) above.

**Particulars**

As to (a), this can be inferred from: Yorston's position as a director of Keystone; Yorston's execution of the Reconciliation Agreement.

As to (b), ASIC refers also to the duty of directors to take the necessary steps to effectively guide and monitor the management of the company.

**C.4.2 Yorston – March 2022 ADPF Loan Agreements**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

327. It was reasonably foreseeable to a person in Yorston's position as a director of Keystone that the execution of each March 2022 ADPF Loan Agreement might harm the interests of:

- (a) unit holders in the ADPF;
- (b) members of the SMF, where the SMF held units in the ADPF; and/or
- (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 68-70, 124-128 and 320 above.

328. A reasonable person in Yorston's position, if exercising care and diligence, would not have executed each March 2022 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraph 327 above and its particulars.

329. By executing each March 2022 ADPF Loan Agreement, Yorston failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Yorston's position.
330. Therefore, by executing each March 2022 ADPF Loan Agreement, Yorston contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 181(1)*

331. Exercising his powers and discharging his duties as a director of Keystone in good faith in the best interests of Keystone and for a proper purpose required that Yorston not execute each March 2022 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 68-70, 124-128, 320 and 327 above.

332. By executing each March 2022 ADPF Loan Agreement, Yorston failed to exercise his powers and discharge his duties in in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 331 above and its particulars.

333. Therefore, by executing each March 2022 ADPF Loan Agreement, Yorston contravened s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 182(1)*

334. Each time Yorston executed a March 2022 ADPF Loan Agreement, he made an improper use of his position as a director of Keystone to gain advantage for someone else.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 68-70, 124-128, 320 and 327 above.

335. Therefore, by executing each March 2022 ADPF Loan Agreement, Yorston contravened s 182(1) of the Corporations Act.

**C.4.3 Yorston – Chiodo Development Management Agreement**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

336. It was reasonably foreseeable to a person in Yorston's position as a director of Keystone that the execution of the Chiodo Development Management Agreement might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or

- (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 71-73, 129-132 and 322 above.

337. A reasonable person in Yorston's position, if exercising care and diligence, would not have executed the Chiodo Development Management Agreement.

**Particulars**

ASIC refers to and repeats paragraph 336 above.

338. By executing the Chiodo Development Management Agreement, Yorston failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Yorston's position.

339. Therefore, by executing the Chiodo Development Management Agreement, Yorston contravened:

- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
- (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

340. Exercising his powers and discharging his duties as a director of Keystone:

- (a) in the best interests of the members of the SMF; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose, required that Yorston not execute the Chiodo Development Management Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 71-73, 129-132, 322 and 336 above.

341. By executing the Chiodo Development Management Agreement, Yorston failed to exercise his powers and discharge his duties:

- (a) in the best interests of the members of the SMF; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 340 above and its particulars.

342. Therefore, by executing the Chiodo Development Management Agreement, Yorston contravened:

- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
- (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

343. When Yorston executed the Chiodo Development Management Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for someone else.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 71-73, 129-132, 322 and 336 above.

344. Therefore, by executing the Chiodo Development Management Agreement Yorston contravened:
- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
  - (b) s 182(1) of the Corporations Act.

**C.4.4 Yorston – July 2023 ADPF Loan Agreements**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

345. It was reasonably foreseeable to a person in Yorston's position as a director of Keystone that the execution of each July 2023 ADPF Loan Agreement might harm the interests of:

- (a) unit holders in the ADPF;
- (b) members of the SMF, where the SMF held units in the ADPF; and/or
- (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 76-78, 124-128 and 320-323 above.

346. A reasonable person in Yorston's position, if exercising care and diligence, would not have executed each July 2023 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraph 345 above and its particulars.

347. By executing each July 2023 ADPF Loan Agreement, Yorston failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Yorston's position.

348. Therefore, by executing each July 2023 ADPF Loan Agreement, Yorston contravened:

- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
- (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

349. Exercising his powers and discharging his duties as a director of Keystone:

- (a) in the best interests of the members of the SMF pursuant; and/or
- (b) in good faith in the best interests of Keystone and for a proper purpose,

required that Yorston not execute each July 2023 ADPF Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 76-78, 124-128, 320-323 and 345 above.

350. By executing each July 2023 ADPF Loan Agreement, Yorston failed to exercise his powers and discharge his duties:
- (a) in the best interests of the members of the SMF pursuant; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 349 above and its particulars.

351. Therefore, by executing each July 2023 ADPF Loan Agreement, Yorston contravened:
- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
  - (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

352. Each time Yorston executed a July 2023 ADPF Loan Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for someone else.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 76-78, 124-128, 320-323 and 345 above.

353. Therefore, by executing each July 2023 ADPF Loan Agreement, Yorston contravened:
- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
  - (b) s 182(1) of the Corporations Act.

**C.4.5 Yorston – Venice Loan Agreements**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

354. It was reasonably foreseeable to a person in Yorston's position as a director of Keystone that the execution of each Venice Loan Agreement might harm the interests of:
- (a) unit holders in the ADPF;
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 80-90, 133-137 and 324 above.

355. A reasonable person in Yorston's position, if exercising care and diligence, would not have:

- (a) voted to authorise himself to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF; and
- (b) executed each Venice Loan Agreement.

**Particulars**

ASIC refers and repeats paragraph 354 above and its particulars.

356. By voting to authorise himself to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing each Venice Loan Agreement, Yorston failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Yorston's position.
357. Therefore, by voting to authorise himself to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing each Venice Loan Agreement, Yorston contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

358. Exercising his powers and discharging his duties as a director of Keystone:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose,
- required that Yorston not vote to authorise himself to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and not execute each Venice Loan Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 80-90, 133-137, 324 and 354 above.

359. By voting to authorise himself to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing each Venice Loan Agreement, Yorston failed to exercise his powers and discharge his duties:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 358 above and its particulars.

360. Therefore, by voting to authorise himself to sign the Venice Loan Agreements on behalf of Keystone atf the ADPF, and by executing each Venice Loan Agreement, Yorston contravened:
- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
  - (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

361. When Yorston voted to authorise himself to sign the Venice Loan Agreements on behalf of Keystone at the ADPF, and each time he executed a Venice Loan Agreement, Yorston made an improper use of his position as a director of Keystone to gain an advantage for someone else.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 80-90, 133-137, 324 and 354 above.

362. Therefore, by voting to authorise himself to sign the Venice Loan Agreements on behalf of Keystone at the ADPF, and by executing each Venice Loan Agreement, Yorston contravened:

- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
- (b) s 182(1) of the Corporations Act.

**C.4.6 Yorston – SMF-ADPF Payments**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

363. It was reasonably foreseeable to a person in Yorston's position as a director of Keystone that the making of each SMF-ADPF Payment might harm the interests of:

- (a) members of the SMF; and/or
- (b) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 94-97, 124-181 and 320-326 above.

364. A reasonable person in Yorston's position, if exercising care and diligence, would not have authorised the SMF-ADPF Payments.

**Particulars**

ASIC refers to and repeats paragraph 363 above and its particulars.

365. Each time he authorised a SMF-ADPF Payment, Yorston failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Yorston's position.

366. Therefore, each time he authorised a SMF-ADPF Payment, Yorston contravened:

- (a) s 601FD(1)(b) and (3) of the Corporations Act; and
- (b) s 180(1) of the Corporations Act.

*Duty to act in the best interests of members – s 601FD(1)(c)*

367. Exercising his powers and discharging his duties as a director of Keystone in the best interests of the members of the SMF required that Yorston not authorise the SMF-ADPF Payments.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 94-97, 124-181, 320-326 and 363 above.

368. Each time he authorised a SMF-ADPF Payment, Yorston failed to exercise his powers and discharge his duties in the best interests of the members of the SMF.

**Particulars**

ASIC refers to and repeats paragraph 367 above and its particulars.

369. Therefore, each time he authorised a SMF-ADPF Payment, Yorston contravened s 601FD(1)(c) and (3) of the Corporations Act.

**C.4.7 Yorston – The Reconciliation Agreement**

*Duty to exercise care and diligence – s 601FD(1)(b) and/or s 180(1)*

370. It was reasonably foreseeable to a person in Yorston's position as a director of Keystone that the execution of the Reconciliation Agreement might harm the interests of:
- (a) unit holders in the ADPF; and/or
  - (b) members of the SMF, where the SMF held units in the ADPF; and/or
  - (c) Keystone.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 121-123, 182-186 and 326 above.

371. A reasonable person in Yorston's position, if exercising care and diligence, would not have executed the Reconciliation Agreement.

**Particulars**

ASIC refers to and repeats paragraph 370 above and its particulars.

372. By executing the Reconciliation Agreement, Yorston failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in Yorston's position.
373. Therefore, by executing the Reconciliation Agreement, Yorston contravened:
- (a) s 601FD(1)(b) and (3) of the Corporations Act; and/or
  - (b) s 180(1) of the Corporations Act.

*Duty to act in best interests – s 601FD(1)(c) and/or s 181(1)*

374. Exercising his powers and discharging his duties as a director of Keystone:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose, required that Yorston not execute the Reconciliation Agreement.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 121-123, 182-186, 326 and 370 above.

375. By executing the Reconciliation Agreement, Yorston failed to exercise his powers and discharge his duties:
- (a) in the best interests of the members of the SMF; and/or
  - (b) in good faith in the best interests of Keystone and for a proper purpose.

**Particulars**

ASIC refers to and repeats paragraph 374 above and its particulars.

376. Therefore, by executing the Reconciliation Agreement, Yorston contravened:
- (a) s 601FD(1)(c) and (3) of the Corporations Act; and/or
  - (b) s 181(1) of the Corporations Act.

*Duty to not make improper use of position – s 601FD(1)(e) and/or s 182(1)*

377. When Yorston executed the Reconciliation Agreement, he made an improper use of his position as a director of Keystone to gain an advantage for someone else.

**Particulars**

ASIC refers to and repeats paragraphs 28, 29, 121-123, 182-186, 326 and 370 above.

378. Therefore, by executing the Reconciliation Agreement, Yorston contravened:
- (a) s 601FD(1)(e) and (3) of the Corporations Act; and/or
  - (b) s 182(1) of the Corporations Act.

**D. RELATED PARTY TRANSACTION CONTRAVENTIONS**

**D.1 Primary case – financial benefits given indirectly**

379. Between 11 April 2022 and 27 May 2024, by making the SMF-ADPF Payments and the Chiodo Corporation Payments, Keystone paid a total of \$303,003,496.72 from the SMF to Chiodo Corporation, via the ADPF (collectively, the **SMF-Chiodo Corporation Benefits**).

**Particulars**

ASIC refers to and repeats paragraphs 94-100 above.

380. Each of the SMF-Chiodo Corporation Benefits was:

- (a) a financial benefit;
- (b) given by Keystone, which was the responsible entity of the SMF;
- (c) given out of the scheme property of the SMF;
- (d) given to Chiodo Corporation, via the ADPF; and
- (e) given when a Chiodo Corporation Payment was made.

**Particulars**

Corporations Act, ss 208 and 229 (as modified by ss 601LA and 601LC).

ASIC refers to and repeats paragraphs 94-100 above.

381. In the period from 11 April 2022 to 27 May 2024, Chiodo Corporation was a related party of Keystone.

**Particulars**

In the period from 11 April 2022 to 27 May 2024, Chiodo was a director of both Keystone and Chiodo Corporation.

382. By reason of the matters pleaded in paragraphs 379-381 above, Keystone was required to obtain the approval of the members of the SMF in the way set out in ss 217 to 227 of the Corporations Act (as modified by s 601LA) before giving each of the SMF-Chiodo Corporation Benefits.

**Particulars**

Corporations Act, s 208 (as modified by s 601LC).

383. Keystone did not obtain the approval of the members of the SMF in the way set out in ss 217 to 227 of the Corporations Act (as modified by s 601LA) before giving any of the SMF-Chiodo Corporation Benefits.

384. In the premises pleaded in paragraphs 382-383 above, each time Keystone gave one of the SMF-Chiodo Corporation Benefits, it contravened s 208 of the Corporations Act (as modified by s 601LC).

385. In the period from 11 April 2022 to 27 May 2024, Chiodo:

- (a) was a director of both Keystone and Chiodo Corporation;
- (b) authorised the SMF-ADPF Payments;
- (c) in the periods identified in paragraph 99 above, authorised the Chiodo Corporation Payments;
- (d) knew that Chiodo Corporation was a related party of Keystone; and

**Particulars**

This can be inferred from: Chiodo's position as a director of Keystone and Chiodo Corporation; and Chiodo's indirect interest in Chiodo Corporation.

- (e) knew that Keystone did not obtain the approval of the members of the SMF before giving any of the SMF-Chiodo Corporation Benefits.

**Particulars**

This can be inferred from: Chiodo's position as a director of Keystone; and the matter pleaded in paragraph 383 above.

386. In the premises pleaded in paragraphs 384-385 above, in the period from 11 April 2022 to 27 May 2024, each time Keystone gave one of the SMF-Chiodo Corporation Benefits, Chiodo:

- (a) was involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and
- (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

387. In the period from 11 April 2022 to 29 December 2023, Frolov:

- (a) was a director of Keystone;
- (b) authorised the SMF-ADPF Payments;
- (c) in the periods identified in paragraph 99 above, authorised the Chiodo Corporation Payments;
- (d) knew that Chiodo Corporation was a related party of Keystone; and

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone; the issue and content of the Information Memorandum (referred to in paragraphs 65 and 66 above); Frolov's membership of the Compliance Committee; Frolov's position as the Compliance Officer; and the content of the COI Register (referred to in paragraphs 476, 478 and 480 below).

- (e) knew that Keystone did not obtain the approval of the members of the SMF before giving any of the SMF-Chiodo Corporation Benefits.

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone; and the matter pleaded in paragraph 383 above.

388. In the premises pleaded in paragraphs 384 and 387 above, in the period from 11 April 2022 to 29 December 2023, each time Keystone gave one of the SMF-Chiodo Corporation Benefits, Frolov:
- (a) was involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and
  - (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

389. In the period from 2 January 2024 to 27 May 2024, Yorston:
- (a) was a director of Keystone;
  - (b) authorised the SMF-ADPF Payments;
  - (c) knew that Chiodo Corporation was a related party of Keystone; and

**Particulars**

This can be inferred from: Yorston's position as a director of Keystone; the issue and content of the Information Memorandum (referred to in paragraphs 65 and 66 above); Yorston's execution of the Chiodo Development Management Agreement on behalf of Keystone, which was countersigned by Chiodo on behalf of Chiodo Corporation and / or Chiodo Operations; Yorston's provision of legal advice to Chiodo, Chiodo Corporation, Chiodo Operations and the SPVs at least between 10 July 2020 to around February 2025.

- (d) knew that Keystone did not obtain the approval of the members of the SMF before giving any of the Chiodo Corporation Payments.

**Particulars**

This can be inferred from: Yorston's position as a director of Keystone; and the matter pleaded in paragraph 383 above.

390. In the premises pleaded in paragraphs 384 and 389 above, in the period from 2 January 2024 to 27 May 2024, each time Keystone gave one of the SMF-Chiodo Corporation Benefits, Yorston:
- (a) was involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and
  - (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

**D.2 Alternative case – financial benefits given directly**

**D.2.1 SMF-ADPF Payments**

391. Paragraphs 392-401 below are pleaded in the alternative to paragraphs 379-390 above.
392. Each of the SMF-ADPF Payments was:
- (a) a financial benefit;
  - (b) given by Keystone as responsible entity of the SMF;
  - (c) given out of the scheme property of the SMF; and
  - (d) given to Keystone as trustee for the ADPF.

**Particulars**

Corporations Act, ss 208 and 229 (as modified by ss 601LA and 601LC).

ASIC refers to and repeats paragraphs 94-97 above.

393. By reason of the matters pleaded in paragraph 392 above, Keystone was required to obtain the approval of the members of the SMF in the way set out in ss 217-227 of the Corporations Act (as modified by s 601LA) before making each of the SMF-ADPF Payments.

**Particulars**

Corporations Act, s 208 (as modified by s 601LC).

394. Keystone did not obtain the approval of the members of the SMF in the way set out in ss 217-227 of the Corporations Act (as modified by s 601LA) before making any of the SMF-ADPF Payments.
395. In the premises pleaded in paragraphs 393-394 above, each time Keystone made one of the SMF-ADPF Payments, it contravened s 208 of the Corporations Act (as modified by s 601LC).
396. In the period from 11 April 2022 to 27 May 2024, Chiodo:
- (a) was a director of Keystone;
  - (b) authorised the SMF-ADPF Payments; and
  - (c) knew that Keystone did not obtain the approval of the members of the SMF before making any of the SMF-ADPF Payments.

**Particulars**

This can be inferred from: Chiodo's position as a director of Keystone; and the matter pleaded in paragraph 394 above.

397. In the premises pleaded in paragraphs 395-396 above, in the period from 11 April 2022 to 27 May 2024, each time Keystone made one of the SMF-ADPF Payments, Chiodo:
- (a) was involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and
  - (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

398. In the period from 11 April 2022 to 29 December 2023, Frolov:
- (a) was a director of Keystone;
  - (b) authorised the SMF-ADPF Payments; and
  - (c) knew that Keystone did not obtain the approval of the members of the SMF before making any of the SMF-ADPF Payments.

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone; and the matter pleaded in paragraph 394 above.

399. In the premises pleaded in paragraphs 395 and 398 above, in the period from 11 April 2022 to 29 December 2023, each time Keystone made one of the SMF-ADPF Payments, Frolov:
- (a) was involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and
  - (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

400. In the period from 2 January 2024 to 27 May 2024, Yorston:
- (a) was a director of Keystone;
  - (b) authorised the SMF-ADPF Payments; and
  - (c) knew that Keystone did not obtain the approval of the members of the SMF before making any of the SMF-ADPF Payments.

**Particulars**

This can be inferred from: Yorston's position as a director of Keystone; and the matter pleaded in paragraph 394 above.

401. In the premises pleaded in paragraphs 395 and 400 above, in the period from 2 January 2024 to 27 May 2024, each time Keystone made one of the SMF-ADPF Payments, Yorston:

- (a) was involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and
- (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

**D.2.2 Chiodo Corporation Payments – Ch 5C.7**

402. Paragraphs 403-411 below are pleaded in the alternative to paragraphs 379-390 above, and further to paragraphs 392-401 above.
403. Each of the Chiodo Corporation Payments was:
- (a) a financial benefit;
  - (b) given by Keystone, which was the responsible entity of the SMF;
  - (c) given out of the scheme property of the SMF (or, alternatively, that could endanger the scheme property of the SMF); and
  - (d) given to Chiodo Corporation.

**Particulars**

Corporations Act, ss 208 and 229 (as modified by ss 601LA and 601LC).

ASIC refers to and repeats paragraphs 94-100 above.

404. ASIC refers to and repeats paragraph 381 above.
405. By reason of the matters pleaded in paragraphs 403-404 above, Keystone was required to obtain the approval of the members of the SMF in the way set out in ss 217-227 of the Corporations Act (as modified by s 601LA) before making each of the Chiodo Corporation Payments.

**Particulars**

Corporations Act, s 208 (as modified by s 601LC).

406. Keystone did not obtain the approval of the members of the SMF in the way set out in ss 217-227 of the Corporations Act (as modified by s 601LA) before making any of the Chiodo Corporation Payments.
407. In the premises pleaded in paragraphs 405-406 above, each time Keystone made one of the Chiodo Corporation Payments, it contravened s 208 of the Corporations Act (as modified by s 601LC).
408. In the period from 11 April 2022 to 27 May 2024, Chiodo:
- (a) was a director of both Keystone and Chiodo Corporation;
  - (b) in the periods identified in paragraph 99 above, authorised the Chiodo Corporation Payments;

- (c) knew that Chiodo Corporation was a related party of Keystone; and

**Particulars**

ASIC refers to and repeats the particulars to paragraph 385(d) above.

- (d) knew that Keystone did not obtain the approval of the members of the SMF before making any of the Chiodo Corporation Payments.

**Particulars**

This can be inferred from: Chiodo's position as a director of Keystone; and the matter pleaded in paragraph 406 above.

409. In the premises pleaded in paragraphs 407-408 above, in the periods identified in paragraph 99 above, each time Keystone made one of the Chiodo Corporation Payments, Chiodo was:

- (a) involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and  
 (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

410. In the period from 11 April 2022 to 29 December 2023, Frolov:

- (a) was a director of Keystone;  
 (b) in the periods identified in paragraph 99 above, authorised the Chiodo Corporation Payments;  
 (c) knew that Chiodo Corporation was a related party of Keystone; and

**Particulars**

ASIC refers to and repeats the particulars to paragraph 387(d) above.

- (d) knew that Keystone did not obtain the approval of the members of the SMF before making any of the Chiodo Corporation Payments.

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone; and the matter pleaded in paragraph 406 above.

411. In the premises pleaded in paragraphs 407 and 410 above, in the periods identified in paragraph 99 above, each time Keystone made one of the Chiodo Corporation Payments, Frolov:

- (a) was involved in Keystone's contravention of s 208 of the Corporations Act (as modified by s 601LC); and  
 (b) therefore contravened s 209(2) of the Corporations Act (as modified by s 601LA).

**Particulars**

Corporations Act, ss 79, 209(2) (as modified by s 601LA).

**D.2.3 Chiodo Corporation Payments – Chapter 2E**

412. Paragraphs 413-421 below are pleaded in the alternative to paragraphs 379-390 and 402-411 above, and further to paragraphs 392-401 above.
413. Each of the Chiodo Corporation Payments was:
- (a) a financial benefit;
  - (b) given by Keystone, which was a public company; and
  - (c) given to Chiodo Corporation.

**Particulars**

Corporations Act, ss 208 and 229.

ASIC refers to and repeats paragraphs 94-100 above.

414. ASIC refers to and repeats paragraph 381 above.
415. By reason of the matters pleaded in paragraphs 413-414 above, Keystone was required to obtain the approval of the members of Keystone in the way set out in ss 217-227 of the Corporations Act before making each of the Chiodo Corporation Payments.

**Particulars**

Corporations Act, s 208.

416. Keystone did not obtain the approval of the members of Keystone in the way set out in ss 217-227 of the Corporations Act before making any of the Chiodo Corporation Payments.
417. In the premises pleaded in paragraphs 415-416 above, each time Keystone made one of the Chiodo Corporation Payments, it contravened s 208 of the Corporations Act.
418. In the period from 11 April 2022 to 27 May 2024, Chiodo:
- (a) was a director of both Keystone and Chiodo Corporation;
  - (b) in the periods identified in paragraph 99 above, authorised the Chiodo Corporation Payments;
  - (c) knew that Chiodo Corporation was a related party of Keystone; and

**Particulars**

ASIC refers to and repeats the particulars to paragraph 385(d) above.

- (d) knew that Keystone did not obtain the approval of the members of Keystone in the way set out in ss 217-227 of the Corporations Act before making any of the Chiodo Corporation Payments.

**Particulars**

This can be inferred from: Chiodo's position as a director of Keystone; and the matter pleaded in paragraph 416 above.

419. In the premises pleaded in paragraphs 417-418 above, in the periods identified in paragraph 99 above, each time Keystone made one of the Chiodo Corporation Payments, Chiodo:
- (a) was involved in Keystone's contravention of s 208 of the Corporations Act; and
  - (b) therefore contravened s 209(2) of the Corporations Act.

**Particulars**

Corporations Act, ss 79, 209(2).

420. In the period from 11 April 2022 to 29 December 2023, Frolov:
- (a) was a director of Keystone;
  - (b) in the periods identified in paragraph 99 above, authorised the Chiodo Corporation Payments;
  - (c) knew that Chiodo Corporation was a related party of Keystone; and

**Particulars**

ASIC refers to and repeats the particulars to paragraph 387(d) above.

- (d) knew that Keystone did not obtain the approval of the members of Keystone in the way set out in ss 217-227 of the Corporations Act before making any of the Chiodo Corporation Payments.

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone; and the matter pleaded in paragraph 416 above.

421. In the premises pleaded in paragraphs 417-420 above, in the periods identified in paragraph 99 above, each time Keystone made one of the Chiodo Corporation Payments, Frolov:
- (a) was involved in Keystone's contravention of s 208 of the Corporations Act; and
  - (b) therefore contravened s 209(2) of the Corporations Act.

**Particulars**

Corporations Act, ss 79, 209(2).

## E. VALUATIONS

### E.1 Failure to value the units in the ADPF

422. Keystone was required to ensure that each asset of the SMF was valued on the last business day of each quarter.

#### Particulars

Corporations Act, s 601FC(1)(j).

SMF Constitution, cl 12.1.

Compliance Plan, cl 6.9.1 (under 'Controls for monitoring').

423. Keystone was required to ensure that valuations of the assets of the SMF were prepared by:

- (a) the Administrator of the SMF, being a service provider that is not related to Keystone; or
- (b) if the Administrator lacks the relevant expertise, an external expert valuer, being a service provider that is not related to Keystone.

#### Particulars

Compliance Plan, cl 6.9.1 (under 'Controls for monitoring').

424. The Compliance Plan allocated responsibility for each of the requirements pleaded in paragraphs 422-423 above to the Compliance Officer.

425. ASIC refers to and repeats paragraph 97 above.

426. On 23 June 2022, Unity Fund Services Pty Ltd (**Unity**) was appointed as Administrator of the ADPF.

#### Particulars

Administration Services Agreement between Keystone and Unity dated 23 June 2022 [S9Z.0014.0001.4082].

Circulating Resolution dated 23 June 2022 [S9Z.0014.0001.1088].

427. As Administrator, Unity:

- (a) was not required to conduct any valuation of the SMF's units in the ADPF; and

#### Particulars

Administration Services Agreement, Sch 2 [S9Z.0014.0001.4082 at .4109].

- (b) did not conduct any valuation of the SMF's units in the ADPF.

428. On 20 October 2022, FSA Audit Pty Ltd (**FSA**) provided a valuation of the SMF's units in the ADPF as at 30 June 2022.

#### Particulars

Valuation Report dated 20 October 2022 [KSS.0454.0010.6858].

429. In about October 2023, Frolov prepared:

- (a) an internal valuation of each of the loans made (or purported to be made) pursuant to the ADPF Loan Agreements as at 30 June 2023; and

**Particulars**

Fair Value of Investments Report dated 20 July 2023 (which appears to have been created in about October 2023) [KSS.0210.0016.0655].

- (b) an internal valuation of each of the loans made (or purported to be made) pursuant to the ADPF Loan Agreements as at 30 September 2023.

**Particulars**

Fair Value of Investments Report dated 18 October 2023 [KSS.0210.0016.0658].

430. On 31 October 2023 and/or 13 December 2023, FSA provided a valuation of the SMF's units in the ADPF as at 30 June 2023.

**Particulars**

Valuation Report dated 31 October 2023 [KSS.0454.0028.1156]; Valuation Report dated 13 December 2023 [KSS.0013.0001.0002].

431. In the period from March 2024 to June 2024, Chiodo Corporation and/or CF Capital obtained valuations of specific ADPF Developments.

**Particulars**

- CBRE Valuation Report for 348-350 Warrigal Road, Ashburton as at 31 December 2023 (Inspection date 6 March 2024) [KAM.1012.0001.0001].
- CBRE Valuation Report for 141-145 Augustine Terrace, Glenroy as at 31 December 2023 (Inspection date 6 March 2024) [KAM.1012.0001.0048].
- CBRE Valuation Report for 21-23 Norwood Crescent, Moonee Ponds as at 31 December 2023 (Inspection date 6 March 2024) [KAM.1012.0001.0112].
- CBRE Valuation Report for 33-35 Nicholson Street, Bentleigh as at 31 December 2023 (Inspection date 6 March 2024) [KAM.1012.0001.0176].
- CBRE Retrospective Valuation Report for 33 Davidson Street, Port Douglas as at 31 December 2023 (Inspection date 8 March 2024) [KAM.1012.0001.0230].
- CBRE Draft Valuation Report for 71-85 Port Douglas Road, Port Douglas as at 31 December 2023 (Inspection date 12 March 2024). [KAM.1010.0001.0468].
- JLL Valuation Report for Namuka Bay, Fiji dated 6 June 2024 [KAM.1013.0001.0203].

432. In the period from 11 April 2022 to 27 May 2024, valuations of the units in the ADPF were only conducted as at 30 June 2022, 30 June 2023 and 30 September 2023.

**Particulars**

ASIC refers to and repeats paragraphs 428-430 above.

433. In the period from 11 April 2022 to 27 May 2024, valuations of the units in the ADPF were only conducted by an external expert valuer as at 30 June 2022 and 30 June 2023.

**Particulars**

ASIC refers to and repeats paragraphs 428 and 430 above.

434. In the premises pleaded in paragraphs 422-433 above, in each of the quarters ending 30 September 2022, 31 December 2022, 31 March 2023, 30 September 2023, 31 December 2023 and 31 March 2024, Keystone:
- (a) failed to comply with cl 12.1 of the SMF Constitution in relation to the SMF's units in the ADPF by failing to ensure that the SMF's units in the ADPF were valued on the last business day of each quarter;
  - (b) contravened s 601FC(1)(m) of the Corporations Act, by failing to comply with cl 12.1 of the SMF Constitution in relation to the SMF's units in the ADPF;
  - (c) failed to comply with cl 6.9.1 of the Compliance Plan in relation to the SMF's units in the ADPF by:
    - (i) failing to ensure that the SMF's units in the ADPF were valued on the last business day of each quarter; and
    - (ii) in respect of each of those quarters and also the quarter ending 30 September 2023, failing to ensure that the valuations were prepared by the Administrator or an external expert valuer, being a service provider that is not related to Keystone;
  - (d) contravened s 601FC(1)(h) of the Corporations Act, by failing to comply with cl 6.9.1 of the Compliance Plan in relation to the SMF's units in the ADPF; and
  - (e) contravened s 601FC(1)(j) of the Corporations Act, by failing to ensure that the SMF's units in the ADPF were valued at regular intervals appropriate to the nature of that property.

**E.2 Contraventions by directors**

**E.2.1 Contraventions by Chiodo**

435. Chiodo was required to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act, the SMF Constitution and the Compliance Plan.

**Particulars**

Corporations Act, s 601FD(1)(f).

436. In the period from 11 April 2022 to 27 May 2024, Chiodo:
- (a) knew that the SMF held units in the ADPF;

### Particulars

This can be inferred from: Chiodo's position as a director of Keystone; and the fact that Chiodo authorised each of the SMF-ADPF Payments in the period from 11 April 2022 to 27 May 2024.

- (b) knew (alternatively, ought to have known) that Unity was not required to value the SMF's units in the ADPF;

### Particulars

In the period from 11 April 2022 to 23 June 2022, Unity had not yet been engaged as Administrator. In the period from 23 June 2022 to 27 May 2024, Chiodo's knowledge can be inferred from the fact that he executed the Administration Services Agreement on behalf of Keystone.

- (c) apart from the valuations prepared by FSA pleaded in paragraphs 428 and 430 above, did not receive other external valuations of the SMF's units in the ADPF; and
- (d) apart from the internal valuations prepared by Frolov pleaded in paragraph 429 above, did not receive other internal valuations of the SMF's units in the ADPF.

437. A reasonable person in Chiodo's position would have:

- (a) caused Keystone to obtain valuations of the SMF's units in the ADPF on the last business day of each quarter; and
- (b) ensured Keystone obtained those valuations from the Administrator or an external expert valuer, being a service provider that was not related to Keystone.

### Particulars

As to Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 55, 94-97 and 436 above.

438. Chiodo did not take the steps pleaded in paragraph 437 above.

439. In the premises pleaded in paragraphs 434-438 above, in each of the quarters ending 30 September 2022, 31 December 2022, 31 March 2023, 30 September 2023, 31 December 2023 and 31 March 2024, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act, the SMF Constitution and the Compliance Plan.

440. Therefore, in each of the quarters ending 30 September 2022, 31 December 2022, 31 March 2023, 30 September 2023, 31 December 2023 and 31 March 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.

### ***E.2.2 Contraventions by Frolov***

441. Frolov was required to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act, the SMF Constitution and the Compliance Plan.

**Particulars**

Corporations Act, s 601FD(1)(f).

442. In the period from 11 April 2022 to 29 December 2023, Frolov:

- (a) knew that the SMF held units in the ADPF;

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone; and the fact that Frolov authorised each of the SMF-ADPF Payments in the period from 11 April 2022 to 29 December 2023.

- (b) knew (alternatively, ought to have known) that Unity was not required to value the SMF's units in the ADPF;

**Particulars**

In the period from 11 April 2022 to 23 June 2022, Unity had not yet been engaged as Administrator. In the period from 23 June 2022 to 29 December 2023, Frolov's knowledge can be inferred from the fact that he executed the Administration Services Agreement on behalf of Keystone.

- (c) apart from the valuations prepared by FSA pleaded in paragraphs 428 and 430 above, did not receive other external valuations of the SMF's units in the ADPF; and
- (d) apart from the internal valuations pleaded in paragraph 429 above, did not prepare other internal valuations of the SMF's units in the ADPF.

443. A reasonable person in Frolov's position would have:

- (a) caused Keystone to obtain valuations of the SMF's units in the ADPF on the last business day of each quarter; and
- (b) ensured Keystone obtained those valuations from the Administrator or an external expert valuer, being a service provider that was not related to Keystone.

**Particulars**

As to Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 55, 94-97 and 442 above.

444. Frolov did not take the steps pleaded in paragraph 443 above.

445. In the premises pleaded in paragraphs 434 and 441-444 above, in each of the quarters ending 30 September 2022, 31 December 2022, 31 March 2023 and 30 September 2023, Frolov failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act, the SMF Constitution and the Compliance Plan.

446. Therefore, in each of the quarters ending 30 September 2022, 31 December 2022, 31 March 2023 and 30 September 2023, Frolov contravened s 601FD(1)(f) and (3) of the Corporations Act.

### **E.2.3 Contraventions by Yorston**

447. Yorston was required to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act, the SMF Constitution and the Compliance Plan.

#### **Particulars**

Corporations Act, s 601FD(1)(f).

448. A reasonable person in Yorston's position would have:

- (a) informed himself about the arrangements Keystone had in place to comply with cl 12.1 of the SMF Constitution, cl 6.9.1 of the Compliance Plan and s 601FC(1)(j) of the Corporations Act; and
- (b) obtained and reviewed the valuations of the SMF's units in the ADPF that Keystone was required to receive.

#### **Particulars**

As to Yorston's position, ASIC refers to and repeats paragraphs 28, 29, 55, 94-97 and 447 above.

449. Yorston did not take the steps pleaded in paragraph 448 above.

450. In the premises pleaded in paragraphs 434 and 447-449 above, in the period from 11 April 2022 to 27 May 2024, Yorston failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act, the SMF Constitution and the Compliance Plan.

451. Therefore, in the period from 11 April 2022 to 27 May 2024, Yorston contravened s 601FD(1)(f) and (3) of the Corporations Act.

### **E.3 Contraventions by Compliance Committee members**

452. In the period from 18 February 2021 to 27 August 2024, the Compliance Committee:

- (a) did not discuss whether Keystone was complying with the requirements in cl 12.1 of the SMF Constitution, cl 6.9.1 of the Compliance Plan or s 601FC(1)(j) of the Corporations Act; and
- (b) did not report to Keystone or ASIC any breach, or suspected breach, of cl 12.1 of the SMF Constitution, cl 6.9.1 of the Compliance Plan or s 601FC(1)(j) of the Corporations Act.

453. On 20 September 2022, Frolov:

- (a) told Danon that, because the SMF was investing in the ADPF, the SMF's auditor said that Keystone must either provide consolidated accounts or get the ADPF valued externally to provide a fair value; and

- (b) asked Danon if he had previously seen this requested by an auditor.

**Particulars**

Email dated 20 September 2022 [KSS.0210.0006.0523].

**E.3.1 Contraventions by Frolov**

454. As a member of the Compliance Committee, Frolov was required to exercise the degree of care and diligence that a reasonable person would exercise if they were in his position.

**Particulars**

Corporations Act, s 601JD(1)(b).

455. ASIC refers to and repeats paragraph 442 above.
456. A reasonable person in Frolov's position would have:
- (a) in respect of each of the quarters ending 30 September 2022, 31 December 2022, 31 March 2023 and 30 September 2023, informed the Compliance Committee that Keystone had not obtained valuations of the SMF's units in the ADPF from the Administrator or an external expert valuer, being a service provider that was not related to Keystone;
  - (b) informed the Compliance Committee that Keystone did not have arrangements in place to obtain valuations of the SMF's units in the ADPF on the last business day of each quarter from the Administrator or an external expert valuer, being a service provider that was not related to Keystone; and
  - (c) in respect of each of the quarters ending 30 September 2022, 31 December 2022, 31 March 2023 and 30 September 2023, caused the Compliance Committee to report to Keystone the matters in paragraph 434 above.

**Particulars**

As to Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 41-48, 55, 94-97, 442 and 452-453 above.

457. Frolov did not take the steps pleaded in paragraph 456 above.
458. In the premises pleaded in paragraphs 434 and 454-457 above, Frolov as a member of the Compliance Committee failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in his position.
459. Therefore, Frolov contravened s 601JD(1)(b) and (3) of the Corporations Act.

**E.3.2 Contraventions by Danon**

460. As a member of the Compliance Committee, Danon was required to exercise the degree of care and diligence that a reasonable person would exercise if they were in his position.

**Particulars**

Corporations Act, s 601JD(1)(b).

461. The Compliance Plan allocated responsibility for the requirements pleaded in paragraphs 422 to 423 above to the Compliance Officer.
462. In the period from 7 June 2022 (alternatively, 20 September 2022) to 27 August 2024, a reasonable person in Danon's position would have:
- (a) inquired about Keystone's arrangements for ensuring that:
    - (i) the assets of the SMF were valued on the last day of each calendar quarter; and
    - (ii) the assets of the SMF were valued either by the Administrator or an external expert valuer, being a service provider that was not related to Keystone;
  - (b) taken steps to ensure that Keystone had arrangements in place to ensure it:
    - (i) obtained a valuation of the assets of the SMF on the last day of each calendar quarter; and
    - (ii) obtained the valuation from the Administrator or an external expert valuer, being a service provider that was not related to Keystone; and/or
  - (c) caused the Compliance Committee to report to Keystone that the arrangements referred to in subparagraph (a) above did not comply with the Compliance Plan.

**Particulars**

ASIC refers to and repeats paragraphs 30, 31, 41-48, 55, 94-97, 452-453 and 461 above.

463. In the period from 7 June 2022 (alternatively, 20 September 2022) to 27 August 2024, Danon did not take the steps identified in paragraph 462 above.
464. In the premises pleaded in paragraphs 434 and 460-463 above, in the period from 7 June 2022 (alternatively, 20 September 2022) to 27 August 2024, Danon as a member of the Compliance Committee failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in his position.
465. Therefore, in the period from 7 June 2022 (alternatively, 20 September 2022) to 27 August 2024, Danon contravened s 601JD(1)(b) and (3) of the Corporations Act.

## F. CONFLICTS OF INTEREST

### F.1 Conflicts of interest

#### F.1.1 Conflicts involving Chiodo

466. In the period from about March 2022 to 27 May 2024, there were conflicts between Chiodo's duties as a director of Keystone, and:
- (a) his duties as a director of 33 Davidson Port Douglas Pty Ltd and indirect interest in that SPV, in relation to the Davidson Loan Agreement;
  - (b) his duties as a director of 75 Port Douglas Road Pty Ltd and indirect interest in that SPV, in relation to the Port Douglas Road Loan Agreement;
  - (c) his duties as a director of Augustine Terrace Glenroy Pty Ltd and indirect interest in that SPV, in relation to the Augustine Terrace Loan Agreement;
  - (d) his duties as a director of Nicholson Street Bentleigh Pty Ltd and indirect interest in that SPV, in relation to the Nicholson Street Loan Agreement;
  - (e) his duties as a director of Norwood Ponds (Land) Pty Ltd and indirect interest in that SPV, in relation to the Norwood Ponds Loan Agreement;
  - (f) his duties as a director of Red Hill Terraces (Land) Pty Ltd and indirect interest in that SPV, in relation to the Red Hill Loan Agreement; and
  - (g) his duties as a director of Warrigal Road Ashburton Pty Ltd and indirect interest in that SPV, in relation to the Warrigal Road Loan Agreement,
- (together, the **Chiodo March 2022 Loan Agreement Conflicts**).

#### Particulars

ASIC refers to and repeats paragraphs 3, 4, 11 and 68-70 above.

In respect of each Loan Agreement, the conflicts arose in relation to:

- (a) the negotiation of the Loan Agreement between Keystone and the SPV;
  - (b) the entry into the Loan Agreement by Keystone and the SPV;
  - (c) decisions by Keystone about requiring security and advancing loan funds under the Loan Agreement;
  - (d) Keystone's monitoring of the SPV's compliance with the Loan Agreement; and
  - (e) decisions by Keystone about how to respond to breaches by the SPV of the Loan Agreement.
467. In the period from about May 2022 to 27 May 2024, there were conflicts between Chiodo's duties as a director of Keystone, and his duties as a director of Chiodo Corporation and indirect interest in Chiodo Corporation, in relation to the Chiodo Development Management Agreement (**Chiodo Development Management Agreement Conflicts**).

### Particulars

ASIC refers to and repeats paragraphs 3, 4, 6 and 71-73 above.

The conflicts arose in relation to:

- (a) the negotiation of the Chiodo Development Management Agreement between Keystone and Chiodo Corporation;
- (b) the entry into the Chiodo Development Management Agreement by Keystone and Chiodo Corporation;
- (c) Keystone's monitoring of Chiodo Corporation's compliance with the Chiodo Development Management Agreement; and
- (d) decisions by Keystone about how to respond to breaches by Chiodo Corporation of the Chiodo Development Management Agreement.

468. In the period from about July 2023 to 27 May 2024, there were conflicts between Chiodo's duties as a director of Keystone, and:

- (a) his duties as a director of Luxurious Resort (Fiji) Pte Ltd, in relation to the Fiji Loan Agreement;
- (b) his indirect interest in 417 Bellmere Road Pty Ltd, in relation to the Bellmere Road Loan Agreement; and
- (c) his duties as a director of Chiodo K'Gari Pty Ltd and indirect interest in that SPV, in relation to the K'Gari Loan Agreement,

(together, the **Chiodo July 2023 Loan Agreement Conflicts**).

### Particulars

ASIC refers to and repeats paragraphs 3, 4, 11 and 76-78 above.

In respect of each Loan Agreement, the conflicts arose in relation to:

- (a) the negotiation of the Loan Agreement between Keystone and the SPV;
- (b) the entry into the Loan Agreement by Keystone and the SPV;
- (c) decisions by Keystone about requiring security and advancing loan funds under the Loan Agreement;
- (d) Keystone's monitoring of the SPV's compliance with the Loan Agreement; and
- (e) decisions by Keystone about how to respond to breaches by the SPV of the Loan Agreement.

469. In the period from about December 2023 to 27 May 2024, there were conflicts between Chiodo's duties as a director of Keystone, and:

- (a) his duties as a director of Chiodo Corporation and indirect interest in Chiodo Corporation;
- (b) his duties as a director and manager of Luxuria IT and interest in Luxuria IT; and

(c) from about February 2024, his duties as a director of Poseidon Luxury and indirect interest in Poseidon Luxury,

in relation to the Venice Loan Agreements and (from about February 2024) the Venice Side Letter (the **Chiodo Venice Conflicts**).

#### Particulars

ASIC refers to and repeats paragraphs 3, 4, 6, 12-13 and 80-93 above.

The conflicts arose in relation to:

- (a) the negotiation of the Venice Loan (Purchase Money) Agreement between Keystone, Chiodo Corporation and Luxuria IT;
- (b) the negotiation of the Venice Loan (Earnest Money) Agreement between Keystone and Chiodo Corporation;
- (c) the negotiation of the Venice Side Letter between Chiodo Corporation, Luxuria IT and Poseidon Luxury;
- (d) the entry into the Venice Loan Agreements by Keystone, Chiodo Corporation and Luxuria IT;
- (e) the entry into the Venice Side Letter by Chiodo Corporation, Luxuria IT and Poseidon Luxury;
- (f) decisions by Keystone about requiring security and advancing loan funds under the Venice Loan Agreements;
- (g) Keystone's monitoring of compliance with the Venice Loan Agreements; and
- (h) decisions by Keystone about how to respond to breaches of the Venice Loan Agreements.

470. In the period from about April 2022 to 27 May 2024, there were conflicts between Chiodo's duties as a director of Keystone, and:

- (a) his duties as a director of Chiodo Corporation and indirect interest in Chiodo Corporation;
- (b) his duties as a director of each of the SPVs referred to in paragraph 466 above and indirect interest in each of those SPVs;
- (c) from about May 2022, his duties as a director of Malana Management and indirect interest in Malana Management;
- (d) from about March 2023, his indirect interest in 24Calibre;
- (e) from 7 July 2023, his duties and interests in respect of the SPVs referred to in paragraph 468 above; and
- (f) from about January 2024, his duties as a director of Aquatica CK and indirect interest in Aquatica CK,

in relation to decisions to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments (**Chiodo Investment Decision Conflicts**).

### Particulars

ASIC refers to and repeats paragraphs 3, 4, 6, 9, 11, 15, 16 and 94-120 above.

Further:

- (a) under cl 2.4 of the Chiodo Development Management Agreement, Chiodo Corporation was entitled to be paid a fee determined by reference to the 'gross realisation value' of projects carried on by the SPVs, which were in part funded by the Chiodo Corporation Payments;
- (b) the projects carried on by the SPVs were in part funded by the Chiodo Corporation Payments.

### **F.1.2 Conflicts involving Frolov**

471. In the period from about July 2023 to 29 December 2023, there were conflicts between Frolov's duties as a director of Keystone, and:

- (a) his indirect interest in 417 Bellmere Road Pty Ltd, in relation to the Bellmere Road Loan Agreement; and
- (b) his duties as a director of Chiodo K'Gari Pty Ltd and indirect interest in that SPV, in relation to the K'Gari Loan Agreement,

(together, the **Frolov July 2023 Loan Agreement Conflicts**).

### Particulars

ASIC refers to and repeats paragraphs 17, 18, 24 and 76-78 above.

In respect of each Loan Agreement, the conflicts arose in relation to:

- (a) the negotiation of the Loan Agreement between Keystone and the SPV;
- (b) the entry into the Loan Agreement by Keystone and the SPV;
- (c) decisions by Keystone about requiring security and advancing loan funds under the Loan Agreement;
- (d) Keystone's monitoring of the SPV's compliance with the Loan Agreement; and
- (e) decisions by Keystone about how to respond to breaches by the SPV of the Loan Agreement.

472. In the period from about May 2022 to 29 December 2023, there were conflicts between Frolov's duties as a director of Keystone, and:

- (a) his duties as a director of Malana Management and indirect interest in Malana Management; and
- (b) from about August 2022, his duties as a director of Marsi Group and indirect interest in Marsi Group;
- (c) from about March 2023, his indirect interest in 24Calibre; and
- (d) from 7 July 2023, his duties and interests in respect of the SPVs referred to in paragraph 471 above;

in relation to decisions to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments (**Frolov Investment Decision Conflicts**).

**Particulars**

ASIC refers to and repeats paragraphs 17, 18, 20, 23-24, 27 and 94-120 above.

**F.2 Arrangements to manage conflicts**

473. Keystone was required to have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by Keystone or its representatives in the provision of financial services as part of Keystone's financial services business.

**Particulars**

Corporations Act, s 912A(1)(aa).

474. Keystone was required:
- (a) to have '[a] conflicts of interest management system ... in place which aims to identify, assess and manage any conflicts';
  - (b) to have '[h]igh level conflicts ... listed in a matrix that is to be managed via an internal control or disclosure';
  - (c) to avoid conflicts of interest that 'cannot be managed via these methods';
  - (d) to keep 'a record of conflicts of interests identified and how such conflicts are managed';
  - (e) to manage '[i]dentified conflicts and perceived conflicts ... on a case by case basis' and record and report such conflicts to the Compliance Committee; and
  - (f) to document '[r]elated party transactions ... in writing against the required regulatory requirements'.

**Particulars**

Compliance Plan, cl 6.19.1 (under 'Controls for monitoring' and 'Monitoring measures') and cl 6.20.1 (under 'Controls for monitoring').

475. In the period from about 17 November 2021 to 27 May 2024, Keystone maintained:
- (a) a Conflicts of Interest Register (**COI Register**); and
  - (b) a Related Party Transaction Register (**RPT Register**).

**Particulars**

The COI Register and the RPT Register were updated from time to time, as described in paragraphs 476-487 below.

**F.2.1 COI Register**

476. In the period from about 17 November 2021 to 21 November 2022, the COI Register recorded that:

- (a) 'Chiodo Corporation acts as the property developer for the [CDPF]. Chiodo Corporation shares a director with [Keystone] and CF Capital. This related party transaction is on a commercial arms length terms and proceeds based on the disclosure provided under this PDS';
- (b) 'CF Capital acts as the investment manager for [Keystone]. CF Capital shares directors with Keystone. This related party transaction is on a reasonable remuneration and proceed based on the disclosure provided under this PDS'; and
- (c) 'Chiodo Corporation acts as the property developer for the [ADPF]. Chiodo Corporation shares a director with [Keystone] and CF Capital. This related party transaction is on a commercial arms length terms and proceeds based on the disclosure provided under this PDS'.

#### **Particulars**

Some versions of the COI Register produced between 17 November 2021 and 21 November 2022 omitted sub-paragraph (c) above: see, eg, COI Register dated 3 March 2022 [PAT.0001.0001.8655], COI Register dated 31 May 2022 [PAT.0001.0001.9215].

- 477. On or about 21 November 2022, Danon updated the COI Register.
- 478. In the period from 21 to 23 November 2022, the COI Register recorded:
  - (a) as item 1 under the heading 'Description of Conflict / Interest', that '[CF Capital] acts as the investment manager for the managed investment schemes operated by [Keystone]. Conflict deemed to constitute a related party transaction since it relates to a public company';
  - (b) under the heading 'Action Taken' in respect of item 1, that 'Transaction is covered by one [of] the exemptions provided by Section 211 of the Act – that is reasonable remuneration. Further, full details are disclosed in the Product Disclosure Statement';
  - (c) under the heading 'Resulting Action' in respect of item 1, that 'No further action required. The relationship is disclosed in the Related Party Transaction Register';
  - (d) as item 2 under the heading 'Description of Conflict / Interest', that '[Chiodo Operations] acts as the property developer for the [CDPF]. [Keystone] and [CF Capital] share common directors';
  - (e) under the heading 'Action Taken' in respect of item 2, that 'This related party transaction is on a commercial arm's length terms and full details are disclosed in the Product Disclosure Statement of the relevant Responsible Entity (Falcon Capital Limited)'; and

- (f) under the heading 'Resulting Action' in respect of item 2, that 'No further action required. The relationship does not constitute a Related Party Transaction, pursuant to Section 207 of the Act'.
479. On or about 23 November 2022, Danon updated the COI Register.
480. In the period from 23 November 2022 to 27 May 2024, the COI Register recorded:
- (a) the matters set out in paragraph 478 above;
  - (b) as item 3 under the heading 'Description of Conflict / Interest', that '[Keystone] is the Responsible Manager of two funds which invest in each other. Conflict deemed to constitute a related party transaction since it relates to a public company';
  - (c) as item 4 under the heading 'Description of Conflict / Interest', that 'Monies from the [ADPF] (in which [Keystone] is the Responsible Entity), are used to finance projects run by [Chiodo Operations]. [Keystone] and [Chiodo Operations] share common directors. Conflict deemed to constitute a related party transaction since it relates to a public company';
  - (d) under the heading 'Action Taken' in respect of items 3 and 4, that 'Transactions are covered by one [of] the exemptions provided by Section 211 of the Act – that is arm's length basis'; and
  - (e) under the heading 'Resulting Action' in respect of items 3 and 4, that 'No further action required. The relationship is disclosed in the Related Party Transaction Register'.

### **F.2.2 RPT Register**

481. In the period from about 17 November 2021 to 21 November 2022, the RPT Register recorded that:
- (a) the Fund Management Agreement between Keystone and CF Capital was a related party transaction by reason of those companies having common shareholders and two common directors; and
  - (b) the Investment Management Agreement between CF Capital and Chiodo Corporation (in relation to the CDPF) was a related party transaction by reason of those companies having one common shareholder and one common director.
482. On or about 21 November 2022, Danon updated the RPT Register.
483. In the period from 21 to 23 November 2022, the RPT Register recorded that CF Capital's engagement as the investment manager for the managed investment schemes operated by Keystone was a related party transaction.
484. On or about 23 November 2022, Danon updated the RPT Register.
485. In the period from 23 November 2022 to 27 October 2023, the RPT Register recorded:

- (a) as item 1 under the headings 'How is the Party Related?' and 'Nature of Transaction', that CF Capital acts as the investment manager for the funds operated by Keystone, and that both entities share common directors and members;
  - (b) under the heading 'Covered by Exemption' in respect of item 1, 'Yes – the related party transaction is on a reasonable remuneration basis, pursuant to Section 211 of the Act';
  - (c) as item 2 under the headings 'How is the Party Related?' and 'Nature of Transaction', that monies from the SMF are invested in the ADPF, and that Keystone 'is the Responsible Entity of two funds in which investments are made';
  - (d) as item 3 under the headings 'How is the Party Related?' and 'Nature of Transaction', that monies from the ADPF are used to finance projects run by [Chiodo Operations], that both entities share common directors and members;
  - (e) under the heading 'Covered by Exemption' in respect of items 2 and 3, 'Yes – the related party transaction is on an arm's length basis, pursuant to Section 211 of the Act'; and
  - (f) under the heading 'Action Taken If No Exemption' in respect of items 1, 2 and 3, 'No further action required'.
486. On 27 October 2023, Frolov updated the RPT Register.
487. In the period from 27 October 2023 to 27 May 2024, the RPT Register recorded:
- (a) the matters set out in paragraph 485 above;
  - (b) that 'Monies from the [ADPF] are used to finance the development for' each of:
    - (i) 75 Port Douglas Road Pty Ltd;
    - (ii) Luxurious Resort (Fiji) Pte Ltd;
    - (iii) Chiodo K'Gari Pty Ltd;
    - (iv) 417 Bellmere Road Pty Ltd;
    - (v) 33 Davidson Port Douglas Pty Ltd;
    - (vi) Augustine Terrace Glenroy Pty Ltd;
    - (vii) Nicholson Street Bentleigh Pty Ltd;
    - (viii) Norwood Ponds (Land) Pty Ltd;
    - (ix) Red Hill Terrace (Land) Pty Ltd; and
    - (x) Warrigal Road Ashburton Pty Ltd;

- (c) under the heading 'Covered by Exemption' in respect of each of those entries, 'Yes – the related party transaction is on an arm's length basis, pursuant to Section 211 of the Act'; and
- (d) under the heading 'Action Taken If No Exemption' in respect of each of those entries, 'No further action taken'.

### **F.2.3 Inadequacy of arrangements**

488. In the period from about March 2022 to 27 May 2024, apart from disclosure of the matters set out in the COI Register and the RPT Register (as amended from time to time), and disclosure of some aspects of the Chiodo Venice Conflicts at a Keystone board meeting on 21 December 2023, Keystone did not identify or implement any arrangements to manage:

- (a) the Chiodo March 2022 Loan Agreement Conflicts;
- (b) the Chiodo Development Management Agreement Conflicts;
- (c) the Chiodo July 2023 Loan Agreement Conflicts;
- (d) the Chiodo Venice Conflicts; or
- (e) the Chiodo Investment Decision Conflicts.

489. In the period from about May 2022 to 29 December 2023, apart from disclosure of the matters set out in the COI Register and the RPT Register (as amended from time to time), Keystone did not identify or implement any arrangements to manage:

- (a) the Frolov July 2023 Loan Agreement Conflicts; or
- (b) the Frolov Investment Decision Conflicts.

490. Disclosure of the matters set out in the COI Register and the RPT Register was not adequate to manage:

- (a) the Chiodo March 2022 Loan Agreement Conflicts;
- (b) the Chiodo Development Management Agreement Conflicts;
- (c) the Chiodo July 2023 Loan Agreement Conflicts;
- (d) the Chiodo Venice Conflicts;
- (e) the Chiodo Investment Decision Conflicts;
- (f) the Frolov July 2023 Loan Agreement Conflicts; or
- (g) the Frolov Investment Decision Conflicts.

491. In the premises pleaded in paragraphs 488 and 490 above, in the period from about March 2022 to 27 May 2024, Keystone did not have adequate arrangements to manage:

- (a) the Chiodo March 2022 Loan Agreement Conflicts;
- (b) the Chiodo Development Management Agreement Conflicts;

- (c) the Chiodo July 2023 Loan Agreement Conflicts;
  - (d) the Chiodo Venice Conflicts; or
  - (e) the Chiodo Investment Decision Conflicts.
492. In the premises pleaded in paragraphs 488 and 490-491 above, in the period from about March 2022 to 27 May 2024, Keystone contravened s 912A(1)(aa) of the Corporations Act.
493. In the premises pleaded in paragraphs 489-490 above, in the period from about May 2022 to 29 December 2023, Keystone did not have adequate arrangements to manage:
- (a) the Frolov July 2023 Loan Agreement Conflicts; or
  - (b) the Frolov Investment Decision Conflicts.
494. In the premises pleaded in paragraphs 489-490 and 493 above, in the period from about May 2022 to 29 December 2023, Keystone contravened s 912A(1)(aa) of the Corporations Act.

### **F.3 Contraventions by directors**

#### ***F.3.1 Contraventions by Chiodo***

495. Chiodo was required to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

#### **Particulars**

Corporations Act, s 601FD(1)(f).

#### ***March 2022 Loan Agreements***

496. In the period from about March 2022 to 27 May 2024, Chiodo knew of the existence of the Chiodo March 2022 Loan Agreement Conflicts.

#### **Particulars**

Chiodo was a director of Keystone and each SPV counterparty to each March 2022 ADPF Loan Agreements; Chiodo had indirect interests in each of those SPVs.

497. A reasonable person in Chiodo's position would have taken steps to avoid or adequately manage the Chiodo March 2022 Loan Agreement Conflicts, by:
- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
  - (b) refraining from participating in the negotiation of the March 2022 ADPF Loan Agreements, or decision-making in relation to those agreements.

#### **Particulars**

In respect of Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 11, 68-70, 466 and 496 above.

498. In the period from about March 2022 to 27 May 2024, Chiodo did not take the steps identified in paragraph 497 above.
499. In the premises pleaded in paragraphs 488-494 and 496-498 above, in the period from about March 2022 to 27 May 2024, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
500. Therefore, in the period from about March 2022 to 27 May 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.

*Chiodo Development Management Agreement*

501. In the period from about May 2022 to 27 May 2024, Chiodo knew of the existence of the Chiodo Development Management Agreement Conflicts.

**Particulars**

Chiodo was a director of Keystone and Chiodo Corporation; Chiodo had an indirect interest in Chiodo Corporation.

502. A reasonable person in Chiodo's position would have taken steps to avoid or adequately manage the Chiodo Development Management Agreement Conflicts, by:
- (a) causing Keystone to appoint an independent development manager, instead of Chiodo Corporation; and/or
  - (b) refraining from participating in the negotiation of the Chiodo Development Management Agreement, or decision-making in relation to that agreement.

**Particulars**

In respect of Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 6, 71-73, 467 and 501 above.

503. In the period from about May 2022 to 27 May 2024, Chiodo did not take the steps identified in paragraph 502 above.
504. In the premises pleaded in paragraphs 488-494 and 501-503 above, in the period from about May 2022 to 27 May 2024, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
505. Therefore, in the period from about May 2022 to 27 May 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.

*July 2023 Loan Agreements*

506. Chiodo knew of the existence of:
- (a) in the period from about July 2023 to 27 May 2024, the Chiodo July 2023 Loan Agreement Conflicts; and

**Particulars**

Chiodo was a director of Keystone and each SPV counterparty to each July 2023 ADPF Loan Agreements (except 417 Bellmere Road Pty Ltd); Chiodo had indirect interests in each of those SPVs (except Luxurious Resort (Fiji) Pte Ltd).

- (b) in the period from about July 2023 to 29 December 2023, the Frolov July 2023 Loan Agreement Conflicts.

**Particulars**

This can be inferred from: Chiodo's position as a director of Keystone; Chiodo's position as a director of Chiodo K'Gari Pty Ltd; Chiodo's indirect interest in 417 Bellmere Road Pty Ltd and Chiodo K'Gari Pty Ltd; Chiodo and Frolov's dealings with each other for the purposes of the business of the SMF and the ADPF.

507. A reasonable person in Chiodo's position would have taken steps to avoid or adequately manage the Chiodo July 2023 Loan Agreement Conflicts, by:
- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
  - (b) refraining from participating in the negotiation of the Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

In respect of Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 11, 76-78, 468 and 506 above.

508. In the period from about July 2023 to 27 May 2024, Chiodo did not take the steps identified in paragraph 507 above.
509. In the premises pleaded in paragraphs 488-494 and 506-508 above, in the period from about July 2023 to 27 May 2024, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
510. Therefore, in the period from about July 2023 to 27 May 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.
511. A reasonable person in Chiodo's position would have taken steps to avoid or adequately manage the Frolov July 2023 Loan Agreement Conflicts, by:
- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
  - (b) causing Frolov to refrain from participating in the negotiation of the Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

In respect of Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 11, 76-78, 471 and 506 above.

512. In the period from about July 2023 to 29 December 2023, Chiodo did not take the steps identified in paragraph 511 above.

513. In the premises pleaded in paragraphs 488-494, 506 and 511-512 above, in the period from about July 2023 to 29 December 2023, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

514. Therefore, in the period from about July 2023 to 27 May 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.

#### *Venice Agreements*

515. In the period from about December 2023 to 27 May 2024, Chiodo knew of the existence of the Chiodo Venice Conflicts.

#### **Particulars**

Chiodo was a director of Keystone, Chiodo Corporation, Luxuria IT and Poseidon Luxury; Chiodo was a shareholder in Luxuria IT and had an indirect interest in Chiodo Corporation and Poseidon Luxury.

516. A reasonable person in Chiodo's position would have taken steps to avoid or adequately manage the Chiodo Venice Conflicts, by:

- (a) causing Keystone not to enter into the Venice Loan Agreements or the Venice Side Letter; and/or
- (b) refraining from participating in the negotiation of the Venice Loan Agreements and the Venice Side Letter, or decision-making in relation to those agreements.

#### **Particulars**

In respect of Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 6, 12-13, 80-93, 469 and 515 above.

517. In the period from about December 2023 to 27 May 2024, Chiodo did not take the steps identified in paragraph 516 above.

518. In the premises pleaded in paragraphs 488-494 and 515-517 above, in the period from about December 2023 to 27 May 2024, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

519. Therefore, in the period from about December 2023 to 27 May 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.

#### *Investment Decisions*

520. Chiodo knew of the existence of:

- (a) in the period from about April 2022 to 27 May 2024, the Chiodo Investment Decision Conflicts; and

#### **Particulars**

Chiodo was a director of Keystone, Chiodo Corporation, each SPV (except 417 Bellmere Road Pty Ltd), Malana Management and (from about January 2024)

Aquatica CK; Chiodo had indirect interests in Chiodo Corporation, each SPV (except Luxurious Resort (Fiji) Pte Ltd), Malana Management, 24Calibre and Aquatica CK.

- (b) in the period from about May 2022 to 29 December 2023, the Frolov Investment Decision Conflicts.

**Particulars**

This can be inferred from: Chiodo's position as a director of Keystone, CF Capital, Chiodo K'Gari Pty Ltd, and Malana Management; Chiodo's indirect interests in 417 Bellmere Road Pty Ltd, Chiodo K'Gari Pty Ltd, Malana Management and 24Calibre; Chiodo and Frolov's dealings with each other for the purposes of the business of the SMF and the ADPF.

521. A reasonable person in Chiodo's position would have taken steps to avoid or adequately manage the Chiodo Investment Decision Conflicts by refraining from participating in decisions about whether to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments.

**Particulars**

In respect of Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 6, 9, 11, 15, 16, 94-120, 470 and 520 above.

522. In the period from about April 2022 to 27 May 2024, Chiodo did not take the steps identified in paragraph 521 above.
523. In the premises pleaded in paragraphs 488-494 and 520-522 above, in the period from about April 2022 to 27 May 2024, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
524. Therefore, in the period from about April 2022 to 27 May 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.
525. A reasonable person in Chiodo's position would have taken steps to avoid or adequately manage the Frolov Investment Decision Conflicts by causing Frolov to refrain from participating in decisions about whether to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments.

**Particulars**

In respect of Chiodo's position, ASIC refers to and repeats paragraphs 3, 4, 6, 9, 11, 15, 16, 94-120, 472 and 520 above.

526. In the period from about May 2022 to 29 December 2023, Chiodo did not take the steps identified in paragraph 525 above.
527. In the premises pleaded in paragraphs 488-494, 520 and 525-526 above, in the period from about May 2022 to 29 December 2023, Chiodo failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

528. Therefore, in the period from about May 2022 to 27 May 2024, Chiodo contravened s 601FD(1)(f) and (3) of the Corporations Act.

### ***F.3.2 Contraventions by Frolov***

529. Frolov was required to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

#### **Particulars**

Corporations Act, s 601FD(1)(f).

#### ***March 2022 Loan Agreements***

530. In the period from about March 2022 to 29 December 2023, Frolov knew of the existence of the Chiodo March 2022 Loan Agreement Conflicts.

#### **Particulars**

This can be inferred from: Frolov's position as a director of Keystone; Frolov's execution of each of the March 2022 ADPF Loan Agreements on behalf of Keystone, each of which was countersigned by Chiodo on behalf of the relevant SPV; Chiodo and Frolov's dealings with each other for the purposes of the business of the SMF and the ADPF.

531. A reasonable person in Frolov's position would have taken steps to avoid or adequately manage the Chiodo March 2022 Loan Agreement Conflicts, by:

- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
- (b) causing Chiodo to refrain from participating in the negotiation of the March 2022 ADPF Loan Agreements, or decision-making in relation to those agreements.

#### **Particulars**

In respect of Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 24, 68-70, 466 and 496 above.

532. In the period from about March 2022 to 29 December 2023, Frolov did not take the steps identified in paragraph 531 above.

533. In the premises pleaded in paragraphs 488-494 and 530-532 above, in the period from about March 2022 to 29 December 2023, Frolov failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

534. Therefore, in the period from about March 2022 to 29 December 2023, Frolov contravened s 601FD(1)(f) and (3) of the Corporations Act.

#### ***Chiodo Development Management Agreement***

535. In the period from about May 2022 to 29 December 2023, Frolov knew of the existence of the Chiodo Development Management Agreement Conflicts.

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone; the issue and content of the Information Memorandum (see paragraphs 65 and 66 above); Frolov's membership of the Compliance Committee; Frolov's position as the Compliance Officer; the content of the COI Register (see paragraphs 476, 478 and 480 above); Chiodo and Frolov's dealings with each other for the purposes of the business of the SMF and the ADPF.

536. A reasonable person in Frolov's position would have taken steps to avoid or adequately manage the Chiodo Development Management Agreement Conflicts, by:
- (a) causing Keystone to appoint an independent development manager, instead of Chiodo Corporation; and/or
  - (b) causing Chiodo to refrain from participating in the negotiation of the Chiodo Development Management Agreement, or decision-making in relation to that agreement.

**Particulars**

In respect of Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 71-73, 467 and 501 above.

537. In the period from about May 2022 to 29 December 2023, Frolov did not take the steps identified in paragraph 536 above.
538. In the premises pleaded in paragraphs 488-494 and 535-537 above, in the period from about May 2022 to 29 December 2023, Frolov failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
539. Therefore, in the period from about May 2022 to 29 December 2023, Frolov contravened s 601FD(1)(f) and (3) of the Corporations Act.

*July 2023 Loan Agreements*

540. In the period from about July 2023 to 29 December 2023, Frolov knew of the existence of:
- (a) the Frolov July 2023 Loan Agreement Conflicts; and

**Particulars**

Frolov was a director of Keystone and Chiodo K'Gari Pty Ltd; Frolov had indirect interests in 417 Bellmere Road Pty Ltd and Chiodo K'Gari Pty Ltd.

- (b) the Chiodo July 2023 Loan Agreement Conflicts.

**Particulars**

This can be inferred from: Frolov's position as a director of Keystone and Chiodo K'Gari Pty Ltd; Frolov's indirect interests in 417 Bellmere Road Pty Ltd and Chiodo K'Gari Pty Ltd; Chiodo and Frolov's dealings with each other for the purposes of the business of the SMF and the ADPF.

541. A reasonable person in Frolov's position would have taken steps to avoid or adequately manage the Frolov July 2023 Loan Agreement Conflicts, by:
- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
  - (b) refraining from participating in the negotiation of the Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

In respect of Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 24, 76-78, 471 and 540(a) above.

542. In the period from about July 2023 to 29 December 2023, Frolov did not take the steps identified in paragraph 541 above.
543. In the premises pleaded in paragraphs 488-494 and 540-542 above, in the period from about July 2023 to 29 December 2023, Frolov failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
544. Therefore, in the period from about July 2023 to 29 December 2023, Frolov contravened s 601FD(1)(f) and (3) of the Corporations Act.
545. A reasonable person in Frolov's position would have taken steps to avoid or adequately manage the Chiodo July 2023 Loan Agreement Conflicts, by:
- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
  - (b) causing Chiodo to refrain from participating in the negotiation of the Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

In respect of Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 24, 76-78, 468 and 540(b) above.

546. In the period from about July 2023 to 29 December 2023, Frolov did not take the steps identified in paragraph 545 above.
547. In the premises pleaded in paragraphs 488-494, 540 and 545-546 above, in the period from about July 2023 to 29 December 2023, Frolov failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
548. Therefore, in the period from about July 2023 to 29 December 2023, Frolov contravened s 601FD(1)(f) and (3) of the Corporations Act.

*Investment Decisions*

549. Frolov knew of the existence of:
- (a) in the period from about May 2022 to 29 December 2023, the Frolov Investment Decision Conflicts; and

**Particulars**

Frolov was a director of Chiodo K’Gari Pty Ltd, Malana Management and Marsi Group; Frolov had indirect interests in 417 Bellmere Road Pty Ltd, Chiodo K’Gari Pty Ltd, Malana Management, Marsi Group and 24Calibre.

- (b) in the period from about April 2022 to 29 December 2023, the Chiodo Investment Decision Conflicts.

**Particulars**

This can be inferred from: Frolov’s position as a director of Keystone, CF Capital, Chiodo K’Gari Pty Ltd and Malana Management; Frolov’s indirect interests in 417 Bellmere Road Pty Ltd, Chiodo K’Gari Pty Ltd, Malana Management and 24Calibre; Frolov’s membership of the Compliance Committee; Frolov’s position as the Compliance Officer; the content of the COI Register (see paragraphs 476, 478 and 480 above); Chiodo and Frolov’s dealings with each other for the purposes of the business of the SMF and the ADPF.

550. A reasonable person in Frolov’s position would have taken steps to avoid or adequately manage the Frolov Investment Decision Conflicts by refraining from participating in decisions about whether to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments.

**Particulars**

In respect of Frolov’s position, ASIC refers to and repeats paragraphs 17, 18, 20, 23-24, 27, 94-120, 472 and 549 above.

551. In the period from about May 2022 to 29 December 2023, Frolov did not take the steps identified in paragraph 550 above.
552. In the premises pleaded in paragraphs 488-494 and 549-551 above, in the period from about May 2022 to 29 December 2023, Frolov failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
553. Therefore, in the period from about May 2022 to 29 December 2023, Frolov contravened s 601FD(1)(f) and (3) of the Corporations Act.
554. A reasonable person in Frolov’s position would have taken steps to avoid or adequately manage the Chiodo Investment Decision Conflicts by causing Chiodo to refrain from participating in decisions about whether to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments.

**Particulars**

In respect of Frolov’s position, ASIC refers to and repeats paragraphs 17, 18, 20, 23-24, 27, 94-120, 470 and 549 above.

555. In the period from about April 2022 to 29 December 2023, Frolov did not take the steps identified in paragraph 554 above.

556. In the premises pleaded in paragraphs 488-494, 549 and 554-555 above, in the period from about April 2022 to 29 December 2023, Frolov failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
557. Therefore, in the period from about April 2022 to 29 December 2023, Frolov contravened s 601FD(1)(f) and (3) of the Corporations Act.

### ***F.3.3 Contraventions by Yorston***

558. Yorston was required to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

#### **Particulars**

Corporations Act, s 601FD(1)(f).

### ***March 2022 Loan Agreements***

559. In the period from about March 2022 to 27 May 2024, Yorston knew of the existence of the Chiodo March 2022 Loan Agreement Conflicts.

#### **Particulars**

This can be inferred from: Yorston's position as a director of Keystone; Yorston's execution of each March 2022 ADPF Loan Agreements on behalf of Keystone, each of which was countersigned by Chiodo on behalf of the relevant SPV; Yorston's provision of legal advice to Chiodo, Chiodo Corporation, Chiodo Operations and the SPVs between at least 10 July 2020 to around February 2025.

560. A reasonable person in Yorston's position would have taken steps to avoid or adequately manage the Chiodo March 2022 Loan Agreement Conflicts, by:
- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
  - (b) causing Chiodo to refrain from participating in the negotiation of the Loan Agreements, or decision-making in relation to those agreements.

#### **Particulars**

In respect of Yorston's position, ASIC refers to and repeats paragraphs 28, 29, 68-70, 466 and 559 above.

561. In the period from about March 2022 to 27 May 2024, Yorston did not take the steps identified in paragraph 560 above.
562. In the premises pleaded in paragraphs 488-494 and 559-561 above, in the period from about March 2022 to 27 May 2024, Yorston failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
563. Therefore, in the period from about March 2022 to 27 May 2024, Yorston contravened s 601FD(1)(f) and (3) of the Corporations Act.

*Chiodo Development Management Agreement*

564. In the period from about May 2022 to 27 May 2024, Yorston knew of the existence of the Chiodo Development Management Agreement Conflicts.

**Particulars**

This can be inferred from: Yorston's position as a director of Keystone; the issue and content of the Information Memorandum (see paragraphs 65 and 66 above); Yorston's execution of the Chiodo Development Management Agreement on behalf of Keystone, which was countersigned by Chiodo on behalf of Chiodo Corporation and/or Chiodo Operations; Yorston's provision of legal advice to Chiodo, Chiodo Corporation, Chiodo Operations and the SPVs at least between 10 July 2020 to around February 2025.

565. A reasonable person in Yorston's position would have taken steps to avoid or adequately manage the Chiodo Development Management Agreement Conflicts, by:
- (a) causing Keystone to appoint an independent development manager, instead of Chiodo Corporation; and/or
  - (b) causing Chiodo to refrain from participating in the negotiation of the Chiodo Development Management Agreement, or decision-making in relation to that agreement.

**Particulars**

In respect of Yorston's position, ASIC refers to and repeats paragraphs 28, 29, 71-73, 467 and 564 above.

566. In the period from about May 2022 to 27 May 2024, Yorston did not take the steps identified in paragraph 565 above.
567. In the premises pleaded in paragraphs 488-494 and 564-566 above, in the period from about May 2022 to 27 May 2024, Yorston failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
568. Therefore, in the period from about May 2022 to 27 May 2024, Yorston contravened s 601FD(1)(f) and (3) of the Corporations Act.

*July 2023 Loan Agreements*

569. In the period from about July 2023 to 27 May 2024, Yorston knew of the existence of the Chiodo July 2023 Loan Agreement Conflicts.

**Particulars**

This can be inferred from: Yorston's position as a director of Keystone; Yorston's execution of each of the July 2023 Loan Agreements on behalf of Keystone, of which Chiodo countersigned the Fiji Loan Agreement and K'Gari Loan Agreement on behalf of those SPVs; Yorston's provision of legal advice to Chiodo, Chiodo Corporation, Chiodo Operations and the SPVs at least between 10 July 2020 to around February 2025.

570. A reasonable person in Yorston's position would have taken steps to avoid or adequately manage the Chiodo July 2023 Loan Agreement Conflicts, by:
- (a) causing Keystone not to enter into loan agreements with the SPVs; and/or
  - (b) causing Chiodo to refrain from participating in the negotiation of the Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

In respect of Yorston's position, ASIC refers to and repeats paragraphs 28, 29, 76-78, 468 and 569 above.

571. In the period from about July 2023 to 27 May 2024, Yorston did not take the steps identified in paragraph 570 above.
572. In the premises pleaded in paragraphs 488-494 and 569-571 above, in the period from about July 2023 to 27 May 2024, Yorston failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
573. Therefore, in the period from about July 2023 to 27 May 2024, Yorston contravened s 601FD(1)(f) and (3) of the Corporations Act.

*Venice Agreements*

574. In the period from about December 2023 to 27 May 2024, Yorston knew of the existence of the Chiodo Venice Conflicts.

**Particulars**

This can be inferred from: Yorston's position as a director of Keystone; Yorston's execution of both of the Venice Loan Agreements on behalf of Keystone, both of which Chiodo countersigned the on behalf of Chiodo Corporation; Yorston's provision of legal advice to Chiodo, Chiodo Corporation and Chiodo Operations at least between 10 July 2020 to around February 2025.

575. A reasonable person in Yorston's position would have taken steps to avoid or adequately manage the Chiodo Venice Conflicts, by:
- (a) causing Keystone not to enter into the Venice Loan Agreements; and/or
  - (b) causing Chiodo to refrain from participating in the negotiation of the Venice Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

In respect of Yorston's position, ASIC refers to and repeats paragraphs 28, 29, 83-90, 469 and 574 above.

576. In the period from about December 2023 to 27 May 2024, Yorston did not take the steps identified in paragraph 575 above.
577. In the premises pleaded in paragraphs 488-494 and 574-576 above, in the period from about December 2023 to 27 May 2024, Yorston failed to take all steps that a

reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.

578. Therefore, in the period from about December 2023 to 27 May 2024, Yorston contravened s 601FD(1)(f) and (3) of the Corporations Act.

#### *Investment Decisions*

579. In the period from about April 2022 to 27 May 2024, Yorston knew of the existence of the Chiodo Investment Decision Conflicts.

#### **Particulars**

This can be inferred from: Yorston's position as a director of Keystone; Yorston's execution each of the ADPF Loan Agreements, of which all except the Bellmere Road Loan Agreement were countersigned by Chiodo on behalf of the relevant SPV; Yorston's execution of the Chiodo Development Management Agreement on behalf of Keystone, which Chiodo countersigned on behalf of Chiodo Corporation and/or Chiodo Operations; the issue and content of the Information Memorandum (see paragraphs 65 and 66 above); Yorston's provision of legal advice to Chiodo, Chiodo Corporation, Chiodo Operations and the SPVs at least between 10 July 2020 to around February 2025.

580. A reasonable person in Yorston's position would have taken steps to avoid or adequately manage the Chiodo Investment Decision Conflicts by causing Chiodo to refrain from participating in decisions about whether to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments.

#### **Particulars**

In respect of Yorston's position, ASIC refers to and repeats paragraphs 28, 29, 94-120, 470 and 549 above.

581. In the period from about April 2022 to 27 May 2024, Yorston did not take the steps identified in paragraph 580 above.
582. In the premises pleaded in paragraphs 488-494 and 579-581 above, in the period from about March 2022 to 27 May 2024, Yorston failed to take all steps that a reasonable person would take, if they were in his position, to ensure that Keystone complied with the Corporations Act.
583. Therefore, in the period from about March 2022 to 27 May 2024, Yorston contravened s 601FD(1)(f) and (3) of the Corporations Act.

### **F.4 Contraventions by Compliance Committee members**

#### ***F.4.1 Contraventions by Frolov***

584. As a member of the Compliance Committee, Frolov was required to exercise the degree of care and diligence that a reasonable person would exercise if they were in his position.

**Particulars**

Corporations Act, s 601JD(1)(b).

*March 2022 Loan Agreements*

585. In the period from about March 2022 to 29 December 2023, Frolov knew of the existence of the Chiodo March 2022 Loan Agreement Conflicts.

**Particulars**

ASIC refers to and repeats the particular to paragraph 530 above.

586. A reasonable person in Frolov's position would have, in about March 2022:
- (a) identified the Chiodo March 2022 Loan Agreement Conflicts in the COI Register;
  - (b) assessed that those conflicts could not be adequately managed by disclosure; and
  - (c) taken steps to avoid or adequately manage those conflicts by:
    - (i) causing Keystone not to enter into loan agreements with the SPVs; or
    - (ii) causing Chiodo to refrain from participating in negotiation of the Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

As to Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 24, 41-48, 68-70, 466 and 585 above.

587. In the period from about March 2022 to 29 December 2023, Frolov did not take the steps identified in paragraph 586 above.
588. In the premises pleaded in paragraphs 473-474, 488-494 and 585-587 above, Frolov as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.
589. Therefore, Frolov contravened s 601JD(1)(b) and (3) of the Corporations Act.

*Chiodo Development Management Agreement*

590. In the period from about May 2022 to 29 December 2023, Frolov knew of the existence of the Chiodo Development Management Agreement Conflicts.

**Particulars**

ASIC refers to and repeats the particulars to paragraph 535 above.

591. A reasonable person in Frolov's position would have, in about May 2022:
- (a) identified the Chiodo Development Management Agreement Conflicts in the COI Register;
  - (b) assessed that those conflicts could not be adequately managed by disclosure; and

- (c) taken steps to avoid or adequately manage those conflicts by:
  - (i) causing Keystone to appoint an independent development manager, instead of Chiodo Corporation; or
  - (ii) causing Chiodo to refrain from participating in negotiation of the Chiodo Development Management Agreement, or decision-making in relation to that agreement.

**Particulars**

As to Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 41-48, 71-73, 467 and 590 above.

- 592. In the period from about May 2022 to 29 December 2023, Frolov did not take the steps identified in paragraph 591 above.
- 593. In the premises pleaded in paragraphs 473-474, 488-494 and 590-592 above, Frolov as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.
- 594. Therefore, Frolov contravened s 601JD(1)(b) and (3) of the Corporations Act.

*July 2023 Loan Agreements*

- 595. In the period from about July 2023 to 29 December 2023, Frolov knew of the existence of the Chiodo July 2023 Loan Agreement Conflicts and the Frolov July 2023 Loan Agreement Conflicts.

**Particulars**

ASIC refers to and repeats the particulars to paragraph 540 above.

- 596. A reasonable person in Frolov's position would have, in about July 2023:
  - (a) identified the Chiodo July 2023 Loan Agreement Conflicts and the Frolov July 2023 Loan Agreement Conflicts in the COI Register;
  - (b) assessed that those conflicts could not be adequately managed by disclosure; and
  - (c) taken steps to avoid or adequately manage those conflicts by:
    - (i) causing Keystone not to enter into loan agreements with the SPVs; or
    - (ii) causing himself and Chiodo to refrain from participating in negotiation of the Loan Agreements, or decision-making in relation to those agreements.

**Particulars**

As to Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 24, 41-48, 76-78, 468, 471 and 595 above.

- 597. In the period from about July 2023 to 29 December 2023, Frolov did not take the steps identified in paragraph 596 above.

598. In the premises pleaded in paragraphs 473-474, 488-494 and 595-597 above, Frolov as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.

599. Therefore, Frolov contravened s 601JD(1)(b) and (3) of the Corporations Act.

*Investment Decisions*

600. Frolov knew of the existence of:

- (a) in the period from about April 2022 to 29 December 2023, the Chiodo Investment Decision Conflicts; and
- (b) in the period from about May 2022 to 29 December 2023, the Frolov Investment Decision Conflicts.

**Particulars**

ASIC refers to and repeats the particulars to paragraph 549 above.

601. A reasonable person in Frolov's position would have, in about April or May 2022:

- (a) identified the Chiodo Investment Decision Conflicts and the Frolov Investment Decision Conflicts in the COI Register;
- (b) assessed that those conflicts could not be adequately managed by disclosure; and
- (c) taken steps to avoid or adequately manage those conflicts by causing himself and Chiodo to refrain from making decisions about whether to make the SMF-ADPF Payments and/or the Chiodo Corporation Payments.

**Particulars**

As to Frolov's position, ASIC refers to and repeats paragraphs 17, 18, 20, 23-24, 27, 41-48, 94-120, 470, 472 and 600 above.

602. In the period from about April 2022 to 29 December 2023, Frolov did not take the steps identified in paragraph 601 above.

603. In the premises pleaded in paragraphs 473-474, 488-494 and 600-602 above, Frolov as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.

604. Therefore, Frolov contravened s 601JD(1)(b) and (3) of the Corporations Act.

**F.4.2 Contraventions by Danon**

605. As a member of the Compliance Committee, Danon was required to exercise the degree of care and diligence that a reasonable person would exercise if they were in his position.

**Particulars**

Corporations Act, s 601JD(1)(b).

606. The Compliance Plan allocated responsibility for each of the requirements pleaded in paragraph 474 above to the Compliance Officer.
607. In the period from 18 February 2021 to 27 May 2024, the Compliance Committee:
- (a) did not discuss whether the arrangements that Keystone had in place to manage conflicts of interest were adequate; and
  - (b) did not report to Keystone or ASIC any noncompliance, or suspected noncompliance, with s 912A(1)(aa) of the Corporations Act or cls 6.19.1 or 6.20.1 of the Compliance Plan.

*Chiodo Development Management Agreement*

608. On 21 November 2022, Mr Jake Ou (an employee of Keystone):
- (a) told Danon that the SMF invests in the ADPF, rather than the CDPF;
  - (b) told Danon that the ADPF provides financing to projects run by Chiodo Corporation, of which Chiodo is the director; and
  - (c) asked Danon if it was necessary to disclose each financing agreement between the ADPF and Chiodo Corporation in the RPT Register.

**Particulars**

Email dated 21 November 2022. [KSS.0210.0007.8289]

609. From about 7 June 2022 (alternatively, from about 21 November 2022), Danon knew that:
- (a) Chiodo Corporation acted as the property developer for the ADPF; and
  - (b) Chiodo Corporation shared directors with Keystone and CF Capital.

**Particulars**

ASIC refers to and repeats paragraph 608 above. Danon's knowledge can otherwise be inferred from: Danon's role as Compliance Officer; the content of the COI Register (see paragraphs 476 and 478 above); Danon's receipt of the COI Register on 7 June 2022 [KSS.0388.0001.5664]; and Danon updating the COI Register on 21 November 2022.

610. A reasonable person in Danon's position would have:
- (a) shortly after 7 June 2022 (alternatively, shortly after 21 November 2022), identified that the COI Register did not state how conflicts of interest arising from Chiodo Corporation's position as property developer were to be managed; and
  - (b) thereafter:
    - (i) taken steps to assess those conflicts of interest and how they could be appropriately managed; and/or

- (ii) caused the Compliance Committee to report to Keystone the matters in subparagraph (a) above.

**Particulars**

As to Danon's position, ASIC refers to and repeats paragraphs 30, 31, 41-48 and 606-609 above.

- 611. In the period from 7 June 2022 (alternatively, 21 November 2022) to 27 May 2024, Danon did not take the steps identified in paragraph 610 above.
- 612. In the premises pleaded in paragraphs 473-474, 488-494 and 606-611 above, Danon as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.
- 613. Therefore, Danon contravened s 601JD(1)(b) and (3) of the Corporations Act.

*Financing Agreements*

- 614. From about 21 November 2022, Danon knew that:
  - (a) the SMF invested in the ADPF;
  - (b) the ADPF provided financing to projects run by Chiodo Corporation;
  - (c) Chiodo was a director of both Keystone and Chiodo Corporation; and
  - (d) there were financing agreements by which the ADPF provided financing to projects run by Chiodo Corporation.

**Particulars**

ASIC refers to and repeats paragraph 608 above. Danon's knowledge can otherwise be inferred from the content of the COI Register as amended by Danon on 23 November 2022.

- 615. A reasonable person in Danon's position would have:
  - (a) shortly after 21 November 2022, identified that the COI Register did not refer to financing agreements by which the ADPF provided financing to projects run by Chiodo Corporation or state how conflicts of interest arising from those agreements were to be managed; and
  - (b) thereafter:
    - (i) taken steps to assess those conflicts of interest and how they could be appropriately managed; and/or
    - (ii) caused the Compliance Committee to report to Keystone the matters in subparagraph (a) above.

**Particulars**

As to Danon's position, ASIC refers to and repeats paragraphs 30, 31, 41-48, 606-607 and 614 above.

616. In the period from 21 November 2022 to 27 May 2024, Danon did not take the steps identified in paragraph 615 above.
617. In the premises pleaded in paragraphs 473-474, 488-494 and 606-607 and 614-616 above, Danon as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.
618. Therefore, Danon contravened s 601JD(1)(b) and (3) of the Corporations Act.

#### *Investment Decisions*

619. ASIC refers to and repeats paragraphs 608, 609 and 614 above.
620. A reasonable person in Danon's position would have:
- (a) shortly after 21 November 2022, identified that:
    - (i) there were conflicts between Chiodo's duties as a director of Keystone and a director of Chiodo Corporation in relation to decisions by Keystone to invest scheme property of the SMF in the ADPF; and
    - (ii) the COI Register did not state how such conflicts of interest were to be managed; and
  - (b) thereafter:
    - (i) taken steps to assess those conflicts of interest and how they could be appropriately managed; and/or
    - (ii) caused the Compliance Committee to report to Keystone the matters in subparagraph (a) above.

#### **Particulars**

As to Danon's position, ASIC refers to and repeats paragraphs 30, 31, 41-48, 606-607 and 619 above.

621. In the period from 21 November 2022 to 27 May 2024, Danon did not take the steps identified in paragraph 620 above.
622. In the premises pleaded in paragraphs 473-474, 488-494 and 606-607 and 619-621 above, Danon as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.
623. Therefore, Danon contravened s 601JD(1)(b) and (3) of the Corporations Act.

#### *References to Falcon Capital*

624. The Compliance Plan stated that:
- (a) 'The Compliance Officer, in reviewing the arrangements in respect of an investment in interests in wholesale unregistered managed investment

schemes operated by Falcon Capital, must ensure that the arrangement is entered into in the best interests of the Scheme.’

- (b) ‘The [Compliance Officer], prior to the Fund making an investment in a wholesale unregistered managed investment scheme operated by Falcon Capital, must ensure that the underlying fund is subject to the equivalent conflict of interests and valuation policies.’

**Particulars**

Compliance Plan, cl 6.19.1 (under ‘Controls for monitoring’ under ‘Monitoring measures’).

625. A reasonable person in Danon’s position would have:

- (a) shortly after 7 June 2022, made inquiries about the references to Falcon Capital in cl 6.19.1 of the Compliance Plan, and identified that those references were included in error and should have been references to Keystone; and
- (b) thereafter:
- (i) reviewed the arrangements in respect of investments by the SMF in the ADPF; and
- (ii) taken steps to ensure that any such arrangement was entered into in the best interests of the members of the SMF.

**Particulars**

As to Danon’s position, ASIC refers to and repeats paragraphs 30, 31, 41-48, 606-607 and 624 above.

626. In the period from 7 June 2022 to 15 May 2023, Danon did not make inquiries about the references to Falcon Capital in cl 6.19.1 of the Compliance Plan.

627. On 15 May 2023, Danon asked Frolov about the relationship between Keystone and Falcon Capital.

**Particulars**

Email dated 15 May 2023 at 5.05pm [KSS.0210.0011.7866 at .7868].

Email dated 15 May 2023 at 5.56pm [KSS.0210.0011.7866 at .7867].

628. Frolov did not respond to Danon’s questions about Falcon Capital.

629. In the period from 7 June 2022 to 27 May 2024, Danon did not take the other steps identified in paragraph 624 above.

630. In the premises pleaded in paragraphs 473-474, 488-494 and 606-607 and 624-629 above, Danon as a member of the Compliance Committee failed to exercise the degree and care and diligence that a reasonable person would exercise if they were in his position.

631. Therefore, Danon contravened s 601JD(1)(b) and (3) of the Corporations Act.

**G. HARM**

632. On 27 August 2024, on the application of ASIC in Federal Court proceeding VID536 of 2024, the Federal Court appointed receivers and managers to the property of Keystone in its capacity as the responsible entity of the SMF.

**Particulars**

*Australian Securities and Investments Commission v Keystone Asset Management Ltd* [2024] FCA 1019.

633. On 28 August 2024, Keystone was placed into administration by its directors.
634. By 22 November 2024, the receivers and managers of Keystone estimated that the SMF had suffered significant loss, and the returns to unitholders of the SMF (varying between class) could be between 22% and 58% of their investment.

**Particulars**

Letter dated 27 November 2024 from Deloitte, as Receivers and Administrators of Keystone, to unitholders of the SMF titled 'Significant Event Notice for the purposes of Section 1017B of the Corporations Act 2001 regarding the Appointment of voluntary Administrators and Receivers of Keystone Asset Management and related events' [KSS.0003.0020.0138 at .0142, .0149, .0151].

635. On 2 December 2024, Keystone was placed into liquidation by its creditors.
636. On 10 April 2025, the receivers and managers and liquidators of Keystone informed unitholders of the SMF that they had determined it was in the best interests of the SMF unitholders to terminate the SMF, on grounds including that:
- (a) the purpose, return objectives and investment and diversification exposures outlined in the product disclosure statements for each class of units in the SMF could not be achieved; and
  - (b) the SMF had likely suffered significant losses.

**Particulars**

Letter dated 10 April 2025 from Alvarez & Marsal to unitholders of the SMF titled 'Notice of termination of the Shield Master Fund' [KSS.0003.0020.0152].

637. In the premises alleged above, investors who invested superannuation in the SMF suffered substantial loss.

**H. RELIEF**

638. ASIC seeks relief as set out in the Originating Process.

Dated: 25 June 2026



.....  
Signed by Rebecca Caroline Jaffe  
Solicitor for the Plaintiff

This pleading was prepared by Michael Rush KC and Dean Luxton, Mark Hosking and Camilla Middleton of Counsel

## SCHEDULE OF PARTIES

No VID of 2026

Federal Court of Australia  
District Registry: Victoria  
Division: Commercial and Corporations

### **Defendants**

Second Defendant:	ILYA FROLOV
Third Defendant:	MARK YORSTON
Fourth Defendant:	JEREMY DANON

Date: 25 June 2026

## SCHEDULE A

#	Secured Lender	Borrower(s)	Loan Agreement Date [and Doc ID]	Subject Property	Facility Limit	Guarantee given by Chiodo?	Loan Agreement term - Events of Default
1	The Trust Company (Australia) Limited ACN 000 000 993 as custodian for Trilogy Funds Management Limited ACN 080 383 679 as Responsible Entity for the Trilogy Monthly Income Trust ABN 12 921 343 543	Norwood Ponds (Land) Pty Ltd	27 August 2020 [KSS.0263.0001.0393]	21-23 Norwood Crescent, Moonee Ponds	\$9,093,970.00	Yes: cl 9.1, and item 3 of Sch 1  Deed of Guarantee and Indemnity signed by Chiodo, dated 27 August 2020 [KSS.0263.0001.0329]	Events of Default – includes cl 11(l):  <i>'if the Borrower or Guarantor without the prior written consent of the Lender creates or attempts to create a mortgage or charge over any part of the Mortgaged Property'</i>
2	Millbrook Funds Pty Ltd ACN 149 711 419 atf Millbrook Income Fund	33 Davidson Port Douglas Pty Ltd	~July 2021 [KSS.0257.0001.0071]	33 Davidson Road, Port Douglas QLD	\$830,000.00	Yes (with Chiodo Corporation and 33 Davidson Port Douglas Pty Ltd): cl 6.1, and item 17 of Sch 1	Events of Default – includes cl 12.1(j):  <i>'Material Adverse Change: Any other event or series of events, whether related or not, occurs (including, without limitation, any Material Adverse Change in the business, assets or financial condition of a Transaction Party) which in the opinion of</i>

#	Secured Lender	Borrower(s)	Loan Agreement Date [and Doc ID]	Subject Property	Facility Limit	Guarantee given by Chiodo?	Loan Agreement term - Events of Default
							<i>the Lender (acting reasonably) may affect the ability or willingness of the Borrower to comply with all or any of its obligations under this Agreement.'</i>
3		75 Port Douglas Road Pty Ltd 33 Davidson Port Douglas Pty Ltd	27 January 2022 [KSS.0257.0001 .0140] (Letter of Offer)	71-85 Port Douglas Road 33 Davidson Road, Port Douglas QLD	\$4,829,000.00 (to refinance existing loan facility etc).	Yes: cl 4 of Letter of Offer	[Not presently known]
4	Millbrook Mortgage Management Ltd ACN 123 219 732	Augustine Terrace Glenroy Pty Ltd	8 July 2021 [KSS.0256.0001 .0023] (Letter of Offer) [KSS.0256.0001 .0020] (signed counterpart)	141-145 Augustine Terrace, Glenroy VIC	\$715,000.00	Yes (with Chiodo Corporation) [KSS.0256.0001.0020] (signed counterpart to Letter of Offer)	[Not presently known]
5	Kanun Capital Pty Ltd ACN 642 775	Warrigal Road Ashburton Pty	29 July 2020	348-350 Warrigal	The lower of \$7,620,130.88	Yes (with Pure Development): cls	Events of Default – includes cl 10.1:

#	Secured Lender	Borrower(s)	Loan Agreement Date [and Doc ID]	Subject Property	Facility Limit	Guarantee given by Chiodo?	Loan Agreement term - Events of Default
	424 atf the Kanun Capital Unit Trust	Ltd & Warrigal Road Ashburton Operations Pty Ltd (ACN 638 125 078)	[KSS.0664.0041 .4542]	Road, Ashburton , VIC	or 73.5% of the 'as if complete' value of the Project	3.1(a)(i), 3.2(a)(i), Sch 1  Guarantee And Indemnity, in name of Chiodo (but not signed or dated) [KSS.0260.0001.1813]	<i>'Each of the following events of circumstances is an Event of Default:</i>  <i>(i) an event or a change occurs which could, or could in the opinion of the Lender, have a Material Adverse Effect;</i>  <i>(k) a Transaction Party or any of its subsidiaries creates or permits to exist any Encumbrance over any of its property, other than a Permitted Encumbrance.'</i>  See also cl 9.7(g) - Securities Obligations <i>'Each Transaction Party must ensure that any caveat, Encumbrance or other restriction (other than a Permitted Encumbrance) entered on any register in which its or the Lender's interest in the Secured Property is registered is immediately removed, if failure to do so could have a Material Adverse Effect.'</i>
6		75 Port Douglas Road Pty Ltd  33 Davidson Street Pty Ltd	25 August 2020  [KSS.0664.0041 .4341]	71-85 Port Douglas Road  33 Davidson	The lower of: \$4,187,572.68 or 70.6% of the value of the Property	Yes (with Pure Development): cls 3.1(a)(i), 3.2(a)(i), Sch 1	Events of Default – includes cl 10.1:  <i>'Each of the following events or circumstances is an Event of Default:</i>

#	Secured Lender	Borrower(s)	Loan Agreement Date [and Doc ID]	Subject Property	Facility Limit	Guarantee given by Chiodo?	Loan Agreement term - Events of Default
		(ACN 615 764 568) atf for the 33 Davidson Unit Trust and in its own right		Road, Port Douglas QLD		Guarantee And Indemnity, in name of Chiodo (but not signed or dated) [KSS.0260.0001.0397]	<p><i>(h) an event or a change occurs which could, or could in the opinion of the Lender, have a Material Adverse Effect;</i></p> <p><i>(j) a Transaction Party or any of its subsidiaries creates or permits to exist any Encumbrance over any of its property, other than a Permitted Encumbrance;</i></p> <p>See also clause 9.6(g): 'Each Transaction Party must ensure that any caveat, Encumbrance or other restriction (other than a Permitted Encumbrance) entered on any register in which its or the Lender's interest in the Secured Property is registered is immediately removed, if failure to do so could have a Material Adverse Effect.'</p>
7	Bowery Capital Pty Ltd ACN 620 870 779	Warrigal Road Ashburton Pty Ltd  Warrigal Road Ashburton Operations Pty Ltd (ACN 638 125 078)	19 November 2021  [BOW.0001.000 1.4710]  Amended and restated 25 May 2023	348-350 Warrigal Road, Ashburton , VIC	\$8,260,000.00  Later amended to \$7,687,000.	Yes (with Pure Development): cls 18-22	Event of Default - includes cl 17.1(u):  '(Material Adverse Event) an event (or series of events (whether related or not)) or circumstance occurs which the Lender reasonably believes would have or is reasonably likely to have a Material Adverse Effect;'

#	Secured Lender	Borrower(s)	Loan Agreement Date [and Doc ID]	Subject Property	Facility Limit	Guarantee given by Chiodo?	Loan Agreement term - Events of Default
			[BOW.0001.0002.4830]				
8		Nicholson Street Bentleigh Pty Ltd	23 June 2020 [KSS.0260.0001.0086]  (Indicative Term Sheet)	33-35 Nicholson Street, Bentleigh, VIC	The lower of \$2,625,000 or 70% of Loan to Value Ratio on the Security Valuation	Yes	[Not presently known]
9	ACF159 Pty Ltd ACN 623 115 926	Nicholson Street Bentleigh Pty Ltd	10 May 2022 [KAM.1000.0030.4051]	33-35 Nicholson Street, Bentleigh, VIC	\$10,964,309.88	Yes (with Pure Development, Chiodo Corporation, Red Hill Terraces (Land) Pty Ltd, Norwood Ponds (Land) Pty Ltd, Warrigal Road Ashburton Pty Ltd, Augustine Terrace Glenroy Pty Ltd)	Event of Default (Facility Agreement) – cl 14.1:  <i>'Each of the events set out in this clause 14.1 is an Event of Default, whether or not the cause is beyond the control of any Obligor or any other person...'</i>  <i>(j)(ii) a third party asserts a claim to any part of the Secured Property.</i>  <i>(dd) (Material Adverse Effect) any event or series of events whether related or not which, in the Mortgagee's opinion, has or could have a Material Adverse Effect;'</i>

#	Secured Lender	Borrower(s)	Loan Agreement Date [and Doc ID]	Subject Property	Facility Limit	Guarantee given by Chiodo?	Loan Agreement term - Events of Default
							<p>Event of Default (mortgage terms) - clause 11.1:</p> <p><i>'Each of the events set out in this clause 11.1 is an Event of Default, whether or not the cause is beyond the control of any Obligor or any other person...</i></p> <p><i>(j)(ii) a third party asserts a claim to any part of the Security Property.</i></p> <p><i>(dd) (Material Adverse Effect) any event or series of events whether related or not which, in the Mortgagee's opinion, has or could have a Material Adverse Effect;'</i></p>

### **Certificate of lawyer**

I, Rebecca Caroline Jaffe, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 25 June 2026



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Signed by Rebecca Caroline Jaffe  
Solicitor for the Plaintiff