

NOTICE OF FILING

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v EQUITY TRUSTEES SUPERANNUATION LIMITED (ACN 055 641 757) IN ITS CAPACITY AS TRUSTEE OF THE AMG SUPERANNUATION FUND AND SUPER SIMPLIFIER
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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The date of the filing of the document is determined pursuant to the Court's Rules.



Form 1

Rule 2.1

Amended Statement of Claim

[Amended on 10 October 2025 pursuant to rule 16.51(1) of the *Federal Court Rules* 2011 (Cth)]

No. of 2025

Federal Court of Australia

District Registry: Victoria

Division: General

Australian Securities and Investments Commission

Plaintiff

**Equity Trustees Superannuation Limited (ACN 055 641 757) in its capacity as trustee
of the AMG Superannuation Fund and Super Simplifier**

Defendant

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

1. The plaintiff (**ASIC**) is:
 - (a) a body corporate under s 8(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**); and
 - (b) entitled to commence and maintain this proceeding in its corporate name under s 8(1)(d) of the ASIC Act.
2. The defendant (**ETSL**) was between February 2022 and January 2024 (the **Relevant Period**) and is:
 - (a) a company duly incorporated pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - (b) the holder of an Australian Financial Services Licence (**AFSL**) (licence no: 229757) which authorises it to (*inter alia*) carry on a financial services business to provide a superannuation trustee service to retail and wholesale clients;
 - (c) a financial services licensee (previously within the meaning of s 761A of the Corporations Act and now within the meaning of s 9 of the Corporations Act);
 - (d) the holder of a registrable superannuation entity (**RSE**) licence (license no: L0001458);
 - (e) a RSE licensee (within the meaning of s 10(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**));
 - (f) a body corporate carrying on the business of (*inter alia*) acting as a trustee of superannuation entities and investing money on behalf of the beneficiaries of those superannuation entities; and
 - (g) the trustee of AMG Super and Super Simplifier (defined in paragraphs 6 and 17, respectively, below).

B. BACKGROUND

B1. ETSL

3. During the Relevant Period, ETSL was the trustee of (*inter alia*) member directed superannuation funds (**Platforms**).

4. During the Relevant Period:
 - (a) ETSL had in place a Board Investment Committee (**BIC**);
 - (b) the BIC reported to ETSL's board of directors (**ETSL Board**).
5. During the Relevant Period:
 - (a) ETSL had in place a Superannuation Investment Office (**SIO**);
 - (b) the SIO sat within ETSL's Superannuation Trustee Office (**STO**) (which was subsequently known as Superannuation Trustee Services or **STS**);
 - (c) until 17 February 2023, members of the SIO reported to Mark Blair as Executive General Manager STO (**EGM – STO**);
 - (d) on and from 17 February 2023, members of the SIO reported to Andrew Godfrey as EGM – STO; and
 - (e) the members of the SIO included the following persons referred to in this statement of claim:
 - i. James Buckley, who held the role of General Manager, Investment Oversight and was the officer responsible for the SIO;
 - ii. Marcus Shaw, who held the role of Senior Investment Governance Analyst;
 - iii. Ben Ashton, who held the role of Investment Analyst; and
 - iv. Alina Jin, who held the role of Investment Governance Analyst.

B2. AMG Superannuation Fund and its NQ Super and Pension Division

6. ETSL is, and has been since 23 February 2017, the trustee of the AMG Superannuation Fund (**AMG Super**), established by a trust deed dated 12 May 2000 (as amended from time to time) (**AMG Super Trust Deed**).

PARTICULARS

- A. AMG Universal Super Deed Poll by Permanent Trustee Company Limited dated 12 May 2000 (EQS.0056.0001.0204).
- B. The amending deeds to the AMG Super Trust Deed include:

- a. Deed of Amendment - AMG Universal Super by The Trust Company (Superannuation) Limited dated 27 November 2013, pursuant to which all of the existing clauses, schedules and headings in the Trust Deed were deleted and replaced (EQS.0056.0001.0095);
 - b. Amending Deed Poll AMG Universal Super by The Trust Company (Superannuation) Limited dated 7 May 2014 (EQS.0056.0001.0157), pursuant to which the AMG Super Trust Deed was amended to change the name of the Fund (as defined in the AMG Super Trust Deed) to 'AMG Super';
 - c. Deed of Retirement and Appointment between Diversa Trustees Limited (formerly The Trust Company (Superannuation) Limited), ETSL and Acclaim Management Group Pty Ltd dated 23 February 2017 (EQS.0056.0001.0167), pursuant to which ETSL was appointed trustee to replace Diversa Trustees Limited and ETSL agreed to perform all of the obligations of the trustee under the AMG Super Trust Deed (as amended from time to time);
 - d. Trust Deed of Amendment by ETSL (undated) (EQS.0048.0001.0084), pursuant to which a new clause 9.12 was inserted; and
 - e. Deed of Amendment by ETSL effective from 1 December 2021 (EQS.0056.0001.0196), pursuant to which the AMG Super Trust Deed was amended to establish a new division to be known as NQ Super & Pension.
7. AMG Super was at all times during the Relevant Period:
- (a) a registrable superannuation entity within the meaning of s 10(1) of the SIS Act; ~~and~~
 - (b) a regulated superannuation fund within the meaning of s 19(1) of the SIS Act; and
 - (c) a superannuation entity within the meaning of s 10(1) of the SIS Act.
8. At all times during the Relevant Period, the AMG Super Trust Deed provided (*inter alia*):

(aa) in cl 2.3, that ETSL will hold on the trusts set out in the Deed any contributions paid to and accepted by it for the purposes of AMG Super and any property acquired by it on the investment of contributions made to AMG Super;

- (a) in cl 9.2(a), that ETSL covenants to act honestly in all matters concerning AMG Super;
- (b) in cl 9.2(b), that ETSL covenants to exercise in relation to all matters affecting AMG Super the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) in cl 9.2(c), that ETSL covenants to ensure that ETSL's duties and powers are performed and exercised in the best interests of members;
- (d) in cl 9.3, that ETSL:
 - i. has an absolute and uncontrolled discretion in the exercise of its powers, authorities and discretions;
 - ii. may exercise or refrain from exercising all or any of those powers, authorities and discretions at any time; and
 - iii. is not bound to give to any person any reason for or explanation of its exercise, non-exercise or partial exercise of any such power;
- (e) in cl 9.12, that AMG Super:
 - i. consists of any categories, classes, divisions, sub-divisions or sub-plans as determined by ETSL; and
 - ii. is one trust comprising different parts;
- (f) in cl 10.1, that ETSL may do anything which it considers necessary to administer AMG Super and to comply with (*inter alia*) the SIS Act;
- (g) in cl 10.2, that ETSL:
 - i. may delegate any functions, authorities, discretions or powers exercisable by it (including a power which it has a duty to exercise) to any person upon such terms and conditions as it determines; and
 - ii. is not liable or responsible for any act or omission, error of judgment, negligence or breach of trust of a delegate;

- (h) in cl 10.3(c), that ETSL may:
 - i. appoint on such terms as it determines one or more bodies corporate to manage the investments of AMG Super or any part of AMG Super; and
 - ii. only appoint such a person if the appointment is in writing, the person is eligible under (*inter alia*) the SIS Act to be appointed to act, and the terms of the appointment comply with any applicable provision of (*inter alia*) the SIS Act;
- (i) in cl 10.4, that ETSL may act on the advice or opinion of (*inter alia*) any asset consultant, consultant or other professional person;
- (j) in cl 10.7, that any exercise by ETSL of any power, discretion or authority of ETSL may be made by a resolution of the corporation or by a resolution of its board of directors or other governing body; and
- (k) in cl 11.1, that ETSL must set investment objectives for AMG Super and formulate an investment strategy to achieve those objectives having regard to the whole of the circumstances of AMG Super including, but not limited to, the matters prescribed under (*inter alia*) the SIS Act.

PARTICULARS

- A. Deed of Amendment - AMG Universal Super by The Trust Company (Superannuation) Limited dated 27 November 2013 (EQS.0056.0001.0095).
 - B. Trust Deed of Amendment by ETSL (undated) (EQS.0048.0001.0084).
9. Throughout the Relevant Period, Acclaim Management Group Limited (**AMG**) was the promoter and administrator of AMG Super but not the promoter or administrator of NQ Super (as defined in paragraph 10 below).
 10. Effective from 1 December 2021, NQ Super & Pension (**NQ Super**) was established as a division of AMG Super.

PARTICULARS

Deed of Amendment to the AMG Super Trust Deed by ETSL, effective 1 December 2021 (EQS.0056.0001.0196), Attachment 1, Schedule D.

11. From 12 September 2021, New Quantum Pty Limited (**New Quantum**) was the promoter of NQ Super.

PARTICULARS

- A. Participation Deed between ETSL, AMG and New Quantum dated 12 September 2021 (EQS.0011.0002.0388), cl 4.1, Schedule 2, item 1.
 - B. Promoter Deed between ETSL and New Quantum dated 12 September 2021 (EQS.0011.0002.0425), cl 2.1 and Schedule A.
12. Throughout the Relevant Period, TAG Asset Consulting Group Pty Ltd trading as Atchison Consultants (**Atchison**) was engaged by ETSL (in its capacity as trustee of AMG Super) to provide investment management and asset consulting services with respect to AMG Super, including NQ Super (**AMG Super Investment Consulting Agreement**).

PARTICULARS

- Investment Consulting Agreement between ETSL and Atchison with respect to AMG Super dated 25 July 2019 (EQS.0027.0001.1912).
13. The AMG Super Investment Consulting Agreement provided (*inter alia*):
- (a) in cl 2, that ETSL appointed Atchison to provide the services set out in the table in Schedule 1; and
 - (b) in Schedule 1, that the services included (*inter alia*), in respect of unlisted managed funds for (*inter alia*) AMG Super, of which NQ Super was a division:
 - i. quarterly monitoring (in June, September, December and March); reviewing data collected for accuracy; performing a quantitative assessment of all unlisted managed funds to identify underperformance; providing ETSL with a report identifying any unlisted managed funds that have failed the quantitative assessment; and that the unlisted managed funds that have failed the quantitative assessment, on ETSL's instruction, may be subject to a qualitative assessment to be submitted to ETSL with a recommendation (items 6.1 to 6.5); and

- ii. annual (in June) scenario stress testing of investment options, and liquidity management reporting and liquidity stress testing as appropriate (items 7.1 to 7.2),

(Atchison's AMG Super Ongoing Monitoring Services).

- 14. On or about 26 August 2022, ETSL issued a Product Disclosure Statement (**PDS**) with respect to NQ Super (**NQ Super PDS**) and an Additional Information Booklet which formed part of the NQ Super PDS.

PARTICULARS

A. NQ Super PDS prepared 26 August 2022 (EQS.0011.0002.0473).

B. NQ Super Additional Information Booklet prepared 26 August 2022 (EQS.0011.0002.0481).

- 15. The NQ Super PDS provided in section 1 (*inter alia*):
 - (a) if a member establishes an NQ Super account, any contributions or amounts paid into NQ Super will be invested in accordance with a member's selected investment strategy and underlying investments determined in conjunction with the member's financial advisor; and
 - (b) ETSL is responsible for managing AMG Super and its service providers to ensure that it complies with all legal requirements and operates in the best financial interests of members.

PARTICULARS

NQ Super PDS prepared 26 August 2022 (EQS.0011.0002.0473), p2 (p.0474).

- 16. The Additional Information Booklet provided, with respect to investment holding limits, that (*inter alia*):
 - (a) ETSL, as trustee, imposes certain limits on the amount that can be invested in certain investments;
 - (b) the limits relate to single investments and the aggregate holding in a type of investment of the account;

- (c) these limits help to keep a member's investment portfolio diversified; and
- (d) with respect to managed funds, the single holding limit was up to 50% of a member's account value and the aggregate holding limit was up to 100% of a member's account value.

PARTICULARS

NQ Super Additional Information Booklet prepared 26 August 2022 (EQS.0011.0002.0481), p21 (p.0502).

B3. Super Simplifier Superannuation Fund

17. ETSL is, and has been since 24 August 2022, the trustee of the Super Simplifier superannuation fund (**Super Simplifier**) established by Trust Deed dated 24 August 2022 (**Super Simplifier Trust Deed**).

PARTICULARS

Super Simplifier Trust Deed dated 24 August 2022 including the rules annexed thereto (**Rules**) (EQS.0048.0001.0098).

18. Super Simplifier was, at all times from 24 August 2022 to the end of the Relevant Period:
 - (a) a registrable superannuation entity within the meaning of s 10(1) of the SIS Act; ~~and~~
 - (b) a regulated superannuation fund within the meaning of s 19(1) of the SIS Act; ~~and~~
 - (c) a superannuation entity within the meaning of s 10(1) of the SIS Act.
19. At all times from 24 August 2022 to the end of the Relevant Period, the Super Simplifier Trust Deed provided (*inter alia*):
 - (aa) in the operative part, paragraph 3, that the assets of Super Simplifier are vested in, controlled and must be administered by ETSL in accordance with the Deed and the attached Rules (together, the Rules);
 - (ab) in the operative part, paragraph 4, that ETSL holds the assets of Super Simplifier on the trusts of, and subject to, the Rules;
 - (a) in rule 5.1(a), that ETSL, under the Relevant Law (which was defined in the Super Simplifier Trust Deed to include (*inter alia*) the SIS Act and the Corporations Act),

must formulate and give effect to an investment strategy and in doing so, may offer investment choice in any manner that complies with the Relevant Law;

- (b) in rule 5.2, that ETSL (*inter alia*):
 - i. has the power do to whatever it considers appropriate to manage and invest the fund;
 - ii. may invest and re-invest the assets of the fund in any investment that complies with the investment strategy or strategies for the fund; and
 - iii. notwithstanding any criteria formulated by ETSL from time to time, may allow an investment strategy to be implemented by investments or assets that ETSL considers appropriate;
- (c) in rule 20.2, that the provisions of the Rules are subject to the Relevant Law and if:
 - i. there is any inconsistency between the provisions of the Rules and the Relevant Law, the requirements of the Relevant Law prevail;
 - ii. a provision of a Relevant Law is required to be included in the Rules, that provision is included in the Rules for as long as required by the Relevant Law; and
 - iii. a provision of the Relevant Law (**authorising provision**) states that ETSL can (but is not obliged to) act in accordance with the authorising provision, the Rules are deemed to include the necessary power authorising ETSL to act in accordance with the authorising provision;
- (d) in rule 20.3, that ETSL must comply with a requirement of the Relevant Law and can (but is not obliged to) act in accordance with a provision of the Relevant Law that is not a requirement;
- (e) in rule 22.1, that ETSL shall administer, operate and regulate the affairs of the fund as it thinks appropriate;
- (f) in rule 22.5, that ETSL may appoint any person permitted under the Relevant Law to be custodian or investment manager and the form of appointment must comply with the Relevant Law;
- (g) in rule 22.6:

- i. that ETSL may engage anyone, on terms ETSL sees fit, to provide services of any kind to the fund; and
 - ii. such services include without limitation administration services, distribution or promotional services, legal services, actuarial services and accounting services;
- (h) in rule 22.7, that ETSL may act on the opinion, advice or information from any service providers engaged by it;
- (i) in rule 22.10:
 - i. that ETSL may delegate any of its powers or functions to any person and subject to any terms and conditions it sees fit;
 - ii. the delegation must be evidenced in writing;
 - iii. anything done by a delegate under a delegation is taken to have been done by ETSL; and
- (j) in rule 22.12 (*inter alia*):
 - i. that subject to the other provisions of the Rules, ETSL has an absolute and uncontrolled discretion in acting in connection with the fund; and
 - ii. ETSL may exercise or not exercise any of its trusts, powers or discretions at any time.

PARTICULARS

Super Simplifier Trust Deed dated 24 August 2022
(EQS.0048.0001.0098).

20. At all times from 14 October 2022 to the end of the Relevant Period, Dash Promoter Services Pty Ltd (**Dash**) was the promoter of Super Simplifier.

PARTICULARS

Promoter Services Agreement, Super Simplifier, between ETSL
and Dash dated 14 October 2022 (EQS.0024.0001.0074).

21. At all times from 11 November 2022 to the end of the Relevant Period, Atchison was engaged by ETSL (in its capacity as trustee of Super Simplifier) to provide investment management and asset consulting services with respect to Super Simplifier (**Super Simplifier Investment Consulting Agreement**).

PARTICULARS

Investment Consulting Agreement between ETSL and Atchison with respect to Super Simplifier dated 11 November 2022 (EQS.0027.0001.1944).

22. The Super Simplifier Investment Consulting Agreement provided (*inter alia*):
- (a) in cl 2, that ETSL appointed Atchison to provide the services set out in the table in Schedule 1; and
 - (b) in Schedule 1, that the services included (*inter alia*) with respect to unlisted managed funds:
 - i. quarterly monitoring (in June, September, December and March in accordance with the Funds Monitoring Policy for Super Simplifier); reviewing data collected for accuracy; reviewing all unlisted managed fund ratings in the approved product lists (**APL**) for changes in recommendations; performing a quantitative assessment of all unlisted managed funds to identify underperformance and outperformance based on quantitative trigger levels determined by Atchison and agreed with ETSL; that the unlisted managed funds that have failed the quantitative assessment, on ETSL's instruction, may be subject to a qualitative assessment to be submitted to ETSL with a recommendation; provide ETSL with recommendations for APL additions and approval (items 3.1-3.6);
 - ii. providing ETSL with quarterly reporting which will include (*inter alia*):
 - I. performance comparison against appropriate asset class and/or peer group benchmarks;
 - II. identification of those investments below stated performance tolerances;
 - III. analysis and recommendation of investments exceeding performance tolerances;
 - IV. changes in investment rating below investment grade; and
 - V. material change in investment liquidity,(item 3.7);
 - iii. annual (in June):

- I. scenario stress testing of investment options including historical and forecast data by Atchison; and
 - II. liquidity management reporting and liquidity stress testing under normal and stressed market conditions to demonstrate liquidity profile,
- (items 4.1 to 4.2),

(Atchison's Super Simplifier Ongoing Monitoring Services).

23. On or about 21 November 2022, ETSL issued a PDS with respect to Super Simplifier, which was amended from time to time during the Relevant Period.

PARTICULARS

- A. Super Simplifier PDS Part I and Part II dated 21 November 2022 (EQS.0011.0002.0967).
 - B. Super Simplifier PDS Part I and Part II dated 24 November 2022 (EQS.0011.0002.1031).
 - C. Super Simplifier PDS Part I and Part II dated 13 June 2023 (EQS.0011.0002.1095).
24. The Super Simplifier PDS provided in Part II, section 7 (*inter alia*):
- (a) ETSL imposes certain limits on the amount that an account may invest in listed securities, listed investment companies, exchange traded funds, hybrid securities, hedge funds and term deposits;
 - (b) the limits relate to both a single security or investment and aggregated holdings;
 - (c) these limits help to keep accounts diversified;
 - (d) based on the type of managed fund, the investment holding limit for managed funds will range from 10% to 100% of the member's account balance; and
 - (e) generally, ETSL considers a managed investment to be illiquid if it cannot be converted to cash in less than 30 days, and a managed investment may also be illiquid if converting to cash within 30 days would have a significant adverse impact on the value of the investment.

PARTICULARS

- A. Super Simplifier PDS Part I and Part II dated 21 November 2022 (EQS.0011.0002.0967), Part II, section 7, pp 25-26 (pp.1019-.1020).
- B. Super Simplifier PDS Part I and Part II dated 24 November 2022 (EQS.0011.0002.1031), Part II, section 7, pp 25-26 (pp.1083-.1084).
- C. Super Simplifier PDS Part I and Part II dated 13 June 2023 (EQS.0011.0002.1095), Part II, section 7, pp 28-30 (pp.1154-.1156).

B4. ETSL's Investment Governance Framework (IGF)

- 25. At all times during the Relevant Period, ETSL had in place an investment governance framework (**IGF**).
- 26. The IGF comprised (*inter alia*):
 - (a) the Investment Governance Framework Policy (**IGFP**), as amended from time to time; and
 - (b) the Investment Governance Protocol – Platform Options (**IGPPO**), as amended from time to time.

PARTICULARS

- A. IGFP dated June 2021 (EQS.0011.0002.1298); October 2022 (EQS.0011.0002.1973); October 2023 (EQS.0011.0002.1983).
- B. IGPPO dated June 2021 (EQS.0011.0002.1993); October 2022 (EQS.0011.0002.2002); October 2023 (EQS.0011.0002.2013).

I. The Investment Governance Framework Policy (IGFP)

- 27. The IGFP applied to all directors of ETSL, all members of the BIC, all members of the SIO and its appointed agents, operating under the delegated authority of the ETSL Board.

PARTICULARS

IGFP dated June 2021 (EQS.0011.0002.1298), p4 (p.1301); October 2022 (EQS.0011.0002.1973) at p4 (p.1976); October 2023 (EQS.0011.0002.1983) at p4 (p.1986).

28. At all times during the Relevant Period (unless otherwise indicated below), pursuant to the IGFP:

- (a) the ETSL Board was at all times responsible for each fund's investments;
- (b) the ETSL Board delegated some decision-making responsibilities to various committees and management groups;
- (c) the responsibilities of the BIC included:
 - i. implementation and ongoing oversight and compliance with the IGF;
 - ii. recommending the approval of the fund investment strategy to the ETSL Board;
 - iii. monitoring of investment options; and
 - iv. the approval of Level 2 investments (defined in paragraph 34(b) below).
- (d) the responsibilities of the SIO included:
 - i. undertaking operational investment oversight, implementation and administration of the IGF;
 - ii. quarterly investment governance reporting to the BIC;
 - iii. oversight of (*inter alia*) AMG Super and Super Simplifier's investment strategy;
 - iv. managing service providers including asset consultants and investment managers;
 - v. reviewing and challenging recommendations of asset consultants and investment managers;
 - vi. making recommendations to the BIC and the ETSL Board;
 - vii. implementing requests and decisions of the BIC;
 - viii. implementing the investment strategy; and
 - ix. the approval of Level 1 investments (defined in paragraph 34(a) below).
- (e) the role and responsibilities of asset consultants and investment managers included:

- i. supporting ETSL in providing investment governance and oversight;
- ii. (pursuant to the IGFP dated June 2021) providing advice (when deemed required) on:
 - I. the formulation and design of investment strategies and APLs;
 - II. evaluation and recommendation of investments;
 - III. monitoring and reporting on investment options and underlying investments;
 - IV. investment reviews and stress testing; and
 - V. providing general investment advice, analysis, guidance and recommendations to ETSL.
- (f) the responsibilities of the EGM – STO (subsequently the EGM STS) included:
 - i. (pursuant to the IGFP dated June 2021) being accountable for ensuring compliance with all requirements of the IGF;
 - ii. allocating appropriate and adequate resources to support the requirements of the IGF;
 - iii. assigning compliance responsibilities to applicable staff and reflecting them in position descriptions and delegations; and
 - iv. undertaking and promoting awareness of compliance obligations relevant to the IGF.

PARTICULARS

IGFP dated June 2021 (EQS.0011.0002.1298), section 4, pp4-5 (pp.1301-1302); October 2022 (EQS.0011.0002.1973), section 4, pp4-5 (p.1976-1977); October 2023 (EQS.0011.0002.1983), section 4, pp4-5 (p.1986-987).

29. At all times during the Relevant Period, the IGFP provided with respect to Platforms (*inter alia*) that:
- (a) platforms are member directed funds that are typically available to investors who have appointed a financial adviser in relation to the fund;

- (b) as such, members of these funds exercise investment choice by directing ETSL in relation to investment strategies and options;
- (c) ETSL retains the right to determine the investment offering; and
- (d) investment options may be subject to limits and restrictions as seen fit by ETSL.

PARTICULARS

IGFP dated June 2021 (EQS.0011.0002.1298), section 7, p7 (p.1304); October 2022 (EQS.0011.0002.1973), section 7, p7 (p.1979); October 2023 (EQS.0011.0002.1983), section 7, p7 (p.1989).

30. At all times during the Relevant Period, the IGFP set out guiding investment principles and philosophies which support ETSL's decision-making processes, which included (*inter alia*):
- (a) that “dynamic and tactical asset allocation” may be appropriate where the process and skills are in place to manage it;
 - (b) that ETSL seeks to avoid unrewarded risk;
 - (c) that the use of derivatives by underlying investment managers will be reviewed as part of the investment due diligence process;
 - (d) a recognition that members may wish to exercise choice (with or without advice) and may implement strategies based on their own beliefs; and
 - (e) that ETSL may exercise its discretion to limit member exposure to certain investments or combination of investments where it believes that appropriate risk, return and diversification may be compromised for that member or class of members.

PARTICULARS

IGFP dated June 2021 (EQS.0011.0002.1298), section 8, p8 (pp.1304-1305); October 2022 (EQS.0011.0002.1973), section 8, p8 (p.1980); October 2023 (EQS.0011.0002.1983), section 8, p8 (p.1990).

31. At all times during the Relevant Period (unless otherwise indicated below), the IGFP provided (*inter alia*) that:
- (a) the SIO receives recommendations and reports from third party asset consultants, ratings agencies and investment managers, with the separation ensuring that the

persons applying and assessing the performance of investments and investment options are operationally independent from the persons responsible for recommending and making the investment;

- (b) the performance of investment options is:
 - i. (pursuant to the IGFP dated June 2021) to be reported to the BIC on a quarterly basis to evaluate each investment option's performance and evaluate any changes to the underlying investment manager, such as fund ratings and personnel changes;
 - ii. (pursuant to the IGFP dated October 2022) to be reported to the BIC on a quarterly basis and the report seeks to provide investment performance and evaluate issues, changes and recommendations in relation to the funds; and
 - iii. (pursuant to the IGFP dated October 2023) monitored by the SIO, with all options underperforming according to defined Key Performance Indicators reported to the BIC quarterly and the report seeks to provide investment performance and evaluate issues, changes and recommendations in relation to the funds.
- (c) in addition to the quarterly reports, an annual report concerning the following will be produced:
 - i. a review of the fund's investment strategy;
 - ii. an annual performance stress test; and
 - iii. an annual liquidity stress test.

PARTICULARS

IGFP dated June 2021 (EQS.0011.0002.1298), section 9, p8 (p.1305); October 2022 (EQS.0011.0002.1973), section 9, p9 (p.1981); October 2023 (EQS.0011.0002.1983), section 9, p9 (p.1991).

II. The Investment Governance Protocol – Platform Options (IGPPO)

- 32. At all times during the Relevant Period, the IGPPO provided, with respect to investment strategy, that the investment strategy determined by ETSL is to (*inter alia*):

- (a) select and approve an appropriate range of managed funds within each asset class based on the investment manager's capabilities, investment style and performance; and
- (b) monitor investment return performance.

PARTICULARS

IGPPO dated June 2021 (EQS.0011.0002.1993), section 2 (p.1995); IGPPO dated October 2022 (EQS.0011.0002.2002), section 2 (p.2004); IGPPO dated October 2023 (EQS.0011.0002.2013), section 2 (p.2015).

33. At all times during the Relevant Period (unless otherwise indicated below), the IGPPO provided, with respect to investment selection, that (*inter alia*):
- (a) the investment selection process (**Investment Selection Process**) was as follows:
 - i. first, a recommendation from an investment manager;
 - ii. secondly, review by the SIO;
 - iii. thirdly:
 - I. for a level 1 investment: review by the EGM – STO;
 - II. for a level 2 investment: approval by the BIC;
 - iv. fourthly, implementation by the SIO.
 - (b) the aim of the investment selection process is to ensure that due diligence is conducted commensurate with the nature and characteristics of the investment;
 - (c) the process seeks to establish that the ETSL Board and delegated committees are satisfied:
 - i. that it has sufficient understanding and knowledge of the investment selected, including an assessment of any factors that could have a material impact on achieving the investment objectives of the investment option;
 - ii. (in the period up until October 2023) it has a sufficient understanding of how the investment is expected to perform under the range of stress scenarios;

- (d) (in the period up until October 2023) the ETSL Board / (in the period after October 2023) the BIC may implement limits on investments with due consideration to such factors as liquidity, diversification and level of investment risk;
- (e) ETSL seeks to provide a range of investments that:
 - i. allow members (preferably with financial advice) to direct their own investment choices with consideration to their individual personal circumstances and preferences;
 - ii. have satisfied the investment selection process;
 - iii. are true to label;
 - iv. are within the parameters of each fund's Investment Strategy; and
- (f) the SIO / BIC may place a holding restriction on any managed fund, for example, where it considers that there is an additional risk (including due to size or concentration risk), poor liquidity, or a lack of diversification.

PARTICULARS

IGPPO dated June 2021 (EQS.0011.0002.1993), section 3 (p.1995-.1996); IGGPO dated October 2022 (EQS.0011.0002.2002), section 3 (p.2004-.2005); IGPPO dated October 2023 (EQS.0011.0002.2013), section 3 (p.2015-.2016).

34. At all times during the Relevant Period, the IGPPO defined Level 1 and Level 2 investments as follows:
- (a) Level 1 investments included (*inter alia*):
 - i. (in the period up until October 2023) investment consultant / (in the period after October 2023) asset consultant/investment manager recommended or investment grade rated (where relevant) registered managed investment schemes with a redemption profile of no more than monthly redemption;
 - ii. managed portfolios, asset consultant/investment manager recommended or investment grade rated;
 - (b) Level 2 investments included (*inter alia*):
 - i. Australian equities and listed property trusts listed on the ASX or Chi-X;

- ii. international equities and listed property trusts on recognised trading markets;
- iii. other investments products including structured products subject to deep understanding of the product attributes and suitability to the investment strategy for the fund; and
- iv. an investment with greater than 25% exposure to illiquid assets.

PARTICULARS

IGPPO dated June 2021 (EQS.0011.0002.1993), section 4 (p.1997); IGGPO dated October 2022 (EQS.0011.0002.2002), section 4 (p.2007); IGPPO dated October 2023 (EQS.0011.0002.2013), section 4 (p.2018).

35. At all times during the Relevant Period, the IGPPO provided, with respect to investment approvals:
- (a) the ETSL Board has delegated responsibility for investment approvals (except for investment strategies) to the BIC;
 - (b) the BIC has delegated approval authority for Level 1 investments to the SIO, subject to review from a member of the BIC or the EGM – STO;
 - (c) approved Level 1 investments are noted at a BIC meeting; and
 - (d) Level 2 investments may only be made with the approval of the BIC.

PARTICULARS

IGPPO dated June 2021 (EQS.0011.0002.1993), section 4 (p.1997); IGGPO dated October 2022 (EQS.0011.0002.2002), section 4 (p.2007); IGPPO dated October 2023 (EQS.0011.0002.2013), section 4 (p.2018).

36. At all times during the Relevant Period, the IGPPO provided, with respect to investment monitoring:
- (a) the SIO is responsible for ensuring appropriate measures are in place to monitor the investments of each fund;
 - (b) the SIO will review quarterly reporting provided by the investment manager;
 - (c) the quarterly report will include:

- i. performance comparison against appropriate asset class and/or peer group benchmarks (and, in the period after October 2023, that this may be by exception);
 - ii. identification of those investments exceeding stated performance tolerances;
 - iii. analysis and recommendation of investments exceeding performance tolerances;
 - iv. change in investment rating; and
 - v. material change in investment liquidity;
- (d) the quarterly report will highlight occurrences where an investment has:
- i. exceeded its performance tolerance;
 - ii. exceeded its risk tolerance;
 - iii. had an adverse change in investment rating;
 - iv. a change in liquidity profile;
 - v. had a change of circumstances that may affect the fund (for example, a change of an investment team);
- (e) each of the events described in subparagraph (d) above will be subject to review by the investment manager or asset consultant and the investment placed on a “watch list”; and
- (f) in addition to the quarterly reports, an annual report covering the following will be produced:
- i. a review of each fund’s investment strategy;
 - ii. a comprehensive stress testing report; and
 - iii. an annual review of liquidity.

PARTICULARS

IGPPO dated June 2021 (EQS.0011.0002.1993), section 5 (p.1998); IGGPO dated October 2022 (EQS.0011.0002.2002), section 5 (p.2007-2008); IGPPO dated October 2023 (EQS.0011.0002.2013), section 5 (p.2018-2019).

III. The AMG Super Investment Strategy (in relation to NQ Super)

37. At all times during the Relevant Period, in relation to NQ Super but not Super Simplifier, the IGF also included, in addition to the documents pleaded in paragraph 26 above, the AMG Super Investment Strategy, as amended from time to time.

PARTICULARS

AMG Super Investment Strategy dated October 2021
(EQS.0011.0002.2024).

38. The AMG Super Investment Strategy (*inter alia*):

- (a) describes the investment strategy of the fund;
- (b) (up to December 2022) outlines an effective due diligence process for the selection of investments;
- (c) determines appropriate measures to monitor the performance of investments (up to December 2022) on an ongoing basis; and
- (d) provides the basis for the review of investment objectives and investment strategies (up to December 2022) on a periodic basis.

PARTICULARS

A. AMG Super Investment Strategy dated October 2021
(EQS.0011.0002.2024), section 1 (p.2027).

B. AMG Super Investment Strategy dated December 2022
(EQS.0011.0002.2052), section 1 (p.2054).

C. AMG Super Investment Policy Statement dated December 2023 (EQS.0011.0002.2080), section 1.1 (p.2082).

39. Further, the AMG Super Investment Strategy provided (*inter alia*):

- (a) (up until December 2023) the goal of the process for selection of platform investment options is subject to ETSL being satisfied that (*inter alia*) the investment is consistent with the investment objectives and strategies as allowed under the Investment Strategy (and for a managed fund, ETSL will adopt the investment objectives specific to that option);

PARTICULARS

- A. AMG Super Investment Strategy dated October 2021 (EQS.0011.0002.2024), section 6.2 (p.2034).
 - B. AMG Super Investment Strategy dated December 2022 (EQS.0011.0002.2052), section 4.2 (p.2059).
- (b) (up until December 2023) ETSL may impose upper limits on investment in certain investments available through the fund with consideration to liquidity, diversity and risk, and the limits are articulated in relation to both single security and aggregate holdings, at member account level;

PARTICULARS

- A. AMG Super Investment Strategy dated October 2021 (EQS.0011.0002.2024), section 6.3 (p.2034).
 - B. AMG Super Investment Strategy dated December 2022 (EQS.0011.0002.2052), section 4.3 (p.2059).
- (c) in an appendix relating specifically to NQ Super that (*inter alia*):
- i. no more than 10% of a member's portfolio may be allocated to illiquid holdings, where "liquid" was defined as the "product can be converted to cash within 7 days", "moderately liquid" was defined as the "product can be converted to cash within 360 days" and "illiquid" was defined as the "product may not be able to be converted to cash within 360 days."; and
 - ii. where ETSL offers members an externally managed investment option, ETSL will adopt the investment options specific to that option and these objectives can be found in the offer documents made available to members prior to investment.

PARTICULARS

- A. AMG Super Investment Strategy dated October 2021 (EQS.0011.0002.2024), Appendix 3 (p.2050-.2051).
- B. AMG Super Investment Strategy dated December 2022 (EQS.0011.0002.2052), Appendix 4 (p.2074).

C. AMG Super Investment Strategy dated December 2023 (EQS.0011.0002.2080), Appendix 4 (p.2106).

IV. The Super Simplifier Investment Strategy (in relation to Super Simplifier)

40. From December 2022 in relation to Super Simplifier but not NQ Super, the IGF included, in addition to the documents pleaded in paragraph 26 above, the Super Simplifier Investment Strategy.

PARTICULARS

Super Simplifier Investment Strategy dated December 2022 (EQS.0027.0001.2031).

41. The Super Simplifier Investment Strategy provided that ETSL retained the ultimate right to approve a proposed investment option that does not comply with the selection criteria or processes in the Super Simplifier Investment Strategy, where there is a reasonable basis for doing so and subject to any restrictions imposed by ETSL.

PARTICULARS

Super Simplifier Investment Strategy dated December 2022 (EQS.0027.0001.2031), paragraph 1 (2033).

42. The Super Simplifier Investment Strategy provided (*inter alia*) that:
- (a) ETSL may place a holding restriction on a managed fund where it considers that there is an additional risk (including due to size or concentration risk), poor liquidity, or a lack of diversification;

PARTICULARS

Super Simplifier Investment Strategy dated December 2022 (EQS.0027.0001.2031), paragraph 3.1 (p.2035).

- (b) in relation to holding limits:
- i. actual holding limits were based on a number of factors including (but not limited to) the strength of the research rating, asset class, liquidity, volatility, diversification, fee structure and investment approach (active/passive);
- ii. the maximum holding limit for alternative assets was 30%; and

- iii. the maximum holding limit for illiquid assets was 20%.

PARTICULARS

Super Simplifier Investment Strategy dated December 2022 (EQS.0027.0001.2031), paragraph 3.1 (pp.2035-.2036).

B5. ETSL's Outsourcing Protocol

43. At all times during the Relevant Period, ETSL had in place an outsourcing protocol (**Outsourcing Protocol**).

PARTICULARS

Outsourcing Protocol effective 17 June 2021 (EQS.0042.0001.0012).

44. The Outsourcing Protocol provided (*inter alia*):
- (a) at cl 3, that (*inter alia*) an asset consultant is subject to the specific requirements of the Outsourcing Protocol;
 - (b) at cl 4.2, that (*inter alia*):
 - i. the STO has developed an oversight program of material service providers which includes a calendar of annual audits, the objective of which is to test compliance with legislative requirements and contractual agreements (including service levels), as well as trustee policies and procedures; and
 - ii. material service providers in scope include (*inter alia*) asset consultants, with each audit being risk-based and focussing on known areas of weakness and non-compliance; and
 - (c) at cl 6, a protocol table that outlined (*inter alia*) the approach to how ETSL manages compliance with its outsourcing prudential standard obligations.

B6. Overview of The Shield Master Fund

45. The Shield Master Fund (**SMF**):
- (a) was a registered managed investment scheme, registered on or around 5 July 2021;
 - (b) as at around October 2021, was a new fund with no funds under management; and

- (c) first received investor funds in around April 2022.

PARTICULARS

Report prepared by SQM Research on the SMF dated 6 October 2021 (EQS.0011.0002.1826), p2 (p.1829).

46. During the Relevant Period:

- (a) the responsible entity of the SMF was Keystone Asset Management Limited (**Keystone**); and
- (b) the investment manager of the SMF was CF Capital Pty Ltd (**CF Capital**).

47. Paul Chiodo:

- (a) was a director of Keystone between 27 April 2020 and 27 May 2024; and
- (b) was a director of CF Capital between 10 May 2019 and 17 June 2024.

PARTICULARS

A. Current & Historical Company Extract of Keystone Asset Management Ltd dated 20 August 2025 (EQS.0003.0004.0945), (p.0948).

B. Current & Historical Company Extract of CF Capital Investments Pty Ltd dated 20 August 2025 (EQS.0003.0004.0937), (p.0940).

48. Ilya Frolov:

- (a) was a director of Keystone between 27 April 2020 and 29 December 2023; and
- (b) was a director of CF Capital between 10 May 2019 and 29 December 2023.

PARTICULARS

A. Current & Historical Company Extract of Keystone Asset Management Ltd dated 20 August 2025 (EQS.0003.0004.0945), (p.0948).

B. Current & Historical Company Extract of CF Capital Investments Pty Ltd dated 20 August 2025 (EQS.0003.0004.0937), (p.0940).

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

PARTICULARS

- A. ~~PDS and Supplementary PDS for~~ For the Conservative class of the SMF (EQS.0011.0002.1794): PDS dated 8 September 2021 and Supplementary PDS for dated 3 November 2021 (EQS.0011.0002.1794): Supplementary PDS dated 4 April 2022 (KSS.0210.0006.9285).
 - B. For the Balanced class of the SMF (EQS.0011.0002.1762): PDS dated 8 September 2021 and Supplementary PDS for dated 3 November 2021 (EQS.0011.0002.1762): Supplementary PDS dated 4 April 2022 (KSS.0210.0006.9252).
 - C. For the Growth class of the SMF: PDS dated 8 September 2021 and Supplementary PDS dated 3 November 2021 (EQS.0011.0002.1707): Supplementary PDS dated 4 April 2022 (KSS.0210.0006.9219).
51. With respect to the High Growth class of the SMF:
- (a) a PDS was issued on or about 12 October 2021; ~~and~~
 - (b) a supplementary PDS was issued on or about 3 November 2021; and
 - (c) a supplementary PDS was issued on or about 4 April 2022.

PARTICULARS

PDS dated 12 October 2021 and Supplementary PDS dated 3 November 2021 for the High Growth class of the SMF (EQS.0011.0002.1871); Supplementary PDS dated 4 April 2022 for the High Growth class of the SMF (KSS.0210.0006.9186).

52. The SMF:

(a) in respect of NQ Super:

- i. was approved as an investment option on the NQ Super APL on or about 23 February 2022 (in the case of the Conservative, Balanced and Growth classes) and on or about 11 March 2022 (in the case of the High Growth class);
- ii. was removed from the NQ Super APL on or about 10 January 2024 following an investigation by ETSL into the SMF;
- iii. as at around early 2024, had received approximately \$143,832,637.67 ~~\$116,090,932~~ in investments from approximately 2,795,040 ~~2,795,040~~ members of NQ Super into the Conservative, Balanced and Growth classes; ~~and~~
- iv. as at around early 2024, had received approximately \$4,868,587.05 ~~\$4,266,742~~ in investments from approximately 38 members of NQ Super into the High Growth class; ~~and~~
- v. issued units to ETSL in its capacity as trustee of AMG Super. in connection with investments in the SMF by members of NQ Super; and

(b) in respect of Super Simplifier:

- i. was approved as an investment option on the Super Simplifier APL on or about 21 July 2023 (for each of the Conservative, Balanced, Growth and High Growth classes);
- ii. was removed from the Super Simplifier APL on or about 2 February 2024 following an investigation by ETSL into the SMF; ~~and~~
- iii. as at around early 2024, had received approximately \$11,667,620.86 in investments from approximately 745 ~~745~~ members of Super Simplifier into the Conservative, Balanced, Growth and High Growth classes-; ~~and~~

iv. issued units to ETSL in its capacity as trustee of Super Simplifier, in connection with investments in the SMF by members of Super Simplifier.

PARTICULARS

A. As to subparagraphs (a)(i) and (b)(i): the dates on which, and circumstances in which, the SMF came to be an investment option on the NQ Super and Super Simplifier Platforms are pleaded in Part E and Part G respectively below.

B. As to subparagraphs (a)(ii) and (b)(ii): on 10 January 2024 and 2 February 2024, ETSL removed each class of the SMF from the NQ Super and Super Simplifier APLs respectively.

52A. 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 (*inter alia*) responsible entity of the SMF.

PARTICULARS

Australian Securities and Investments Commission v Keystone Asset Management Ltd [2024] FCA 1019.

52B. By notice dated 22 November 2024 given to unitholders of the SMF (including ETSL), the receivers and managers of Keystone:

(a) identified that the SMF had received funds from all unitholders (including but not limited to ETSL) in the amount of \$530,736,295 less redemptions of \$48,703,623;

(b) estimated, on an indicative basis only, that the net assets of the SMF attributable to all unitholders (including but not limited to ETSL) may have a value in the range of \$202.6 million to \$224.5 million; and

(c) estimated, on a very preliminary basis only, returns (by way of Cents in \$) to SMF unitholders by asset class as:

i. Conservative: between \$0.52 and \$0.55;

ii. Balanced: between \$0.53 and \$0.58;

iii. Growth: between \$0.49 and \$0.54; and

iv. High Growth: between \$0.22 and \$0.28.

PARTICULARS

Letter dated 22 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), pp 5, 12 and 14 (pp.0142, .0149, .0151).

52C. On 2 December 2024, the creditors of Keystone resolved to wind up Keystone and appointed joint and several liquidators.

PARTICULARS

Current & Historical Company Extract of Keystone Asset Management Ltd dated 20 August 2025 (EQS.0003.0004.0945), (pp.0949 and .0953).

52D. By notice dated 10 April 2025, unitholders of the SMF (including ETSL) were informed that:

(a) Keystone and its receivers and managers and liquidators had formed the view that it was in the best interests of SMF unitholders to terminate the SMF;

(b) the reasons for that view included (*inter alia*) that:

i. 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;

ii. Keystone had invested a significant amount of SMF funds into the Advantage Diversified Property Fund (**ADPF**) and the ADPF had in turn made a number of loans to various special purpose vehicles in relation to potential land and/or property development projects, and many of those loans were made without the typical documentation and protections generally afforded in loan arrangements of a similar nature, which had likely resulted in significant losses to the SMF;

iii. some of the SMF funds may have been misappropriated; and

iv. there appeared to have been a number of additional material breaches of the law that may have resulted in further losses to the SMF and SMF unitholders;

(c) the termination date for the SMF was 10 April 2025; and

(d) no further applications or redemptions in the SMF would be accepted.

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).

52E. As at the date of this amended statement of claim:

(a) ETSL, in its capacity as trustee of NQ Super and Super Simplifier, has not redeemed any units in the SMF held by it since February 2024;

(b) ETSL, in its capacity as trustee of NQ Super and Super Simplifier, cannot redeem any units held by it in the SMF;

(c) AMG Super members cannot withdraw, transfer or reinvest funds from their accounts referable to amounts invested by ETSL in the SMF on their behalf; and

(d) Super Simplifier members cannot withdraw, transfer or reinvest funds from their accounts referable to amounts invested by ETSL in the SMF on their behalf.

C. ETSL'S OBLIGATIONS UNDER THE SIS ACT

C1. The SIS Act

53. The:

(a) AMG Super Trust Deed, during the Relevant Period; and

(b) the Super Simplifier Trust Deed, from 24 August 2022 to the end of the Relevant Period,

contained (*inter alia*) the covenants in ss 52(2)(b), 52(2)(c), 52(6) and 52(12) of the SIS Act.

PARTICULARS

A. The covenants are taken to be contained in the AMG Super Trust Deed and the Super Simplifier Trust Deed by operation of SIS Act, s 52(1).

B. Further or alternatively, with respect to the AMG Super Trust Deed only, covenants to the same effect as ss 52(2)(b) and 52(2)(c) (for the purposes of s 54B(1) of the SIS Act) are

expressly contained in cl 9.2(b) and 9.2(c) of the AMG Super Trust Deed.

54. By reason of the matters pleaded in paragraph 53 above, ETSL covenanted to:
- (a) exercise, in relation to all matters affecting each of AMG Super and Super Simplifier, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments (s 52(2)(b) of the SIS Act);
 - (b) perform the trustee's duties and exercise the trustee's powers in the best financial interests of the beneficiaries of each of AMG Super and Super Simplifier (s 52(2)(c) of the SIS Act);
 - (c) exercise due diligence in developing, offering and reviewing regularly each investment option offered by ETSL in each of AMG Super and Super Simplifier (s 52(6)(b) of the SIS Act); and
 - (d) promote the financial interests of the beneficiaries of each of AMG Super and Super Simplifier who hold a choice product, in particular returns to those beneficiaries (after the deduction of fees, costs and taxes) (s 52(12) of the SIS Act).
55. Further, during the Relevant Period, ETSL had imposed on it the requirement that it would comply with the prudential standards made by the Australian Prudential Regulation Authority (**APRA**) under s 34C of the SIS Act.

PARTICULARS

SIS Act, s 29E(1).

C2. SPS 530

56. On 15 November 2012, APRA made *Superannuation (prudential standard) determination No. 8 of 2012 - Prudential Standard SPS 530 - Investment Governance (SPS 530 (July 2013))*.
57. From 1 July 2013 until 31 December 2022, SPS 530 (July 2013) provided (*inter alia*):
- (a) in paragraph 2, that SPS 530 (July 2013) applied to all RSE licensees under the SIS Act;

- (b) in paragraph 19, that an RSE licensee must, for each investment strategy: (a) determine appropriate stress scenarios that cover a range of factors that can create extraordinary losses or make the control of risk in the investment strategy difficult; and (b) undertake stress testing based on the scenarios in sub-paragraph (a) to confirm that the strategy is appropriate, prior to implementation;
 - (c) in paragraph 22, that an RSE licensee must have processes and criteria for selecting each investment to give effect to the investment strategy (investment selection process) to ensure that effective due diligence that is commensurate with the nature and characteristics of the investment is undertaken prior to the selection of an investment for an investment option;
 - (d) in paragraph 23, that an RSE licensee's investment selection process must result in the RSE licensee being satisfied that:
 - i. it has sufficient understanding and knowledge of the investment selected, including an assessment of any factors that could have a material impact on achieving the investment objectives of the investment option;
 - ii. it has sufficient understanding of how the investment is expected to perform under the range of stress scenarios determined under paragraph 19(a) of SPS 530 (July 2013); and
 - iii. the investment is appropriate for the investment option.
 - (e) in paragraph 24, that an RSE licensee must determine appropriate measures, approved by the Board, to monitor the performance of each investment in each investment option and each MySuper product on an ongoing basis;
 - (f) in paragraph 25, that an RSE licensee must ensure that persons applying and assessing the measures required in paragraph 24 are operationally independent from persons who are responsible for making the investment; and
 - (g) in paragraph 26, that an RSE licensee must ensure that the performance of each investment is regularly reported to the Board and senior management.
58. On 18 November 2022, APRA revoked SPS 530 (July 2013) and made *Superannuation (prudential standard) determination No. 2 of 2022 - Prudential Standard SPS 530 - Investment Governance (SPS 530 (January 2023))*.
59. From 1 January 2023, SPS 530 (January 2023) provided (*inter alia*):

- (a) in paragraph 2, that SPS 530 (January 2023) applies to all RSE licensees;
- (b) in paragraph 23, that an RSE licensee must have processes and criteria for selecting each investment to give effect to the investment strategy (investment selection process) to ensure that effective due diligence that is commensurate with the nature and characteristics of the investment is undertaken prior to the selection of an investment for an investment option;
- (c) in paragraph 24, that an RSE licensee's investment selection process must enable the RSE licensee to ensure:
 - i. it has sufficient understanding and knowledge of the investment selected, including an assessment of any factors that could have a material impact on achieving the investment objectives of the investment option;
 - ii. it has sufficient understanding of how the investment is expected to perform under the range of stress scenarios determined under paragraph 31; and
 - iii. the investment is appropriate for the investment option;
- (d) in paragraph 25, that an RSE licensee must determine appropriate measures for the purposes of monitoring performance on an ongoing basis, in respect of each investment option and each investment within an investment option;
- (e) in paragraph 26, that an RSE licensee must ensure that the performance of each investment option is regularly reported to the Board and senior management;
- (f) in paragraph 27, an RSE licensee must ensure that persons undertaking the assessment of performance, by applying and assessing the measures required in paragraph 25, are operationally independent from persons who are responsible for making the investment; and
- (g) in paragraph 31, that an RSE licensee must, at a minimum, determine appropriate adverse stress scenarios for the investment strategy of each option. These adverse stress scenarios must cover a range of factors that can create extraordinary losses or make the control of risk within accepted tolerance level in the investment strategy difficult.

C3. SPS 231

60. On 15 November 2012, APRA made *Superannuation (prudential standard) determination No. 3 of 2012 - Prudential Standard SPS 231 - Outsourcing (SPS 231 (July 2013))*.

61. SPS 231 (July 2013) provided (*inter alia*):

- (a) in paragraph 9, that a 'material business activity' is one that has the potential, if disrupted, to have a significant impact on an RSE licensee's business operations, its ability to manage risks effectively, the interests, or reasonable expectations, of beneficiaries or the financial position of the RSE licensee, any of its RSEs or its connected entities, having regard to such factors as:
 - i. the financial and operational impact and impact on reputation of a failure of the service provider to perform over a given period of time;
 - ii. the cost of the outsourcing arrangement as a share of total costs;
 - iii. the degree of difficulty, including the time taken, in finding an alternative service provider or bringing the business activity in-house;
 - iv. the ability of the RSE licensee to meet regulatory requirements if there are problems with the service provider;
 - v. potential losses to beneficiaries and other affected parties in the event of a service provider failure; and
 - vi. affiliation or other relationship between the RSE licensee and the service provider;
- (b) in paragraph 30, that an RSE licensee must ensure it has sufficient and appropriate resources to manage and monitor each outsourcing relationship at all times. The type and extent of resources required will depend on the materiality of the outsourced business activity. At a minimum, monitoring must include:
 - i. maintaining appropriate levels of regular contact with the service provider. This will range from daily operational contact to senior management involvement; and
 - ii. a process for regular monitoring of performance under the agreement, including meeting criteria concerning service levels.

D. ETSL'S OBLIGATIONS UNDER S 912A(1) OF THE CORPORATIONS ACT

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

E. ETSL'S CONDUCT DURING THE NQ SUPER INVESTMENT SELECTION PROCESS

E1. Approval of the Balanced, Conservative and Growth classes of the SMF

63. On or about 4 February 2022, AMG provided ETSL with a request, on behalf of New Quantum, to add the Balanced, Conservative and Growth classes of the SMF to NQ Super's APL.

PARTICULARS

Email from Mr Bell of AMG to Mr Ashton of ETSL dated 4 February 2022 (EQS.0011.0002.2558) attaching email from Mr Ali of New Quantum to Mr Bell of AMG dated 2 February 2022 (EQS.0011.0002.2561).

64. On or about 7 and 8 February 2022, the SIO received the following documents from AMG in relation to the SMF:
- (a) a document titled 'Investment Approvals Checklist in relation to the Growth, Balanced and Conservative classes of the SMF', completed by or on behalf of CF Capital (**NQ Investment Approvals Checklist**);
 - (b) the PDS and Supplementary PDS dated 3 November 2021 for each of the Balanced, Conservative and Growth classes of the SMF;
 - (c) two reports prepared by SQM Research on the SMF dated 1 October 2021 and 6 October 2021, respectively;
 - (d) a Financial Services Council (**FSC**) Operational Due Diligence Questionnaire with respect to CF Capital ~~dated November 2020~~ (**January 2022 FSC ODD Questionnaire**); and
 - (e) a FSC Investment Management Questionnaire with respect to CF Capital dated January 2022 (**January 2022 FSC IM Questionnaire**).

PARTICULARS

- A. Email chain between CF Capital, New Quantum and the SIO dated 7 and 8 February 2022 attaching the document in B below (EQS.0011.0002.1626) at (pp.1626-.1628).
- B. NQ Investment Approvals Checklist (EQS.0011.0002.1630).
- C. PDS and Supplementary PDS dated 3 November 2021 for the Growth class of the SMF (EQS.0011.0002.1707).
- D. PDS and Supplementary PDS dated 3 November 2021 for the Balanced class of the SMF (EQS.0011.0002.1762).
- E. PDS and Supplementary PDS dated 3 November 2021 for the Conservative class of the SMF (EQS.0011.0002.1794).
- F. Report prepared by SQM Research on the Balanced Class of the SMF dated 1 October 2021 (EQS.0011.0002.1739).
- G. Report prepared by SQM Research on the Balanced, Conservative and Growth classes of the SMF dated 6 October 2021 (EQS.0011.0002.1826).
- H. January 2022 FSC IM Questionnaire (EQS.0011.0002.1395).
- I. January 2022 FSC ODD Questionnaire (EQS.0011.0002.1667).

65. Between about 8 February 2022 and about 22 February 2022, the SIO incorporated an edited version of the NQ Investment Approvals Checklist into a worksheet titled “ETSL-AMG” in a spreadsheet titled “Investment Approvals HTFS & ETSL – February 2022 (**NQ SIO Assessment Checklist**)”.

PARTICULARS

During the period specified, the SIO created the NQ SIO Assessment Checklist (NQ SIO Assessment Checklist (EQS.0011.0002.1849)).

The differences between the NQ Investment Approvals Checklist and the NQ SIO Assessment Checklist were limited to the following:

- A. The words “Level 1” were inserted in each row of Column B titled “Level 1/Level 2”;

- B. Each row of the following columns was highlighted in yellow: Column E titled “Holding Limit”; Column P titled “Short term Performance 1-3 years”; Column Q titled “Longer term performance +3 years”; Column R titled “% of Fund in liquid assets”;
- C. Text in each row of Column V titled “Rating” was replaced with the words “3.75 Stars Acceptable”;
- D. The following text was inserted into Column AC titled “SIO Assessment” (across all rows):
 - *competitive management fee compared to peers with no performance fee*
 - *The investment managers own the investment company and have material personal investments in the various funds under control, creating alignment with clients.*
 - *each component fund for this new Fund has outperformed their benchmark*
 - *This is a new Fund – no performance or analysis can made*
 - *Investment Manager and RE share common members, and a number of related party relationships exist.*
- E. The text in each row of Column AD titled “Conflicts” was deleted and replaced with “NA”;

66. On 8 February 2022, Ms Jin of ETSL sent an email to the distribution list “STO – Investment Oversight Dept” asking three questions about the SMF as follows:
- (a) ‘[a]s this is a new fund, not sure whether they can have short/long term performance data? Not in any of those reports as well.’;
 - (b) ‘[h]olding limit is “None” in their spreadsheet. Should we ask them?’; and
 - (c) ‘80% of fund in liquid assets and 20% investment in property fund. Level 2 approval?’.

PARTICULARS

Email from Ms Jin of ETSL to STO – Investment Oversight Dept dated 8 February 2022 (EQS.0011.0002.1626), (p.1626).

67. As at February 2022:
- (a) the distribution list “STO – Investment Oversight Dept” was associated with the email address “SIOTeam@eqt.com.au”; and
 - (b) the members of the SIO, including Mr Buckley and Mr Ashton, were recipients of emails sent to the distribution list “STO – Investment Oversight Dept” and to the email address “SIOTeam@eqt.com.au”.
68. No member of the SIO, nor other person within ETSL, responded to the questions in the email pleaded in paragraph 66 above.
69. On 10 February 2022, Ms Jin of ETSL sent an email to Mr Bell of AMG (copied to “SIOTeam@eqt.com.au”) asking the same three questions referred to in the email pleaded in paragraph 66 above.

PARTICULARS

Email from Ms Jin of ETSL to Mr Bell of AMG dated 10 February 2022 (EQS.0011.0002.1613), (p.1615).

70. On 18 February 2022, Mr Bell of AMG emailed Ms Jin of ETSL, responding to the three questions as follows:
- (a) ‘[t]he performance values provided were from back-testing the portfolio through FE Analytics. Attached are the reports generated. Also attached is the back-tested monthly return report’;
 - (b) for each class of the SMF, ‘[s]ingle investment limit - Up to 50% of a member’s account value’; and
 - (c) ‘[i]n regards illiquid allocation, this decision is made by the adviser as the adviser is setting the strategy for their client. Please note that 20% is a maximum limit on the illiquid allocation, and can vary from 0-20%.’.

PARTICULARS

Email exchange between Ms Jin of ETSL and Mr Bell of AMG dated 10, 14 and 18 February 2022 (EQS.0011.0002.1613).

71. On or about 22 February 2022, Ms Jin of the SIO:
- (a) sent Mr Blair an approval summary for the AMG February proposed APL additions;

- (b) informed Mr Blair that the SIO was comfortable with the proposed addition of the Growth, Balanced and Conservative classes of the SMF to NQ Super's APL;
 - (c) provided Mr Blair with a copy of the NQ SIO Assessment Checklist; and
 - (d) requested that, if Mr Blair would like to discuss, to please let the SIO know,
- and the SIO thereby approved the proposed addition of the Balanced, Conservative and Growth classes of the SMF to NQ Super's APL as investment options.

PARTICULARS

A. Email from Ms Jin of ETSL to Mr Blair of ETSL dated 22 February 2022 (EQS.0011.0002.1864).

B. NQ SIO Assessment Checklist circulated 22 February 2022 (EQS.0011.0002.1865).

72. Other than the email pleaded in paragraph 71 above attaching the NQ SIO Assessment Checklist, the SIO did not provide Mr Blair with any information or documents recording the reasons for, or its analysis in making, the decision to approve the Conservative, Balanced and Growth classes of the SMF for inclusion on NQ Super's APL.
73. Further, on 22 February 2022, the SIO:
- (a) did not inform Mr Blair that the approval of the Conservative, Balanced and Growth classes of the SMF for inclusion on NQ Super's APL was subject to a holding limit; and
 - (b) provided Mr Blair with the NQ SIO Assessment Checklist which had the word 'None' written in the column headed 'Holding limit'.

PARTICULARS

ASIC refers to and repeats the particulars to paragraph 71 above.

74. On or about 23 February 2022, Mr Blair replied to Ms Jin's email of 22 February 2022 referred to in paragraph 71 above, stating 'Thanks Alina – helpful and all good', and thereby acknowledged the proposed addition of the Balanced, Conservative and Growth classes of the SMF to NQ Super's APL as investment options.

PARTICULARS

Email from Mr Blair of ETSL to Ms Jin of ETSL dated 23 February 2022 (EQS.0011.0002.1950).

75. On or about 23 February 2022, ETSL informed AMG that the Balanced, Conservative and Growth classes of the SMF had been approved as investment options for NQ Super's APL with a 50% holding limit for each class.

PARTICULARS

Email from Ms Jin of ETSL to Mr Bell of AMG dated 23 February 2022 (EQS.0011.0002.1952).

E2. The increase to the holding limits from 50% to 95%

76. On 3 March 2022, New Quantum asked ETSL whether the holding limits applicable to the Balanced, Conservative and Growth classes of the SMF on NQ Super could be increased from 50% to 95%.

PARTICULARS

Email from Mr Westbrook of New Quantum to Mr Ashton of ETSL dated 3 March 2022 (EQS.0011.0002.1867) (p.1868).

77. The reasons given by New Quantum for the request pleaded in paragraph 76 included that:
- (a) the 'adviser MWL group who use these funds have historically allocated up to 100% of a client's portfolio to these diversified funds based on a clients risk profile'; and
 - (b) the 50% holding limit had become a 'barrier to join'.

PARTICULARS

The particulars to paragraph 76 are repeated.

78. On 4 March 2022, ETSL informed New Quantum that:
- (a) ETSL was comfortable increasing the holding limit to 95%; and
 - (b) the 50% holding limit had been adopted on recommendation from New Quantum.

PARTICULARS

Email from Mr Ashton of ETSL to Mr Westbrook of New Quantum dated 4 March 2022 (EQS.0011.0002.1867) (p.1867-.1868).

79. On or around 4 March 2022, ETSL increased the holding limits applicable to the Balanced, Conservative and Growth classes of the SMF on NQ Super to 95%.
80. Other than the emails pleaded in paragraphs 76 and 78 above, the SIO did not:
- (a) consider whether the holding limits applicable to the Balanced, Conservative and Growth classes of the SMF should be increased from 50% to 95%;
 - (b) have regard to the requirements for holding limits contained in the Additional Information Booklet pleaded in paragraph 16 above, when applying a holding limit to the Balanced, Conservative and Growth classes of the SMF; nor
 - (c) document its decision to increase those holding limits from 50% to 95%.

E3. The approval of the High Growth class of the SMF

81. On 8 March 2022, New Quantum:
- (a) requested that ETSL add the High Growth class of the SMF to NQ Super's APL with a 95% holding limit; and
 - (b) provided ETSL with a copy of the PDS and Supplementary PDS dated 3 November 2021, and the Target Market Determination (**TMD**), for the High Growth class of the SMF.

PARTICULARS

Email from Mr Westbrook of New Quantum to Mr Ashton of ETSL dated 8 March 2022 (EQS.0011.0002.1867) attaching the PDS and Supplementary PDS dated 3 November 2021 for the High Growth class (EQS.0011.0002.1871) and the TMD (EQS.0011.0002.1903).

82. On 11 March 2022, Ms Jin of the SIO:
- (a) informed Mr Blair that the SIO had one approval, the High Growth class of the SMF, to be added to the existing approved SMF on NQ Super's APL; and
 - (b) requested that, if Mr Blair would like to discuss, to please let the SIO know,

and the SIO thereby approved the proposed addition of the High Growth class of the SMF to NQ Super's APL as an investment option.

PARTICULARS

Email from Ms Jin of ETSL to Mr Blair of ETSL dated 11 March 2022 (EQS.0011.0002.1866).

83. The SIO did not:
- (a) prepare a spreadsheet in the form of the NQ SIO Assessment Checklist, nor any other document, recording its assessment of the High Growth class of the SMF; nor
 - (b) other than the email referred to in paragraph 82 above, provide Mr Blair with any information or documents recording the reasons for, or its analysis in making, the decision to approve the High Growth class of the SMF for inclusion on NQ Super's APL.
84. On 11 March 2022, Mr Blair replied to Ms Jin's email of 11 March 2022 referred to in paragraph 82 above, stating 'Thanks Alina – easy peasy!', and thereby acknowledged the proposed inclusion of the High Growth class of the SMF on NQ Super's APL as an investment option.

PARTICULARS

Email from Mr Blair to Ms Jin of ETSL of ETSL dated 11 March 2022 (EQS.0011.0002.1958).

E4. The noting by the BIC of the approval for addition of the SMF to NQ Super's APL

85. On or about 26 April 2022, the BIC noted that the Balanced, Conservative, Growth and High Growth classes of the SMF were approved for addition to the APL as Level 1 investments by the SIO, in conjunction with the EGM – STO, between December 2021 and April 2022.

PARTICULARS

Minutes of the meeting of the BIC meeting held on 26 April 2022 (EQS.0045.0001.0168).

86. Between:

- (a) 23 February 2022 and around early 2023, for the Balanced, Conservative and Growth classes of the SMF; and
 - (b) 11 March 2022 and around early 2023, for the High Growth class of the SMF,
- those four classes of the SMF were approved as investment options by ETSL but due to administrative and technological issues were not added to NQ Super's APL.

PARTICULARS

- A. Email from Mr Raheja of ETSL to Mr Tomich of ETSL, Mr Suryadharma of New Quantum and Mr Westbrook of New Quantum dated 30 November 2022 (EQS.0028.0001.3277), (p.3279).
 - B. Emails between Mr Suryadharma of New Quantum, Mr Frolov of Keystone and Mr Ou of CF Capital dated 30 November 2022 (EQS.0028.0001.3277), (p.3278).
 - C. Email from Mr Suryadharma of New Quantum to Mr Ou of CF Capital and Mr Frolov of Keystone dated 16 February 2023 (EQS.0028.0001.3277).
 - D. Email from Mr Suryadharma of New Quantum to Mr Jake Jodlowski of Atchison dated 4 April 2023 (EQS.0028.0001.3274).
87. From about early 2023, each of the Conservative, Balanced, Growth and High Growth classes of the SMF were added to NQ Super's APL.

F. ETSL'S CONTRAVENTIONS DURING THE NQ SUPER INVESTMENT SELECTION PROCESS

F1. ETSL's duties when approving investment options for inclusion on the NQ Super APL

88. Prior to approving an investment option for inclusion on the NQ Super APL, as part of its Investment Selection Process as defined in paragraph 33(a) above, ETSL had duties to:
- (a) have a sufficient understanding and knowledge of the investment option (the **Understanding and Knowledge Duty**);

PARTICULARS

- A. AMG Super Trust Deed cl 9.2(b) and (c) (see paragraphs 6, 8(b) and 8(c) above).
 - B. SPS 530 (July 2013), paragraphs 22 and 23 (see paragraphs 57(c) and 57(d) above).
 - C. IGPPPO, sections 2 and 3 (see paragraphs 32(a), 33(c) and 33(e) above).
 - D. AMG Super Investment Strategy dated October 2021 (EQS.0011.0002.2024), section 6.2 (p.2034); AMG Super Investment Strategy dated December 2022 (EQS.0011.0002.2052), section 4.2 (p.2059) (see paragraph 38 above).
- (b) ensure that effective due diligence is undertaken that is commensurate with the nature and characteristics of the investment option (the **Effective Due Diligence Duty**); and

PARTICULARS

- A. AMG Super Trust Deed cl 9.2(b) and (c) (see paragraphs 6, 8(b) and 8(c) above).
 - B. SPS 530 (July 2013), paragraph 22 (see paragraph 57(c) above).
 - C. IGPPPO, sections 2 and 3 (see paragraphs 32(a), 33(b) and 33(e) above).
- (c) have a sufficient understanding of how an investment option is expected to perform under a range of appropriate stress scenarios (the **Stress Testing Duty**).

PARTICULARS

- A. AMG Super Trust Deed cl 9.2(b) and (c) (see paragraphs 6, 8(b) and 8(c) above).
- B. SPS 530 (July 2013), paragraphs 19 and 23(b) (see paragraphs 57(b) and 57(d) above).
- C. IGPPPO, section 3 (see paragraph 33(c) above).

89. Further, ETSL had a duty to ensure that appropriate holding limits (including any holding limits prescribed in documents issued by ETSL to investors) were applied to any investment option approved for inclusion on its Platform (the **Holding Limits Duty**).

PARTICULARS

- A. AMG Super Trust Deed cl 9.2(b) and (c) (see paragraphs 6, 8(b) and 8(c) above).
- B. IGFP, sections 7 and 8 (see paragraphs 29 and 30(e) above).
- C. IGPPPO, section 3 (see paragraph 33(f) above).
- D. (up until December 2023) AMG Super Investment Strategy dated October 2021 (EQS.0011.0002.2024), section 6.3 (p.2034); AMG Super Investment Strategy dated December 2022 (EQS.0011.0002.2052), section 4.3 (p.2059), Appendix 3 (pp.2072-2073) (see paragraph 39 above).
- E. Additional Information Booklet which formed part of the NQ Super PDS, p21 (see paragraphs 14 to 16 above).

F2. The nature and characteristics of the SMF relevant to the Investment Selection Process

90. The nature and characteristics of the SMF, which were relevant to the Investment Selection Process and which were disclosed to the SIO, in the period between 4 February 2022 and 23 February 2022 (**Initial NQ Super Onboarding Period**) comprised:
- (a) that the type of investment was a multi-asset managed fund;

PARTICULARS

NQ Investment Approvals Checklist (EQS.0011.0002.1630), Columns titled "Type of Inv" and "Asset class".

(aa) that the SMF was a new fund:

PARTICULARS

A. January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), pp24, 29 (pp.1420, .1425).

B. Report prepared by SQM Research on the SMF dated 6 October 2021 (EQS.0011.0002.1826). p2 (p.1829).

(b) that:

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

PARTICULARS

- A. NQ Investment Approvals Checklist (EQS.0011.0002.1630), Column titled “Conflicts”.
- B. January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p2 (p.1396).
- C. PDS and Supplementary PDS dated 3 November 2021 for the Conservative class (EQS.0011.0002.1794), section 4 (p.1806-1807).
- D. PDS and Supplementary PDS dated 3 November 2021 for the Balanced class of the SMF (EQS.0011.0002.1762), section 4 (p.1774-1775).
- E. PDS and Supplementary PDS dated 3 November 2021 for the Growth class of the SMF (EQS.0011.0002.1707), section 4 (p.1719-1720).

(ba) that CF Capital had been in operation since May 2019 and, according to the January 2022 FSC ODD Questionnaire, had acquired Keystone in March 2020;

PARTICULARS

January 2022 FSC ODD Questionnaire (EQS.0011.0002.1667), p6 (p. 1672).

(c) that:

- i. the SMF was launched in August 2021;
- ii. the responsible entity of the SMF was Keystone;

- iii. 100% of the shares in Keystone were owned by Malana Management Pty Ltd (ACN 633 213 948) (**Malana**);
- iv. the shareholders of Malana were Chiodo Corporation Pty Ltd (ACN 611 404 909) (**Chiodo Corp**) and the Frolov Family Trust;
- v. the directors of Malana were Mr Chiodo and Mr Frolov;
- vi. the directors of Keystone were Mr Chiodo, Mr Frolov and Mark Yorston;
- vii. the shareholders of CF Capital were Chiodo Corp and the Frolov Family Trust;
and
- viii. the directors of CF Capital were Mr Chiodo and Mr Frolov;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p2
(p.1398).

(ca) that, with respect to the three directors of Keystone:

- i. Mr Yorston was recorded as being a full-time practising lawyer;
- ii. Mr Chiodo was recorded as having experience in 'acquisition, feasibility financial modelling, town planning design development, marketing/sales and construction management';
- iii. Mr Frolov was recorded as having experience in the financial, technology and construction sector; and
- iv. none of the three directors was recorded as having had management experience in relation to managed funds and dynamic asset allocation;

PARTICULARS

A. January 2022 FSC ODD Questionnaire (EQS.0011.0002.1667),
pp8-9 (p. 1674 -.1675).

B. January 2022 FSC IM Questionnaire (EQS.0011.0002.1395),
p33 (p.1429).

(cb) that, with respect to the two directors of CF Capital:

- i. Mr Chiodo was recorded as having experience in 'acquisition, feasibility financial modelling, town planning design development, marketing/sales and construction management':
- ii. Mr Frolov was recorded as having experience in the financial, technology and construction sector; and
- iii. neither Mr Chiodo nor Mr Frolov was recorded as having had management experience in relation to managed funds and dynamic asset allocation.

PARTICULARS

A. January 2022 FSC ODD Questionnaire (EQS.0011.0002.1667), pp8-9 (p. 1674 -.1675).

B. January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p33 (p.1429).

- (d) that Chiodo Corp is 100% owned by Chiodo Family Trust and is the foundation appointed developer for the underlying property development funds, and a portion of the SMF investment will be invested in the property development funds as equity;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p3 (p.1399).

- (e) that the CF Capital investment team have material investments in the underlying property fund;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p6 (p.1402).

- (f) that Keystone had a policy for managing conflicts of interest;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p11 (p.1407).

(g) that:

- i. CF Capital considered the three multi-asset diversified funds to be conventional unlisted managed funds, issued through a PDS and suitable for retail investors, with the underlying strategies comprised of:
 - I. '80% Watershed Multi-Asset (Conservative, Balanced, Growth) Approved strategies by RE and RSE'; and
 - II. '20% Chiodo Diversified Property Fund – rated approve by SQM Research';
- ii. the Chiodo Diversified Property Fund is rated 3.5 stars from SQM Research;

PARTICULARS

- A. January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p22 (p.1418).
- B. As to subparagraph (i): Report prepared by SQM Research on the SMF dated 6 October 2021 (EQS.0011.0002.1826), p5-6 (pp.1832-.1833).

(h) that the SMF may also invest in underlying assets for which CF Capital and/or Keystone also provide services, including the Property Development Asset Class of the SMF;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p23 (p.1419) and p24 (p.1420).

(i) that changes may be made to the mix of underlying assets, as required, in order to ensure that the objective(s) continue to have a reasonable probability of being attained and the actual asset allocation may fall outside the stated ranges during certain times such as extreme market conditions, asset class transitions or during material transactions;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p23 (p.1419) and p24 (p.1420).

- (j) that, according to the January 2022 FSC IM Questionnaire, the funds are structured as 50/50 Growth/Defensive for the Conservative class, 60/40 Growth/Defensive for the Balanced class and 80/20 Growth/Defensive for the Growth class;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p26 (p.1422).

- (k) that, according to:
- i. the January 2022 FSC IM Questionnaire, weighting between the two primary (foundation) managers is 80% to Watershed and 20% to Chiodo Corp and is based on their asset-class experience;
 - ii. SQM Research, the unlisted direct property component was 20% and managed by CF Capital Investments under Keystone and the listed assets was 80% and managed by Pearl / Watershed Funds Management;

PARTICULARS

A. As to sub-subparagraph (i): January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p26 (p.1422).

B. As to sub-subparagraph (ii): report prepared by SQM Research on the SMF dated 6 October 2021 (EQS.0011.0002.1826), p3 (pp.1830).

- (l) that the future objective as funds under management grow will be to add more managers to each listed and unlisted asset category;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p26 (p.1422).

- (m) that the property development aspect of the SMF is managed in-house by CF Capital, primarily by Mr Chiodo;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p27 (p.1423).

(ma) that Mr Chiodo was recorded as being the 'key personnel managing the unlisted property aspect of the investment team':

PARTICULARS

January 2022 FSC ODD Questionnaire (EQS.0011.0002.1667), p8 (p. 1674).

- (n) that to manage the conflict of interest, the Investment Committee is made up of three members, being two internal members (Mr Chiodo and Mr Frolov) and one independent member (Werner Stals);

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p27 (p.1423).

- (o) that where decisions for in-house investments are concerned, the conflict of interest is managed by Mr Chiodo presenting progress and decisions to the remaining investment team and Mr Chiodo is recused from the approval process, with the investment team then deciding the appropriateness of the investment and/or project decision and approving or denying the approach;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p27 (p.1423).

- (p) that with the funds issued in early September, there is not meaningful performance data to analyse;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p31 (p.1427).

- (q) that, with limited performance data, the performance and turnover data is back tested from the two underlying managers;

PARTICULARS

January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p31 (p.1427).

- (r) that the SMF had an investment grade rating of 3.75 stars (“Favourable”, “Consider for APL inclusion”) in a report prepared by SQM Research that referred to three classes of the SMF, namely the Balanced, Conservative and Growth classes;

PARTICULARS

Report prepared by SQM Research on the SMF dated 6 October 2021 (EQS.0011.0002.1826), p2-3 (p1829-1830).

- (s) that the PDS and supplementary PDS dated 3 November 2021 for the Conservative Class provided (*inter alia*):
 - i. in section 2, that (*inter alia*) the Conservative Class:
 - I. will provide investors predominantly with exposure to growth assets;
 - II. aims to provide exposure to an actively managed portfolio of a 50% allocation to defensive assets and 50% allocation to growth assets;
 - III. the type of suitable investor was a long-term investor seeking a diversified total return investment strategy; and
 - IV. was a long-term investment, with a recommended investment period of five to seven years; and
 - ii. in section 5, that (*inter alia*):
 - I. an internal investment approach had been crafted around dynamic asset allocation, which was the main focus of the multi-asset investment model and the principal driver of returns for investors;
 - II. the SMF may invest in underlying assets for which Keystone and/or CF Capital also provides services, including the Property Development Asset Class of the SMF; and
 - III. the Conservative class aims to build exposure to a diverse portfolio with investments selected for characteristics such as long-term capital growth, inflation protection and risk mitigation, and to facilitate this, CF Capital has

defined targets around long term target exposure allocation as shown by the following table:

Asset Categories/Class

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

Asset Class Allocation Ranges

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

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

PARTICULARS

Supplementary PDS (Conservative Class) dated 3 November 2021; PDS (Conservative class) dated 8 September 2021 (EQS.0011.0002.1794).

(u)(t) that the PDS and supplementary PDS dated 3 November 2021 for the Balanced Class provided (*inter alia*):

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

Asset Categories/Class

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

Asset Class Allocation Ranges

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

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

PARTICULARS

Supplementary PDS (Balanced Class) dated 3 November 2021;
PDS (Balanced class) dated 8 September 2021
(EQS.0011.0002.1762).

~~(t)~~(u) that the PDS and supplementary PDS dated 3 November 2021 for the Growth class provided (*inter alia*);

- i. in section 2, that (*inter alia*) the Growth Class:
 - I. will provide investors predominantly with exposure to growth assets;
 - II. aims to provide exposure to an actively managed portfolio of predominantly growth assets, with the potential for capital growth;
 - III. the type of suitable investor was a long-term investor seeking a diversified total return investment strategy; and

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

Asset Categories/Class

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

Asset Class Allocation Ranges

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

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

PARTICULARS

Supplementary PDS (Growth Class) dated 3 November 2021;
PDS (Growth class) dated 8 September 2021
(EQS.0011.0002.1707).

91. The nature and characteristics of the SMF, which were relevant to the Investment Selection Process and which were disclosed to the SIO prior to, or in the period between, 8 March 2022 and 11 March 2022 (**High Growth Class NQ Super Onboarding Period**) comprised:
- (a) all of the matters referred to in paragraph 90 above; and
 - (b) that the PDS and supplementary PDS dated 3 November 2021 for the High Growth class provided (*inter alia*):
 - i. in section 2, that (*inter alia*) the High Growth class:
 - I. will provide investors predominantly with exposure to growth assets;
 - II. aims to provide exposure to an actively managed portfolio of predominantly growth assets, with the potential for capital growth;
 - III. the type of suitable investor was a long-term investor seeking a diversified total return investment strategy; and
 - IV. was a long-term investment, with a recommended investment period of five to seven years; and
 - ii. in section 5, that (*inter alia*):
 - I. an internal investment approach had been crafted around dynamic asset allocation, which was the main focus of the multi-asset investment model and the principal driver of returns for investors;

- II. the SMF may invest in underlying assets for which Keystone and/or CF Capital also provides services, including the Property Development Asset Class of the SMF; and
- III. the High Growth class aims to build exposure to a diverse portfolio with investments selected for characteristics such as long-term capital growth, inflation protection and risk mitigation, and to facilitate this, CF Capital has defined targets around long term target exposure allocation as shown by the following table:

Asset Categories/Class

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

Asset Class Allocation Ranges

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

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

PARTICULARS

Supplementary PDS (High Growth class) dated 3 November 2021;
PDS (High Growth class) dated 12 October 2021
(EQS.0011.0002.1871).

- (c) that the TMD for the High Growth class provided (*inter alia*) that:
- i. the product was likely to be appropriate for a consumer seeking capital growth to be used as a core component within a portfolio where the consumer has a long investment timeframe, very high risk/return profile and needs weekly access to capital;
 - ii. the High Growth class was a long term investment, with a recommended investment period of five to seven years; and
 - iii. the SMF had a risk band of 7 (Very High).

PARTICULARS

TMD for the High Growth class dated 16 November 2021
(EQS.0011.0002.1903), (p.1904, .1906)

F3. Contraventions with respect to the approval of the Conservative, Balanced and Growth classes

92. During the Relevant Period, the ETSL Board delegated responsibility for investment approvals (except for investment strategies) to the BIC, and the BIC delegated approval authority for Level 1 investments to the SIO, subject to review from a member of the BIC or the EGM – STO.

PARTICULARS

IGPPO, section 4 (see paragraph 35 above).

93. By its conduct pleaded in paragraphs 63 to 75 above during the Initial NQ Super Onboarding Period as defined in paragraph 90 above, the SIO:
- (a) did not form its own opinion nor conduct its own analysis of the SMF;

PARTICULARS

The “SIO Assessment” column of the NQ SIO Assessment Checklist substantially reproduced the strengths and weaknesses identified by SQM in its Report on the SMF dated 6 October 2021 and did not contain any analysis of the SMF undertaken by the SIO.

- (b) did not form its own opinion nor conduct its own analysis of:
 - i. the performance data for the SMF, in circumstances where the SMF was a new fund;
 - ii. whether a holding limit should be applied to the SMF and if so, the appropriate limit; nor
 - iii. whether a Level 1 or Level 2 approval was appropriate for the SMF;

PARTICULARS

A. ASIC refers to and repeats paragraphs 66 to 70 above.

B. The SIO relied solely on and adopted the opinion of AMG with respect to the matters pleaded in paragraph 93(b) above.

- (c) did not request, obtain nor consider a TMD with respect to the Balanced, Conservative and Growth classes of SMF;
- (d) did not:
 - i. convene a meeting of some or all of the members of the SIO to discuss and consider the approval of the SMF;
 - ii. record any consideration by the members of the SIO of the SMF beyond the matters contained in the NQ SIO Assessment Checklist; nor
 - iii. document or record any authorisation by Mr Buckley, as the officer responsible for the SIO, of the decision to approve the inclusion of the SMF on the NQ Super APL;
- (e) did not form its own opinion nor conduct its own analysis of the conflicts of interest and potential conflicts of interest present with respect to the SMF, and described those conflicts of interest and potential conflicts of interest as a positive feature of the SMF;

PARTICULARS

- A. CF Capital had disclosed the matters pleaded in paragraphs 90(b), 90(ba), 90(c), 90(d), 90(e), 90(f), 90(h), 90(m), 90(ma) and 90(o) above, and those matters were not addressed in detail in the SIO Assessment Checklist, or at all, by the SIO.
 - B. The SIO Assessment Checklist described the investment managers' material personal investments in the funds under control as "creating alignment with clients" (see Column titled "SIO Assessment").
 - C. ETSL did not request, obtain nor consider the Conflicts of Interest Policy and Procedure referred to in the January 2022 FSC IM Questionnaire (EQS.0011.0002.1395), p11 (p.1407).
 - D. The Report prepared by SQM Research on the SMF dated 6 October 2021 described the conflicts of interest and potential conflicts of interest as both a strength and a weakness of the SMF (EQS.0011.0002.1826), p5 (p1832).
- (f) did not consider how the SMF would perform under a range of appropriate stress scenarios;

PARTICULARS

- ETSL did not undertake stress testing under the range of stress scenarios determined under paragraph 19(a) of SPS 530 (July 2013) (SPS 530 (July 2013), paragraph 23 (see paragraph 57(d) above)).
- (g) did not consider whether the processes and skills were in place to manage dynamic asset allocation, including the processes and skills of Keystone and CF Capital;
 - (h) did not consider the use or potential use of derivatives by the underlying assets of the SMF;
 - (i) did not form its own opinion nor conduct its own analysis of the liquidity of the SMF; and

PARTICULARS

The SIO relied solely on and adopted the opinion of AMG with respect to the liquidity of the SMF (see paragraphs 66 to 70 above).

- (j) in the circumstances pleaded in subparagraphs (a) to (i), above, did not analyse the nature and characteristics of the SMF.
94. In the premises pleaded in paragraphs 63 to 75, 90, 92 and 93 above, at the time it approved each of the Balanced, Conservative and Growth classes of the SMF for inclusion as an investment option on the NQ Super APL, ETSL did not have a sufficient understanding and knowledge of the SMF, in breach of the Understanding and Knowledge Duty pleaded in paragraph 88(a) above.
95. Further and in the alternative, in the premises pleaded in paragraphs 63 to 75, 90, 92 and 93 above, at the time it approved each of the Balanced, Conservative and Growth classes of the SMF for inclusion as an investment option on the NQ Super APL, ETSL did not ensure that effective due diligence was undertaken that was commensurate with the nature and characteristics of the SMF, in breach of the Effective Due Diligence Duty pleaded in paragraph 88(b) above.
96. Further and in the alternative, in the premises pleaded in paragraphs 63 to 75, 90, 92 and 93(f) above, at the time it approved each of the Balanced, Conservative and Growth classes of the SMF for inclusion as an investment option on the NQ Super APL, ETSL did not have a sufficient understanding of how the SMF was expected to perform under a range of appropriate stress scenarios, in breach of the Stress Testing Duty pleaded in paragraph 88(c) above.
97. By reason of each of the breaches of duty pleaded in paragraphs 94 to 96 above, in approving each of the Balanced, Conservative and Growth classes of the SMF for inclusion as an investment option on the NQ Super APL, ETSL:
- (a) did not exercise, in relation to matters affecting AMG Super, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise, and thereby contravened ss 52(2)(b) and 54B(1) of the SIS Act;

- (b) did not perform its duties and exercise its powers in the best financial interests of the members of AMG Super, and thereby contravened ss 52(2)(c) and 54B(1) of the SIS Act;
 - (c) did not exercise due diligence in developing and offering the SMF as an investment option, and thereby contravened ss 52(6)(b) and 54B(1) of the SIS Act; and
 - (d) did not promote the financial interests of the members of AMG Super, and thereby contravened ss 52(12) and 54B(1) of the SIS Act.
98. Further, by reason of each of the breaches of duty pleaded in paragraphs 94 to 96 above, ETSL did not do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.
- 98A Further, had ETSL not committed each of the breaches of duty pleaded in paragraphs 94 to 96 above, it should not and would not have approved each of the Balanced, Conservative and Growth classes of the SMF for inclusion as an investment option on the NQ Super APL.

PARTICULARS

- A. The SMF was not an appropriate managed fund for inclusion on the NQ Super APL having regard to the capabilities and performance of the investment manager, CF Capital (see paragraphs 90(aa), 90(b), 90(ba), 90(c), 90(cb), 90(p) and 90(q) above) and the absence of skills on the part of CF Capital to manage dynamic asset allocation, which was said to be the main focus of the multi-asset investment model and principal driver of returns for investors (see paragraphs 90(cb), 90(s)(ii)(I), 90(t)(ii)(I) and 90(u)(ii)(I) above).
- B. The SMF was not “true to label”:
 - a. with respect to the Conservative class, there were internal inconsistencies in the PDS relating to the allocation of assets. The PDS for the Conservative class referred to asset allocations of, on the one hand, 50% growth / 50% defensive (see paragraph 90(s)(i)(II) above) and, on the other hand, an indicative target exposure allocation of 57% growth / 43% defensive, with an allowable range of (*inter alia*) up to 30% in “Real Assets” and up to 35% in

“Alternatives (i.e. Property)” (see paragraphs 90(s)(ii)(III) and (IV) above);

b. with respect to the Balanced class, there were internal inconsistencies in the PDS relating to the allocation of assets. The PDS for the Balanced class referred to asset allocations of, on the one hand, 60% growth / 40% defensive (see paragraph 90(u)(i)(II) above) and, on the other hand, an indicative target exposure allocation of 68% growth / 32% defensive, with an allowable range of (*inter alia*) up to 30% in “Real Assets” and up to 35% in “Alternatives (i.e. Property)” (see paragraphs 90(t)(ii)(III) and (IV) above);

c. the January 2022 FSC IM Questionnaire described the allocation of assets as: (1) ‘80% Watershed Multi-Asset’ and ‘20% Chiodo Diversified Property Fund’; (2) that the SMF may invest in (*inter alia*) the Property Development Asset Class of the SMF; (3) that changes may be made to the mix of underlying assets as required; and (4) that the funds are structured as 50/50 Growth/Defensive for the Conservative class, 60/40 Growth/Defensive for the Balanced class and 80/20 Growth/Defensive for the Growth class (see paragraphs 90(g)(i), 90(i), 90(j), 90(k)(i) above); and

d. the Report prepared by SQM Research on the SMF dated 6 October 2021 described the allocation of assets as being an unlisted direct property component of 20% (managed by CF Capital under Keystone) and listed assets of 80% (managed by Pearl / Watershed Funds Management) (see paragraph 90(k)(ii) above).

e. In the premises of sub-paragraphs B(a) to (d) above, when considered collectively, the PDSs, the January 2022 FSC IM Questionnaire and the Report prepared by SQM Research on the SMF dated 6 October 2021 contained information relating to the allocation of assets for the Conservative, Balanced and Growth classes of the SMF that was inconsistent and unclear, with the consequence that the SMF was not “true to label” and the liquidity of the SMF could not reliably be ascertained.

C. The SMF was not an appropriate managed fund for inclusion on the NQ Super APL in circumstances where the property

development aspect of the SMF was managed in-house by CF Capital, primarily by Mr Chiodo, and the CF Capital investment team had material investments in the underlying property fund (see paragraphs 90(d), 90(e), 90(h), 90(m) and 90(ma) above).

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

98B In the premises pleaded in paragraphs 52, 52A to 52E and 97 to 98A above, AMG Super has suffered loss and damage as a result of ETSL's contraventions of the SIS Act pleaded in paragraph 97 above.

PARTICULARS

The loss and damage suffered by AMG Super comprises the difference between:

- a. the net amount of funds invested in the Balanced, Conservative and Growth classes of the SMF by ETSL at the direction of AMG Super members; and
- b. the amount which may, in the future, be returned to AMG Super following (*inter alia*) any distribution to unitholders of those classes of the SMF.

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

98C. In the premises pleaded in paragraphs 98A and 98B above, and in circumstances where ASIC seeks, in its Originating Process filed 26 August 2025, civil penalty orders against ETSL pursuant to s 196 of the SIS Act, ASIC intends to seek leave to file an Amended Originating Process seeking orders that ETSL pay compensation to AMG Super, in an amount to be fixed by the Court, pursuant to s 215(1) of the SIS Act.

98D. Further or alternatively to paragraph 98C above, in the premises pleaded in paragraphs 52, 52A to 52E and 97 to 98A above:

- (a) AMG Super has suffered loss and damage; and/or
- (b) AMG Super members have suffered loss and damage.

as a result of ETSL's contraventions of the Corporations Act pleaded in paragraph 98 above.

PARTICULARS

As to sub-paragraph (a), ASIC refers to and repeats the particulars to paragraph 98B above.

As to sub-paragraph (b), the loss and damage suffered by AMG Super members comprises the difference between:

- a. the net amount of funds invested in the Balanced, Conservative and Growth classes of the SMF by ETSL at the direction of AMG Super members; and
- b. the amount which may, in the future, be returned to AMG Super, and then AMG Super members, following (*inter alia*) any distribution to unitholders of those classes of the SMF.

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

98E. Further to paragraph 98D above, by reason of:

(a) the SIS Act being a law relating to dealing in financial products or providing financial services; and

(b) the matters pleaded in paragraphs 98 and 98D above.

ASIC intends to seek leave to file an Amended Originating Process seeking orders pursuant to s 1101B(1) of the Corporations in the form specified in paragraph 31B of the proposed Amended Originating Process served on 10 October 2025.

F4. Contraventions with respect to the increase in holding limits to 95%

99. Further, by its conduct in the period between 3 and 4 March 2022 when it increased the holding limits applicable to the Balanced, Conservative and Growth classes of the SMF as an investment option on NQ Super to 95%, pleaded in paragraphs 76 to 80 above, the SIO:

- (a) did not comply with the holding limit requirements for managed funds specified in the Additional Information Booklet which formed part of the NQ Super PDS issued by ETSL; and

PARTICULARS

The Additional Information Booklet relevantly provided that with respect to managed funds, the single holding limit was up to 50% of a member's account value (see paragraph 16(d) above), yet the holding limits applicable to the Balanced, Conservative and Growth classes of the SMF were increased to 95%.

- (b) did not form its own opinion nor conduct its own analysis of whether a holding limit should be applied to the SMF and if so, the appropriate limit.

PARTICULARS

A. ASIC refers to and repeats paragraphs 76 to 80 above.

B. The SIO relied solely on and adopted the opinion of New Quantum with respect to the matters pleaded in paragraph 99(b) above (see paragraphs 76 to 80 above).

- 100. In the premises pleaded in paragraphs 76 to 80, 92 and 99 above, when it increased the holding limits applicable to the Balanced, Conservative and Growth classes of the SMF as an investment option on NQ Super to 95%, ETSL did not ensure that appropriate holding limits (including holding limits prescribed in the Additional Information Booklet) were applied to the SMF, in breach of the Holding Limits Duty pleaded in paragraph 89 above.
- 101. By reason of the breach of duty pleaded in paragraph 100 above, when it increased the holding limits applicable to the Balanced, Conservative and Growth classes of the SMF as an investment option on NQ Super to 95%, ETSL:
 - (a) did not exercise, in relation to matters affecting AMG Super, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise, and thereby contravened ss 52(2)(b) and 54B(1) of the SIS Act;
 - (b) did not perform its duties and exercise its powers in the best financial interests of the members of AMG Super, and thereby contravened ss 52(2)(c) and 54B(1) of the SIS Act;
 - (c) did not exercise due diligence in developing, offering and regularly reviewing the SMF as an investment option, and thereby contravened ss 52(6)(b) and 54B(1) of the SIS Act; and

- (d) did not promote the financial interests of the members of AMG Super, and thereby contravened ss 52(12) and 54B(1) of the SIS Act.
102. Further, by the breach of duty pleaded in paragraph 100 above, ETSL did not do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.

F5. Contraventions with respect to the approval of the High Growth class

103. Further, by its conduct pleaded in paragraphs 81 to 84 above during the High Growth class NQ Super Onboarding Period as defined in paragraph 91 above, the SIO:
- (a) did not form its own opinion or conduct its own analysis of the High Growth class of the SMF; and
 - (b) relied on its previous approval of the Balanced, Conservative and Growth classes of the SMF, in circumstances which contravened the provisions pleaded in paragraphs 98, 99, 101 and 102 above, in deciding to approve the High Growth class.
104. In the premises pleaded in paragraphs 63 to 75, 81 to 84, 90 to 92, 99 and 103 above, at the time it approved the High Growth class of the SMF for inclusion as an investment option on the NQ Super APL, ETSL did not have a sufficient understanding and knowledge of the High Growth class of the SMF, in breach of the Understanding and Knowledge Duty pleaded in paragraph 88(a) above.
105. Further and in the alternative, in the premises pleaded in paragraphs 63 to 75, 81 to 84, 90 to 92, 99 and 103 above, at the time it approved the High Growth class of the SMF for inclusion as an investment option on the NQ Super APL, ETSL did not ensure that effective due diligence was undertaken that was commensurate with the nature and characteristics of the High Growth class of the SMF, in breach of the Effective Due Diligence Duty pleaded in paragraph 88(b) above.
106. Further and in the alternative, in the premises pleaded in paragraphs 63 to 75, 90 to 92, 99 and 103 above, at the time it approved the High Growth class of the SMF for inclusion as an investment option on the NQ Super APL, ETSL did not have a sufficient understanding of how the High Growth class of the SMF was expected to perform under a range of appropriate stress scenarios, in breach of the Stress Testing Duty pleaded in paragraph 88(c) above.

107. By reason of each of the breaches of duty pleaded in paragraphs 104 to 106 above, in approving the High Growth class of the SMF for inclusion as an investment option on the NQ Super APL, ETSL:

- (a) did not exercise, in relation to matters affecting AMG Super, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise, and thereby contravened ss 52(2)(b) and 54B(1) of the SIS Act;
- (b) did not perform its duties and exercise its powers in the best financial interests of the members of AMG Super, and thereby contravened ss 52(2)(c) and 54B(1) of the SIS Act;
- (c) did not exercise due diligence in developing, offering and regularly reviewing the SMF as an investment option, and thereby contravened ss 52(6)(b) and 54B(1) of the SIS Act; and
- (d) did not promote the financial interests of the members of AMG Super, and thereby contravened ss 52(12) and 54B(1) of the SIS Act.

108. Further, by reason of each of the breaches of duty pleaded in paragraphs 104 to 106 above, ETSL did not do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.

108A Further, had ETSL not committed each of the breaches of duty pleaded in paragraphs 94 to 96 and 104 to 106 above, it should not and would not have approved the High Growth class of the SMF for inclusion as an investment option on the NQ Super APL.

PARTICULARS

A. ETSL should not and would not have approved the Balanced, Conservative and Growth classes of the SMF for inclusion as an investment option on the NQ Super APL for the reasons set out in the particulars to paragraph 98A above.

B. In the premises of sub-paragraph A above, ETSL also should not and would not have approved the High Growth class of the SMF for inclusion as an investment option on the NQ Super APL in circumstances where:

a. The High Growth class of the SMF was considered for inclusion as an investment option on the NQ Super APL less

than two weeks after ETSL had considered (and should not and would not have approved) the Balanced, Conservative and Growth classes of the SMF for inclusion as investment options on the NQ Super APL.

b. In that time, there had been no material change to the information available to ETSL with respect to the Balanced, Conservative and Growth classes, and the reasons why ETSL should not and would not have approved the inclusion of those three classes as investment options on the NQ Super APL remained relevant and applicable at the time that the High Growth class was being considered for inclusion as an investment option on the NQ Super APL.

c. Further, the High Growth class of the SMF was not “true to label” and the liquidity of the High Growth class of the SMF could not reliably be ascertained. ASIC refers to and repeats paragraph 91(b) and particulars B(c) and (d) to paragraph 98A above.

108B. In the premises pleaded in paragraphs 52, 52A to 52E, 97 to 98A and 107 to 108A above, AMG Super has suffered loss and damage as a result of ETSL’s contraventions of the SIS Act pleaded in paragraph 107 above.

PARTICULARS

The loss and damage suffered by AMG Super comprises the difference between:

- a. the net amount of funds invested in the High Growth class of the SMF by ETSL at the direction of AMG Super members; and
- b. the amount which may, in the future, be returned to AMG Super following (*inter alia*) any distribution to unitholders of the High Growth class of the SMF.

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

108C In the premises pleaded in paragraphs 108A and 108B above, and in circumstances where ASIC seeks, in its Amended Originating Process filed [date], civil penalty orders against ETSL pursuant to s 196 of the SIS Act, ASIC seeks orders that ETSL pay

compensation to AMG Super, in an amount to be fixed by the Court, pursuant to s 215(1) of the SIS Act.

108D. Further or alternatively to paragraph 108C above, in the premises pleaded in paragraphs 52, 52A to 52E, 97 to 98A and 107 to 108A above:

(a) AMG Super has suffered loss and damage; and/or

(b) AMG Super members have suffered loss and damage.

as a result of ETSL's contraventions of the Corporations Act pleaded in paragraph 108 above.

PARTICULARS

A. As to sub-paragraph (a), ASIC refers to and repeats the particulars to paragraph 109B above.

B. As to sub-paragraph (b), the loss and damage suffered by AMG Super members comprises the difference between:

a. the net amount of funds invested in the High Growth class of the SMF by ETSL at the direction of AMG Super members; and

b. the amount which may, in the future, be returned to AMG Super, and then AMG Super members, following (*inter alia*) any distribution to unitholders of the High Growth class of the SMF.

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

108E. Further to paragraph 108D above, by reason of:

(a) the SIS Act being a law relating to dealing in financial products or providing financial services; and

(b) the matters pleaded in paragraphs 108 and 108D above.

ASIC intends to seek leave to file an Amended Originating Process seeking orders pursuant to s 1101B(1) of the Corporations in the form specified in paragraph 31B of the proposed Amended Originating Process served on 10 October 2025.

G. ETSL'S CONDUCT DURING THE SUPER SIMPLIFIER INVESTMENT SELECTION PROCESS

109. On 29 May 2023, Atchison provided ETSL with a request, on behalf of Dash, to add the Balanced, Conservative, Growth and High Growth classes of the SMF (*inter alia*) to Super Simplifier's APL.

PARTICULARS

- A. Email from Justin Ahrens of Dash to Alan Au of Atchison dated 29 May 2023 (EQS.0027.0001.0024).
- B. Email from Mr Au of Atchison to Marcus Shaw of ETSL and Mr Ahrens of Dash dated 29 May 2023 (EQS.0027.0001.0024).
110. On a date or dates between about 29 May 2023 and 14 June 2023, the SIO prepared an SIO assessment checklist (**Super Simplifier SIO Assessment Checklist**) relating to the inclusion of the SMF on the Super Simplifier APL which:
- (a) stated, in the column titled "SIO Assessment":

JA to provide DD docs (AA email 14/6/23)

products on AGM [sic] platform, SQM rated

- (b) contained, in column I entitled 'PDS/IM Web link', links to a Supplementary PDS for each class of the SMF bearing, in each case, a November 2021 date; and
- (c) contained no reference to any more recent PDS for any class of the SMF.

PARTICULARS

SS SIO Assessment Checklist (EQS.0027.0001.0479).

111. On 5 July 2023, Atchison provided ETSL with documents in relation to the SMF including (*inter alia*):
- (a) FSC Investment Management Questionnaire dated November 2022 (**November 2022 FSC IM Questionnaire**);
- (b) FSC Operational Due Diligence Questionnaire dated 2 November 2022 (**November 2022 FSC ODD Questionnaire**); and
- (c) a report prepared by SQM Research dated October 2022.

PARTICULARS

- A. Email from Mr Loebis-Arnost of Atchison to Mr Shaw of ETSL dated 5 July 2023 attaching the documents in B-F below (EQS.0027.0001.0262).
- B. November 2022 FSC IM Questionnaire (EQS.0027.0001.0263).
- C. Unit Pricing and Valuation Policy dated 5 September 2021 (EQS.0027.0001.0299).
- D. November 2022 FSC Operational Due Diligence Questionnaire ~~dated 2 November 2022~~ (EQS.0027.0001.0313).
- E. Report prepared by SQM Research dated October 2022 (EQS.0027.0001.0354).
- F. SMF Annual Completion Report by BDO Audit for period ended 30 June 2022 dated 31 October 2022 (EQS.0027.0001.0377).

112. The November 2022 FSC IM Questionnaire;

(a) in section 6.2, described the underlying strategies of the fund ~~SMF~~ as follows ~~(in section 6.2)~~:

- *40-80% Watershed Multi-Asset (Conservative, Balanced, Growth, High Growth) Approved strategies by RE*
- *20-60% Advantage Diversified Property Fund*

(b) in sections 6.13 and 6.14, described the underlying strategies of the SMF as:

Weighting between the two primary (foundation) managers is 40-80% to Watershed and 20-50% to CF Capital Investments (ADPF) ...

(c) in sections 6.7, 6.29 and 6.31, described the SMF as a new fund.

PARTICULARS

FSC Investment Management Questionnaire dated November 2022 (EQS.0027.0001.0263), p22-~~(p, 24, 26-27, 29-30 (pp.0286, .0288, .0290-.0291, .0293-.0294).~~

113. On or shortly prior to 21 July 2023:

- (a) the SIO approved the Conservative and Balanced classes of the SMF for inclusion on the Super Simplifier APL with a holding limit of 100%; and
- (b) the SIO approved the Growth and High Growth classes of the SMF for inclusion on the Super Simplifier APL with a holding limit of 50%.

PARTICULARS

Email from Mr Shaw of ETSL to Mr Ahrens of Dash dated 21 July 2023 (EQS.0027.0001.0397).

114. The SIO's decision to approve each of the Conservative, Balanced, Growth and High Growth classes of the SMF for inclusion on the Super Simplifier APL was not reviewed by the EGM – STO nor a member of the BIC.
115. By 17 August 2023, the SMF had been added to the Super Simplifier APL.

PARTICULARS

Super Simplifier – Super & Pension APL issued by ETSL dated 17 August 2023 (EQS.0011.0002.0642) at (p.0675).

116. The addition of the SMF to the Super Simplifier APL was not noted at any BIC meeting following the SIO's approval pleaded in paragraph 113 above.

PARTICULARS

- A. The September 2023 BIC Agenda and Papers (EQS.0050.0001.4249) contained no reference to the addition of the SMF to the Super Simplifier APL.
- B. The September 2023 BIC Minutes (EQS.0050.0001.2105), (p.2110) contained no reference to the addition of the SMF to the Super Simplifier APL.

H. ETSL'S CONTRAVENTIONS DURING THE SUPER SIMPLIFIER INVESTMENT SELECTION PROCESS

H1. ETSL's duties when including investment options on the Super Simplifier APL

117. Prior to approving an investment option for inclusion on the Super Simplifier APL, as part of its Investment Selection Process as defined in paragraph 33(a) above, ETSL had the duties pleaded in paragraphs 88(a), 88(b), 88(c) and 89 above, comprising:

(a) the Understanding and Knowledge Duty;

PARTICULARS

A. ASIC refers to and repeats particulars B and C of the particulars to paragraph 88(a) above.

B. Super Simplifier Investment Strategy dated December 2022 (EQS.0027.0001.2031), paragraph 3.1 (see paragraph 42 above).

(b) the Effective Due Diligence Duty; and

PARTICULARS

A. ASIC refers to and repeats particulars B and C of the particulars to paragraph 88(b) above.

B. Super Simplifier Investment Strategy dated December 2022 (EQS.0027.0001.2031), paragraph 3.1 (see paragraph 42 above).

(c) the Stress Testing Duty.

PARTICULARS

ASIC refers to and repeats particulars B and C of the particulars to paragraph 88(c) above.

H2. The nature and characteristics of the SMF relevant to the Investment Selection Process

118. The nature and characteristics of the SMF, which were relevant to the Investment Selection Process and which were disclosed to the SIO, in the period prior to or between, 29 May 2023 and 17 August 2023 (**Super Simplifier Onboarding Period**), comprised:

- (a) all of the matters pleaded in paragraphs 90 and 91 above, being the matters disclosed to the SIO during the Initial NQ Super Onboarding Period and the High Growth Class NQ Super Onboarding Period;
- (b) that the SMF had previously been approved for inclusion as an investment option on an ETSL platform;

PARTICULARS

Super Simplifier SIO Assessment Checklist dated 29 May 2023 (EQS.0027.0001.0479).

- (c) that the underlying strategies of the SMF had changed from those described in the January 2022 FSC IM Questionnaire provided during the NQ Super First Onboarding Period (pleaded in paragraph 90(g) above), and that CF Capital now considered the four multi-asset diversified funds to be conventional unlisted managed funds, issued through a PDS and suitable for retail investors, with the underlying strategies comprised of:
 - i. '40-80% Watershed Multi-Asset (Conservative, Balanced, Growth, High Growth) Approved strategies by RE'; and
 - ii. '20-60% Advantage Diversified Property Fund';

PARTICULARS

November 2022 FSC IM Questionnaire_(EQS.0027.0001.0263), p22 (p.0286).

- (d) that the weighting between the two primary foundation managers had changed from that described in the January 2022 FSC IM Questionnaire provided during the NQ Super First Onboarding Period (pleaded in paragraph 90(k) above), and that the weighting was now 40-80% to Watershed and 20-50% to CF Capital (Advantage Diversified Property Fund) and was based on their asset class expertise; ~~and~~

PARTICULARS

November 2022 FSC IM Questionnaire (EQS.0027.0001.0263),
p26 (p.0290).

- (e) that the SMF had an investment grade rating of 3.75 stars in a report prepared by SQM Research referring to the Conservative, Balanced, Growth and High Growth classes of the SMF; and

PARTICULARS

Report prepared by SQM Research dated October 2022
(EQS.0027.0001.0354).

- (f) that the report prepared by SQM Research dated October 2022:

- i. referred to allowable ranges for asset categories and asset classes of the Balanced class of the SMF that were different to, and wider than, the allowable ranges for asset categories and asset classes contained in the PDS and Supplementary PDS dated 3 November 2021 for the Balanced class of the SMF (referred to in paragraph 90(t) above); and
- ii. stated that those '[c]urrent long-term asset allocation limits for the Fund, from its latest PDS' (emphasis added) 'reflect recent changes, mostly to widen allowable limits, following market volatility in the first two quarters of 2022'.

PARTICULARS

Report prepared by SQM Research dated October 2022
(EQS.0027.0001.0354) at p10 (p.0365).

H3. Contraventions with respect to the approval of the Conservative, Balanced, Growth and High Growth classes of the SMF

119. By its conduct pleaded in paragraphs 110 to 117 above during the Super Simplifier Onboarding Period as defined in paragraph 118 above, the SIO:

- (a) did not form its own opinion nor conduct its own analysis of changes to the SMF since the SMF had been approved for inclusion as an investment option on the NQ Super APL; and

- (b) did not request, obtain nor consider the Supplementary PDSs dated 4 April 2022 for each of the Conservative, Balanced, Growth and High Growth classes of the SMF, notwithstanding the changes to the SMF pleaded in paragraphs 118(c), 118(d) and 118(f) above; and
- (b)(c) relied on its previous approval of the SMF as an investment option on the NQ Super APL, in circumstances which contravened the provisions pleaded in paragraphs 97, 98, 101, 102, 107 and 108 above, in deciding to approve the SMF for inclusion as an investment option on the Super Simplifier APL, and did so notwithstanding the changes to the SMF pleaded in paragraphs 118(c), 118(d) and 118(f) above.
120. In the premises pleaded in paragraphs 63 to 75, 81 to 84, 90 to 93, 99, 103, 118 and 119 above, at the time it approved the SMF for inclusion as an investment option on the Super Simplifier APL, ETSL did not have a sufficient understanding and knowledge of the SMF, in breach of the Understanding and Knowledge Duty pleaded in paragraph 117(a) above.
121. Further and in the alternative, in the premises pleaded in paragraphs 63 to 75, 81 to 84, 90 to 93, 99, 103, 118 and 119 above, at the time it approved the SMF for inclusion as an investment option on the Super Simplifier APL, ETSL did not ensure that effective due diligence was undertaken that was commensurate with the nature and characteristics of the SMF, in breach of the Effective Due Diligence Duty pleaded in paragraph 117(b) above.
122. Further and in the alternative, in the premises pleaded in paragraphs 63 to 75, 81 to 84, 90 to 92, 93(f), 99, 103, 118 and 119 above, at the time it approved the SMF for inclusion as an investment option on the Super Simplifier APL, ETSL did not have a sufficient understanding of how the SMF was expected to perform under a range of appropriate stress scenarios, in breach of the Stress Testing Duty pleaded in paragraph 117(c) above.
123. By reason of each of the breaches of duty pleaded in paragraphs 120 to 122 above, in approving each of the Conservative, Balanced, Growth and High Growth classes of the SMF for inclusion as an investment option on the Super Simplifier APL, ETSL:
- (a) did not exercise, in relation to matters affecting Super Simplifier, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise, and thereby contravened ss 52(2)(b) and 54B(1) of the SIS Act;
 - (b) did not perform its duties and exercise its powers in the best financial interests of the members of Super Simplifier, and thereby contravened ss 52(2)(c) and 54B(1) of the SIS Act;

- (c) did not exercise due diligence in developing, offering and regularly reviewing the SMF as an investment option, and thereby contravened ss 52(6)(b) and 54B(1) of the SIS Act; and
 - (d) did not promote the financial interests of the members of Super Simplifier, and thereby contravened ss 52(12) and 54B(1) of the SIS Act.
124. Further, by reason of each of the breaches of duty pleaded in paragraphs 120 to 122 above, ETSL did not do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.
- 124A. Further, had ETSL not committed each of the breaches of duty pleaded in paragraphs 120 to 122 above, it should not and would not have approved each of the Conservative, Balanced, Growth and High Growth classes of the SMF for inclusion as an investment option on the Super Simplifier APL.

PARTICULARS

ETSL should not and would not have approved the Conservative, Balanced, Growth and High Growth classes of the SMF for inclusion as an investment option on the Super Simplifier APL in circumstances where:

- a. the Conservative, Balanced and Growth classes of the SMF were considered for inclusion as investment options on the Super Simplifier APL approximately 15 months after ETSL had considered (and should not and would not have approved) those classes of the SMF for inclusion as investment options on the NQ Super APL;
- b. the High Growth class of the SMF was considered for inclusion as an investment option on the Super Simplifier APL less than 15 months after ETSL had considered (and should not and would not have approved) that class of the SMF for inclusion as an investment option on the NQ Super APL; and
- c. during the times referred to in subparagraphs (a) and (b) above;

- i. there had been no material change to the information available to ETSL with respect to the capabilities of CF Capital and its absence of skills to manage dynamic asset allocation (see paragraphs 90(cb) and 118(a) above);
- ii. there had been no material change to the information available to ETSL with respect to the property development aspect of the SMF, which was still managed in-house by CF Capital, primarily Mr Chiodo, and the CF Capital investment team still had material investments in the underlying property fund (see paragraphs 90(ca), 90(cb), 90(d), 90(e), 90(m), 90(ma) and 118(a) above);
- iii. the underlying strategies of the SMF had changed such that the weighting to the ADPF had materially increased, from 20% (see paragraphs 90(g) and 90(k) above) to up to 50% according to one part of the November 2022 FSC IM Questionnaire (see paragraph 118(d) above) and up to 60% according to another part of the November 2022 FSC IM Questionnaire (see paragraph 118(c) above);
- iv. the PDSs had been updated (by way of the Supplementary PDSs dated 4 April 2022) to (*inter alia*) widen the allowable ranges for asset categories and asset classes, including (*inter alia*) real assets and alternatives (see paragraph 118(f) above);
- v. in the premises of subparagraphs (c)(iii) and (iv) above, both the illiquidity of the SMF, and the risks associated with the characteristics of the SMF identified in subparagraphs (c)(i) and (ii) above, had materially increased; and
- vi. notwithstanding the matters referred to in subparagraphs (c)(i) to (v) above, the PDSs described each class of the SMF as being

suitable for long term investors seeking a diversified total return investment strategy (see paragraphs 90(s)(i)(III), 90(t)(i)(III), 90(u)(i)(III) and 91(b)(i)(III) above), in circumstances where that was not the case.

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

124B. In the premises pleaded in paragraphs 52, 52A to 52E, 97 to 98A, 107 to 108A and 123 to 124A above, Super Simplifier has suffered loss and damage as a result of ETSL's contraventions of the SIS Act pleaded in paragraph 123 above.

PARTICULARS

A. The loss and damage suffered by Super Simplifier comprises the difference between:

- a. the net amount of funds invested in the Conservative, Balanced, Growth and High Growth classes of the SMF by ETSL at the direction of Super Simplifier members; and
- b. the amount which may, in the future, be returned to Super Simplifier following (*inter alia*) any distribution to unitholders of those classes of the SMF.

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

124C. In the premises pleaded in paragraphs 124A and 124B above, and in circumstances where ASIC seeks, in its Originating Process filed 26 August 2025, civil penalty orders against ETSL pursuant to s 196 of the SIS Act, ASIC intends to seek leave to file an Amended Originating Process seeking orders that ETSL pay compensation to Super Simplifier, in an amount to be fixed by the Court, pursuant to s 215(1) of the SIS Act.

124D. Further or alternatively to paragraph 124C above, in the premises pleaded in paragraphs 52, 52A to 52E, 97 to 98A, 107 to 108A and 123 to 124A above:

- (a) Super Simplifier has suffered loss and damage; and/or
- (b) Super Simplifier members have suffered loss and damage.

as a result of ETSL's contraventions of the Corporations Act pleaded in paragraph 124 above.

PARTICULARS

A. As to sub-paragraph (a), ASIC refers to and repeats the particulars to paragraph 124B above.

B. As to sub-paragraph (b), the loss and damage suffered by Super Simplifier members comprises the difference between:

a. the net amount of funds invested in the Conservative, Balanced, Growth and High Growth class of the SMF by ETSL at the direction of Super Simplifier members; and

b. the amount which may, in the future, be returned to Super Simplifier, and then Super Simplifier members, following (*inter alia*) any distribution to unitholders of those classes of the SMF.

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

124E. Further to paragraph 124D above, by reason of:

(a) the SIS Act being a law relating to dealing in financial products or providing financial services; and

(b) the matters pleaded in paragraphs 124 and 124D above.

ASIC intends to seek leave to file an Amended Originating Process seeking orders pursuant to s 1101B(1) of the Corporations in the form specified in paragraph 31B of the proposed Amended Originating Process served on 10 October 2025.

I. ETSL'S CONDUCT DURING THE NQ SUPER AND SUPER SIMPLIFIER ONGOING MONITORING PERIODS

125. In 2022 and 2023, on a quarterly basis, Atchison provided ETSL with:

- (a) AMG Super Approved Product List Review Reports; and
 - (b) Super Simplifier Approved Product List Review Reports,
- (together, the **Atchison APL Quarterly Review Reports**).

126. The purpose of the Atchison APL Quarterly Review Reports was to provide ETSL with a detailed understanding of the performance of the investment options on the NQ Super and Super Simplifier APLs as at the date of each report.

PARTICULARS

Executive Summary, section 1, of Atchison APL Quarterly Review Report dated March 2023 (EQS.0018.0001.1059).

127. Further, in 2022 and 2023, on an annual basis, Atchison provided ETSL with:
- (a) AMG Super Approved Product Lists Scenario and Liquidity Stress Testing Analysis Reports; and
 - (b) Super Simplifier Approved Product Lists Scenario and Liquidity Stress Testing Analysis Reports,
- (together, the **Atchison APL Annual Liquidity Analysis Reports**).
128. The purpose of the Atchison APL Annual Liquidity Analysis Reports was to provide ETSL with an understanding and gauge of how severe the impact would be on each of AMG Super and Super Simplifier's performance in the event of extraordinary market conditions as at the date of each report.

PARTICULARS

Executive Summary, section 1, Atchison APL Annual Liquidity Analysis Report dated September 2023 (EQS.0018.0001.2643).

129. Provision of the Atchison APL Quarterly Review Reports and the Atchison APL Annual Liquidity Analysis Reports formed part of Atchison's AMG Super Ongoing Monitoring Services and Atchison's Super Simplifier Ongoing Monitoring Services.

PARTICULARS

ASIC refers to and repeats paragraphs 13 and 22 above.

130. As pleaded in paragraphs 52(a) and 52(b) above, the SMF was:
- (a) approved for inclusion as an investment option on the NQ Super APL on or about 23 February 2022 (in the case of the Conservative, Balanced and Growth classes) and on or about 11 March 2022 (in the case of the High Growth class); and

- (b) approved for inclusion as an investment option on the Super Simplifier APL on 21 July 2023.

PARTICULARS

ASIC refers to and repeats paragraphs 52(a) and 52(b) above.

131. The AMG Super Atchison APL Quarterly Review Reports, issued in the period between the SMF being approved for inclusion as an investment option on the NQ Super APL and March 2023, did not refer to the SMF.
132. The AMG Super Atchison APL Quarterly Review Report dated March 2023 was the first report of that kind that referred to the SMF.

PARTICULARS

A. Email from Mr Raheja of ETSL to Mr Tomich of ETSL, Mr Suryadharma of New Quantum and Mr Westbrook of New Quantum dated 30 November 2022 (EQS.0028.0001.3277) at (p.3279).

B. AMG Super Atchison APL Quarterly Review Report dated March 2023 (EQS.0018.0001.1059).

133. The Super Simplifier Atchison APL Quarterly Review Report dated September 2023, issued after the SMF had been added to the Super Simplifier APL, did not refer to the SMF.

PARTICULARS

Super Simplifier Atchison APL Quarterly Review Report dated September 2023 (EQS.0027.0001.1462~~EQS.0018.0001.1462~~).

134. The Super Simplifier Atchison APL Quarterly Review Report dated December 2023 was the first report of that kind that referred to the SMF.

PARTICULARS

Super Simplifier Atchison APL Quarterly Review Report dated December 2023 (EQS.0027.0001.0820~~EQS.0018.0001.0820~~).

135. The AMG Super Atchison APL Annual Liquidity Analysis Report dated September 2022, issued after the SMF had been approved as an investment option for the NQ Super APL, did not refer to the SMF.

136. The AMG Super Atchison APL Annual Liquidity Analysis Report dated September 2023 was the first report of that kind to refer to the SMF.

PARTICULARS

AMG Super Atchison APL Annual Liquidity Analysis Report dated September 2023 (EQS.0018.0001.2643).

137. The Super Simplifier Atchison APL Annual Liquidity Analysis Report dated September 2023, issued after the SMF had been approved for inclusion as an investment option on the Super Simplifier APL and added to the NQ Super APL, did not refer to the SMF.

PARTICULARS

Super Simplifier Atchison APL Annual Liquidity Analysis Report dated September 2023 (EQS.0028.0001.7090).

138. During the period from 23 February 2022 to 10 January 2024, the SIO did not report to the BIC on a quarterly basis about the performance of the SMF.

PARTICULARS

BIC meetings of:

- A. 1 February 2022 (EQS.0050.0001.1570);
- B. 15 March 2022 (EQS.0050.0001.0078);
- C. 26 April 2022 (EQS.0018.0001.0038);
- D. 21 June 2022 (EQS.0050.0001.1752);
- E. 21 October 2022 (EQS.0050.0001.3537);
- F. 6 December 2022 (EQS.0050.0001.0152);
- G. 1 February 2023 (EQS.0050.0001.0374);
- H. 27 April 2023 (EQS.0050.0001.3789);
- I. 20 June 2023 (EQS.0050.0001.0677);
- J. 21 September 2023 (EQS.0050.0001.4249);
- K. 27 October 2023 (EQS.0050.0001.2105); and

L. 5 December 2023 (EQS.0050.0001.4446),

did not refer to the performance of the SMF.

BIC meeting of 22 February 2024 (EQS.0050.0001.0909 was the first BIC meeting that referred to the performance of the SMF.

139. During the period from 23 February 2022 to 10 January 2024, Atchison's AMG Super Ongoing Monitoring Services and Atchison's Super Simplifier Ongoing Monitoring Services, including the provision of the Atchison APL Quarterly Reports and the Atchison APL Annual Liquidity Analysis Reports, constituted a 'material business activity' within the meaning of paragraph 9 of SPS 231.

PARTICULARS

- A. By reason of the matters pleaded in paragraphs 126, 128 and 129 above, the provision of Atchison's AMG Super Ongoing Monitoring Services and Atchison's Super Simplifier Ongoing Monitoring Services, including the provision of the Atchison APL Quarterly Reports and the Atchison APL Annual Liquidity Analysis Reports, had the potential, if disrupted, to have a significant impact on (*inter alia*) the interests or reasonable expectations of members of AMG Super and Super Simplifier having regard to (*inter alia*) the ability of ETSL to meet regulatory requirements.
- B. Outsourcing Protocol, clauses 3 and 4.2 (see paragraphs 43 and 44 above).

J. ETSL'S CONTRAVENTIONS DURING THE NQ SUPER AND SUPER SIMPLIFIER ONGOING MONITORING PERIODS

J1. ETSL's duties when monitoring investment options on APLs

140. In the periods following the approval of an investment option for inclusion on the NQ Super and Super Simplifier APLs, ETSL had duties to:
- (a) monitor the performance of the investment options on the NQ Super and Super Simplifier APLs (the **Performance Monitoring Duty**);

PARTICULARS

- A. For the NQ Super APL: cll 9.2(b) and (c) of the AMG Super Trust Deed (see paragraphs 8(b) and (c) above).
 - B. IGFP, sections 4, 7 and 9 (see paragraphs 28, 29 and 31 above).
 - C. IGPPPO, sections 2 and 5 (see paragraphs 32(b) and 36 above).
 - D. SPS 530 (July 2013), paragraphs 24 to 26 (see paragraphs 57(e), 57(f) and 57(g) above).
 - E. SPS 530 (January 2023), paragraphs 25 to 27 (see paragraphs 59(d), 59(e) and 59(f) above).
- (b) ensure Atchison's compliance with Atchison's AMG Super Ongoing Monitoring Services and Atchison's Super Simplifier Ongoing Monitoring Services (the **Atchison Ongoing Monitoring Requirements Duty**);

PARTICULARS

- A. For the NQ Super APL: cll 9.2(b) and (c) of the AMG Super Trust Deed (see paragraphs 8(b) and (c) above).
 - B. IGFP, sections 4, 7 and 9 (see paragraphs 28, 29 and 31 above).
 - C. IGPPPO, sections 2 and 5 (see paragraphs 32(b) and 36 above).
 - D. SPS 530 (July 2013), paragraphs 24 to 26 (see paragraphs 57(e), 57(f) and 57(g) above).
 - E. SPS 530 (January 2023), paragraphs 25 to 27 (see paragraphs 59(d), 59(e) and 59(f) above).
- (c) ensure the SIO reported to the BIC with respect to the performance of investment options on the NQ Super and Super Simplifier APLs, on a quarterly basis (the **BIC Reporting Duty**); and

PARTICULARS

- A. For the NQ Super APL: cll 9.2(b) and (c) of the AMG Super Trust Deed (see paragraphs 8(b) and (c) above).

- B. IGFP, sections 4, 7 and 9 (see paragraphs 28, 29 and 31 above).
 - C. IGPPPO, sections 2 and 5 (see paragraphs 32(b) and 36 above).
 - D. SPS 530 (July 2013), paragraph 24 to 26 (see paragraphs 57(e), 57(f) and 57(g) above).
 - E. SPS 530 (January 2023), paragraphs 25 to 27 (see paragraphs 59(d), 59(e) and 59(f) above).
- (d) manage, monitor and review the relationship with Atchison and Atchison's performance under the AMG Super Investment Consulting Agreement and the Super Simplifier Investment Consulting Agreement (together, the **Outsourcing Agreements**) (the **Outsourcing Duty**).

PARTICULARS

- A. Outsourcing Protocol, clauses 3, 4.2 and 6 (see paragraphs 43 and 44 above).
- B. SPS 231, paragraph 9 (see paragraph 61(a) above).
- C. SPS 231, paragraph 30 (see paragraph 61(b) above).

J2. Contraventions during the Ongoing Monitoring Period in respect of the SMF

141. During the Relevant Period, the ETSL Board delegated:

- (a) to the BIC, the responsibility for monitoring of investment options;
- (b) to the SIO, the responsibility for quarterly investment governance reporting to the BIC, managing service providers including asset consultants and investment managers and reviewing and challenging recommendations of asset consultants and investment managers; and
- (c) to asset consultants and investment managers, the responsibility for monitoring and reporting on investment options and underlying investments, and investment reviews and stress testing.

PARTICULARS

- A. IGFP, section 4 (see paragraph 28 above).

B. IGPPPO, section 5 (see paragraph 36 above).

142. Further, during the Relevant Period, the ETSL Board delegated to the SIO the responsibility for ensuring appropriate measures are in place to monitor the investments of each fund and to review the quarterly report provided by the investment manager.

PARTICULARS

IGPPPO, section 5 (see paragraph 36 above).

143. By its conduct pleaded in paragraphs 125 to 141 above, the SIO:

- (a) failed to obtain Atchison APL Quarterly Review Reports from Atchison for AMG Super (including NQ Super) that monitored the performance of the SMF, in the quarters ending March 2022, June 2022, September 2022 and December 2022;

PARTICULARS

ASIC refers to and repeats paragraph 131 above.

- (b) failed to obtain Atchison APL Quarterly Review Reports from Atchison for Super Simplifier that monitored the performance of the SMF, in the quarter ending September 2023;

PARTICULARS

ASIC refers to and repeats paragraph 133 above.

- (c) failed to obtain an Atchison APL Annual Liquidity Analysis Report from Atchison for AMG Super (including NQ Super) which included the SMF, in September 2022;

PARTICULARS

ASIC refers to and repeats paragraph 135 above.

- (d) failed to obtain an Atchison APL Annual Liquidity Analysis Report from Atchison for Super Simplifier which included the SMF, in September 2023;

PARTICULARS

ASIC refers to and repeats paragraph 137 above.

- (e) in the premises pleaded in subparagraphs (a) to (d) above, failed to ensure Atchison's compliance with Atchison's AMG Super Ongoing Monitoring Requirements and Atchison's Super Simplifier Ongoing Monitoring Requirements; and
- (f) failed to report to the BIC with respect to the performance of the SMF in the period from 23 February 2022 to October 2023.

PARTICULARS

ASIC refers to and repeats paragraph 138 above.

144. Further, during the Relevant Period, ETSL did not manage, monitor and review the relationship with Atchison and Atchison's performance under the Outsourcing Agreements.

PARTICULARS

In ETSL's Response to Notice issued under s 912C(1) of the ASIC Act (**NTC2425899**) dated 22 October 2024, ETSL stated, in its responses to questions 1 and 2, that it did not undertake any formal audit, review or monitoring of Atchison during the Relevant Period (EQS.0041.0001.0011).

145. In the premises pleaded in:

- (a) paragraphs 143(a), 143(c), 143(e) and 143(f) above, ETSL failed to monitor the performance of the investment options on NQ Super; and
- (b) paragraphs 143(b), 143(d), 143(e) and (in the period from 21 July 2023) 143(f) above, ETSL failed to monitor the performance of the investment options on Super Simplifier, in breach of the Performance Monitoring Duty pleaded in paragraph 140(a) above.

146. Further and in the alternative, in the premises pleaded in:

- (a) paragraphs 143(a), 143(c), 143(e) and 143(f) above, ETSL failed to ensure Atchison's compliance with Atchison's AMG Super Ongoing Monitoring Requirements; and
- (b) paragraphs 143(b), 143(d), 143(e) and (in the period from 21 July 2023) 143(f) above, ETSL failed to ensure Atchison's compliance with Atchison's Super Simplifier Ongoing Monitoring Requirements,

in breach of the Atchison Ongoing Monitoring Requirements Duty pleaded in paragraph 140(b) above.

147. Further and in the alternative, in the premises pleaded in paragraph 143(f) above, ETSL failed to report to the BIC with respect to the performance of investment options on the NQ Super and Super Simplifier APLs, on a quarterly basis, in breach of the BIC Reporting Duty pleaded in paragraph 140(c) above.
148. Further and in the alternative, in the premises pleaded in paragraphs 139 and 144 above, ETSL failed to manage, monitor and review the relationship with Atchison and Atchison's performance under the Outsourcing Agreements, in breach of the Outsourcing Duty pleaded in paragraph 140(d) above.
149. By reason of:
- (a) each of the breaches of duty pleaded in paragraphs 145(a), 146(a), 147 and 148 above, in respect of AMG Super, ETSL did not:
 - i. exercise, in relation to matters affecting AMG Super, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise, and thereby contravened ss 52(2)(b) and 54B(1) of the SIS Act;
 - ii. perform its duties and exercise its powers in the best financial interests of the members of AMG Super, and thereby contravened ss 52(2)(c) and 54B(1) of the SIS Act;
 - iii. exercise due diligence in developing, offering and regularly reviewing the SMF as an investment option, and thereby contravened ss 52(6)(b) and 54B(1) of the SIS Act; and
 - iv. promote the financial interests of the members of AMG Super, and thereby contravened ss 52(12) and 54B(1) of the SIS Act; and
 - (b) each of the breaches of duty pleaded in paragraphs 145(b), 146(b), 147 and 148 above, in respect of Super Simplifier, ETSL did not:
 - i. exercise, in relation to matters affecting Super Simplifier, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise, and thereby contravened ss 52(2)(b) and 54B(1) of the SIS Act;
 - ii. perform its duties and exercise its powers in the best financial interests of the members of Super Simplifier, and thereby contravened ss 52(2)(c) and 54B(1) of the SIS Act;

- iii. exercise due diligence in developing, offering and regularly reviewing the SMF as an investment option, and thereby contravened ss 52(6)(b) and 54B(1) of the SIS Act; and
- iv. promote the financial interests of the members of Super Simplifier, and thereby contravened ss 52(12) and 54B(1) of the SIS Act.

150. Further, by each of the breaches of duty pleaded in paragraphs 145 to 149 above, ETSL did not do all things necessary to ensure that financial services covered by the AFSL were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and 912A(5A) of the Corporations Act.

K. RELIEF

151. ASIC proposes to seek leave to file an Amended Originating Process in the form served on 10 October 2025, and seeks relief in the proceedings comprising declarations, pecuniary penalty orders, compensation and related orders and costs orders ~~ASIC seeks the relief sought in its originating process dated 26 August 2025, comprising declarations, pecuniary penalty orders and costs orders.~~

Dated: ~~26 August~~ 10 October 2025

HWL EBSWORTH

Solicitors for the plaintiff

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

ANNEXURE A

GLOSSARY

ADPF means Australian Diversified Property Fund as defined in paragraph 52(D)(i) of the Amended Statement of Claim.

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

AMG means Acclaim Management Group Limited (ABN 52 091 082 058), the promoter and administrator of AMG Super, as defined in paragraph 9 of the Statement of Claim.

AMG Super means the AMG Superannuation Fund, which was established by the AMG Super Trust Deed, as defined in paragraph 6 of the Statement of Claim.

AMG Super Investment Consulting Agreement means the Investment Consulting Agreement between ETSL and Atchison with respect to AMG Super dated 25 July 2019 (EQS.0027.0001.1912), as defined in paragraph 12 of the Statement of Claim.

AMG Super Trust Deed means the trust deed dated 12 May 2000 (EQS.0056.0001.0204) which establishes AMG Super as amended from time to time, as defined in paragraph 6 of the Statement of Claim.

APL means Approved Product Lists, as defined in paragraph 22(b) of the Statement of Claim.

APRA means the Australian Prudential Regulation Authority, as defined in paragraph 55 of the Statement of Claim.

ASIC means the Australian Securities and Investments Commission.

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

Atchison means TAG Asset Consulting Group Pty Ltd (ACN 097 703 047) trading as Atchison Consultants, as defined in paragraph 12 of the Statement of Claim.

Atchison's AMG Super Ongoing Monitoring Services means the services as set out in Schedule 1 of the AMG Super Investment Consulting Agreement dated 25 July 2019, as defined in paragraph 13 of the Statement of Claim.

Atchison APL Annual Liquidity Analysis Reports means the 'AMG Super Approved Product Lists Scenario and Liquidity Stress Testing Analysis' reports and the 'Super Simplifier Approved Product Lists Scenario and Liquidity Stress Testing Analysis' reports, as defined in paragraph 127 of the Statement of Claim.

Atchison APL Quarterly Review Reports means the 'AMG Super Approved Product List Review' reports and the 'Super Simplifier Approved Product List Review' reports, as defined in paragraph 125 of the Statement of Claim.

Atchison Ongoing Monitoring Requirements Duty means ETSL's duty to ensure Atchison's compliance with Atchison's AMG Super Ongoing Monitoring Services and Atchison's Super Simplifier Ongoing Monitoring Services, as defined in paragraph 140(b) of the Statement of Claim.

Atchison's Super Simplifier Ongoing Monitoring Services means the services set out in Schedule 1 of the Super Simplifier Investment Consulting Agreement dated 11 November 2022, as defined in paragraph 22(b) of the Statement of Claim.

BIC means ETSL's Board Investment Committee, as defined in paragraph 4(a) of the Statement of Claim.

BIC Reporting Duty means ETSL's duty to report to the BIC with respect to the performance of investment options on the NQ Super and Super Simplifier APLs, on a quarterly basis, as defined in paragraph 140(c) of the Statement of Claim.

CF Capital means CF Capital Pty Ltd (ACN 633 394 751), being the investment manager of the SMF during the Relevant Period, as defined in paragraph 46(b) of the Statement of Claim.

Chiodo Corp means Chiodo Corporation Pty Ltd (ACN 611 404 909), as defined in paragraph 90(c) of the Statement of Claim.

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

Dash means Dash Promoter Services Pty Ltd (ACN 055 641 757) which was the promoter of Super Simplifier during the Relevant Period, as defined in paragraph 20 of the Statement of Claim.

Effective Due Diligence Duty means ETSL's duty to ensure that effective due diligence is undertaken that is commensurate with the nature and characteristics of the investment option, as defined in paragraph 88(b) of the Statement of Claim.

EGM - STO means the ETSL position of Executive General Manager of the STO, as defined in paragraph 5(c) of the Statement of Claim.

ETSL means Equity Trustees Superannuation Limited (ACN 055 641 757, AFSL number 229757; RSE license L0001451), trustee of AMG Super and Super Simplifier.

ETSL Board means ETSL's Board of Directors, as defined in paragraph 4(b) of the Statement of Claim.

FSC means Financial Services Council, as defined in paragraph 64(d) of the Statement of Claim.

~~**FSC ODD Questionnaire** means the FSC Operational Due Diligence Questionnaire with respect to CF Capital dated November 2020 (EQS.0011.0002.1667), as defined in paragraph 64(d) of the Statement of Claim.~~

High Growth Class NQ Super Onboarding Period means the period of 8 March 2022 to 11 March 2022, as defined in paragraph 91 of the Statement of Claim.

Holding Limits Duty means ETSL's duty to ensure that appropriate holding limits (including any holding limits prescribed in documents issued by ETSL to investors) were applied to any investment option approved for inclusion on its Platform, as defined in paragraph 89 of the Statement of Claim.

IGF means ETSL's Investment Governance Framework, as defined in paragraph 25 of the Statement of Claim.

IGFP means ETSL's Investment Governance Framework Policies dated June 2021 (EQS.0011.0002.1298), October 2022 (EQS.0011.0002.1973) and October 2023 (EQS.0011.0002.1983), as defined in paragraph 26(a) of the Statement of Claim.

IGPPO means ETSL's Investment Governance Protocol – Platform Options dated June 2021 (EQS.0011.0002.1993), October 2022 (EQS.0011.0002.2002) and October 2023 (EQS.0011.0002.2013), as defined in paragraph 26(b) of the Statement of Claim.

Initial NQ Super Onboarding Period means the period between 4 February 2022 to 23 February 2022, as defined in paragraph 90 of the Statement of Claim.

Investment Selection Process means the process of investment selection described in the IGPPO, as defined in paragraph 33(a) of the Statement of Claim.

January 2022 FSC IM Questionnaire means the FSC Investment Management Questionnaire completed in respect of CF Capital dated January 2022 (EQS.0011.0002.1395), as defined in paragraph 64(e) of the Statement of Claim.

January 2022 FSC ODD Questionnaire means the FSC Operational Due Diligence Questionnaire with respect to CF Capital (EQS.0011.0002.1667), as defined in paragraph 64(e) of the Amended Statement of Claim.

Keystone means Keystone Asset Management Limited (ACN 612 443 008) which was the responsible entity for the SMF during the Relevant Period, as defined in paragraph 46(a) of the Statement of Claim.

Malana means Malana Management Pty Ltd (ACN 633 213 948), as defined in paragraph 9 of the Statement of Claim.

New Quantum means New Quantum Pty Ltd (ACN 632 007 571), the promoter of NQ Super, as defined in paragraph 11 of the Statement of Claim.

November 2022 FSC IM Questionnaire means the FSC Investment Management Questionnaire dated November 2022 (EQS.0027.0001.0263), as defined in paragraph 111(a) of the Statement of Claim.

November 2022 FSC ODD Questionnaire means the FSC Operational Due Diligence Questionnaire with respect to CF Capital dated November 2022 (EQS.0027.0001.0313), as defined in paragraph 111(b) of the Amended Statement of Claim.

NQ Investment Approvals Checklist means the document titled 'Investment Approvals Checklist in relation to the Growth, Balanced and Conservative classes of the SMF', completed by or on behalf of CF Capital and sent to ETSL on or around 7 February 2022 (EQS.0011.0002.1630), as defined in paragraph 64(a) of the Statement of Claim.

NQ SIO Assessment Checklist means the worksheet titled 'ETSL-AMG' in the spreadsheet titled 'Investment Approvals HTFS & ETSL - February 2022' (EQS.0011.0002.1849), as defined in paragraph 65 of the Statement of Claim.

NQ Super means NQ Super & Pension, a division of AMG Super that was established by the Deed of Amendment to the AMG Super Trust Deed by ETSL effective 1 December 2021 (EQS.0056.0001.0196), as defined in paragraph 10 of the Statement of Claim.

NQ Super PDS means the PDS issued by ETSL on or around 26 August 2022 with respect to NQ Super (EQS.0011.0002.0473) and an Additional Information Booklet which is also dated 26 August 2022 and forms part of the NQ Super PDS (EQS.0011.0002.0481), as defined in paragraph 14 of the Statement of Claim.

NTC2425899 means ASIC's notice issued to ETSL under section 912C(1) of the ASIC Act (EQS.0041.0001.0011), as defined in the Particulars to paragraph 144 of the Statement of Claim.

Outsourcing Agreements means the AMG Super Investment Consulting Agreement dated 25 July 2019 (EQS.0027.0001.1912) and the Super Simplifier Investment Consulting Agreement dated 11 November 2022 (EQS.0027.0001.1944), as defined in paragraph 140(d) of the Statement of Claim.

Outsourcing Duty means ETSL's duty to manage, monitor and review the relationship with Atchison and Atchison's performance under the Outsourcing Agreements, as defined in paragraph 140(d) of the Statement of Claim.

Outsourcing Protocol means ETSL's Outsourcing Protocol that was effective from 17 June 2021 (EQS.0042.0001.0012), as defined in paragraph 43 of the Statement of Claim.

Performance Monitoring Duty means ETSL's duty to monitor the performance of investment options on the NQ Super and Super Simplifier APLs, as defined in paragraph 140(a) of the Statement of Claim.

PDS means a Product Disclosure Statement, as defined in paragraph 14 of the Statement of Claim.

Platforms means member directed superannuation funds, as defined in paragraph 3 of the Statement of Claim.

Relevant Period means the period from February 2022 to January 2024, as defined in paragraph 2 of the Statement of Claim.

RSE means Registrable Superannuation Entity, as defined in paragraph 2(d) of the Statement of Claim.

Rules means the rules annexed to the Super Simplifier Trust Deed dated 24 August 2022 (EQS.00480001.0098), as defined in the Particulars to paragraph 17 of the Statement of Claim.

SIO means ETSL's Superannuation Investment Office, as defined in paragraph 5(a) of the Statement of Claim.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth), as defined in paragraph 2(e) of the Statement of Claim.

SMF means the Shield Master Fund, as defined in paragraph 45 of the Statement of Claim.

SPS 231 (July 2013) means the *Superannuation (prudential standard) determination No. 3 of 2012 - Prudential Standard SPS 231 - Outsourcing* made by APRA on 15 November 2012, as defined in paragraph 60 of the Statement of Claim.

SPS 530 (January 2023) means the *Superannuation (prudential standard) determination No. 2 of 2022 - Prudential Standard SPS 530 - Investment Governance* made by APRA on 18 November 2022, as defined in paragraph 58 of the Statement of Claim.

SPS 530 (July 2013) means the *Superannuation (prudential standard) determination No. 8 of 2012 - Prudential Standard SPS 530 - Investment Governance* made by APRA on 15 November 2012, as defined in paragraph 56 of the Statement of Claim.

STO means ETSL's Superannuation Trustee Office which was the predecessor of ETSL's STS, as defined in paragraph 5(b) of the Statement of Claim.

Stress Testing Duty means ETSL's duty to have a sufficient understanding of how an investment option is expected to perform under a range of appropriate stress scenarios, as defined in paragraph 88(c) of the Statement of Claim.

STS means ETSL's Superannuation Trustee Services, as defined in paragraph 5(b) of the Statement of Claim.

Super Simplifier means the superannuation fund which is established by the Super Simplifier Trust Deed, as defined in paragraph 17 of the Statement of Claim.

Super Simplifier Investment Consulting Agreement means the Investment Consulting Agreement between ETSL and Atchison dated 11 November 2022 for the provision of investment management and asset consulting services with respect to Super Simplifier (EQS.0027.0001.1944), as defined in paragraph 21 of the Statement of Claim.

Super Simplifier Onboarding Period means the period between 29 May 2023 and 17 August 2023, as defined in paragraph 118 of the Statement of Claim.

Super Simplifier SIO Assessment Checklist means the excel spreadsheet created by the SIO which relates to the inclusion of the SMF on the Super Simplifier APL (EQS.0027.0001.0479), as defined in paragraph 110 of the Statement of Claim.

Super Simplifier Trust Deed means the Trust Deed dated 24 August 2022 which establishes Super Simplifier, including the rules annexed to the Trust Deed (EQS.0048.0001.0098), as defined in paragraph 17 of the Statement of Claim.

TMD means Target Market Determination, as defined in paragraph 81(b) of the Statement of Claim.

Understanding and Knowledge Duty means ETSL's duty to have a sufficient understanding and knowledge of an investment option, prior to approving it as an investment option on the NQ Super APL, as defined in paragraph 88(a) of the Statement of Claim.