

## NOTICE OF FILING

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File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND  
MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 612 443 008)  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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## Affidavit

No. VID536/2024

Federal Court of Australia  
District Registry: Victoria  
Division: Corporations

### AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

**KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(IN LIQUIDATION) (ACN 612 443 008) and another**  
Defendants

Affidavit of: **ROSS ANDREW BLAKELEY**  
Address: Level 50, 600 Bourke Street, Melbourne  
Occupation: Registered Liquidator  
Date: 16 February 2026

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I, Ross Andrew Blakeley of FTI Consulting, Level 50, 600 Bourke Street, Melbourne in the state of Victoria, Registered Liquidator, affirm that:

1. I am a Registered Liquidator (a qualification I have held since February 2002), a Chartered Accountant, a professional member of the Australian Restructuring Insolvency and Turnaround Association and a Senior Managing Director of FTI Consulting. In total, I have over 30 years' experience in insolvency, restructuring and receivership/secured lender formal appointments and recovery matters.

Filed on behalf of (name & role of party) Paul Ross Blakeley and Paul Harlond in their capacity as joint and several liquidators of Falcon Capital Limited (In Liquidation) ACN 119 204 554, Interested Party.  
Prepared by (name of person/lawyer) Ariel Borland  
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(include state and postcode)

[Version 3 form approved 02/05/2019]

2. Paul Harlond and I are appointed as the joint and several liquidators (**Falcon Liquidators**) of Falcon Capital Limited (In Liquidation) ACN 119 204 554 (**Falcon**).
3. References in this affidavit to “we”, “us”, “our” and “ourselves” are references to Mr Harlond and me as the Falcon Liquidators.
4. I am authorised to make this affidavit on behalf of Mr Harlond.
5. Except where I state otherwise, I make this affidavit from my own knowledge and experience, including based on my own review of the books and records of Falcon or other enquiries and investigations, or such review or other enquiries and investigations conducted by our team and advisors, and findings conveyed by them. I have also drawn upon information and documents provided by the Keystone Appointees. Where I depose to matters based on information and belief, I believe those matters to be true.
6. In making this affidavit I do not intend to waive any privilege. To the extent that any part of this affidavit constitutes waiver of privilege, I withdraw that part of the affidavit and we do not rely on it.
7. Annexed to this affidavit and marked “**RAB-1**” is a paginated bundle of documents which I will refer to throughout this affidavit. Where I refer to page numbers in this affidavit, I refer to page numbers within RAB-1.
8. I make this affidavit in my capacity, together with Mr Harlond, as court-appointed contradictor to the application the subject of paragraphs 4 and 5 of the amended interlocutory process dated 12 December 2025 (**Interim Distribution Application**) made by:
  - (a) the first defendant, Keystone Asset Management Ltd (receivers and managers appointed) (in liquidation) (**Keystone**) in its capacity as the responsible entity of the Shield Master Fund (**SMF**); and
  - (b) Jason Tracy and Glen Kanevsky in their capacity as both joint and several receivers of the property of Keystone and liquidators of Keystone (**Keystone Appointees**).
9. In this affidavit I refer to and rely on a confidential affidavit affirmed by me on 16 February 2026 (**Confidential Blakeley Affidavit**).
10. I am aware, based on publicly available ASIC media releases published on ASIC website that:
  - (a) on 26 August 2025, ASIC published Media Release 25-176MR (titled “ASIC sues Equity Trustees alleging due diligence failures relating to Shield”) about a Federal



Court proceeding it has commenced against Equity Trustees Superannuation Limited (**ASIC ETSL Media Release**); and

- (b) on 24 September 2025, ASIC published Media Release 25-215MR (titled “Macquarie admits to Shield contraventions and commits to pay affected members”) about a Federal Court proceeding it has commenced against Macquarie Investment Management Ltd (**ASIC MIML Media Release**).

A copy of the ASIC ETSL Media Release is at pages **34** to **36** of **RAB-1**.

A copy of the ASIC MIML Media Release is at pages **37** to **39** of **RAB-1**.

11. I have read and refer to:

- (a) the affidavit of Jason Tracy sworn 8 November 2025 (**First Tracy Affidavit**);
- (b) the affidavit of Jason Tracy sworn 29 January 2025 (**Second Tracy Affidavit**); and
- (c) the Keystone Appointees’ Financial Position Report dated 27 July 2024 (**Keystone Financial Position Report**) (found at Confidential JMT-2 to the affidavit of Jason Tracy dated 12 August 2024),

filed in support of the Interim Distribution Application.

12. A current and historical company search of Keystone at pages **40** to **53** of **RAB-1**. A current and historical managed investment scheme extract of the SMF is at Tab 3 to exhibit JMT-14 (pp 98-100) to the First Tracy Affidavit.

13. This affidavit is divided into the following eight sections:

- (a) Part A – a brief overview of the interim distribution application ([14]-[18]);
- (b) Part B – a brief overview of the contradictors’ position on the application ([19]-[23]);
- (c) Part C – our appointment to Falcon and as contradictors ([24]-[26]);
- (d) Part D – a brief overview of Falcon, the FGMF, the CDPF and the ADF ([27]-[60]);
- (e) Part E – analysis on potential comingling ([61]-[64]);
- (f) Part F – potential for claims against Keystone as trustee of the SMF ([65]-[117]);
- (g) Part G - potential prejudice to Falcon ([119]-[120]); and
- (h) Part H – conclusion [121]-[122].

## **A. OVERVIEW OF INTERIM DISTRIBUTION APPLICATION**



14. At paragraph 27 of the First Tracy Affidavit, and based on what is said to be the best available unit register information for the SMF, Mr Tracy sets out the number of units in the SMF by unit holder, and the classes in which the relevant units are held. I reproduce that table below, but with a "total" row added to the bottom of the table and percentage figures inserted.

Unit holder	Amount invested (\$)	Number of units (all Classes)	Classes
BSCL (as custodian for MIML)	318,328,265.19 (66.22%)	305,443,065.98 (67.56%)	Conservative; Balanced; Growth; High Growth
ETSL	133,327,267.26 (27.74%)	119,226,804.27 (26.37%)	Conservative; Balanced; Growth; High Growth
Direct Unitholders	16,435,431.31 (3.42%)	16,129,890.41 (3.57%)	ADPC
TTCL	11,667,620.86 (2.43%)	10,414,803.58 (2.30%)	Balanced; Growth; High Growth
HCNL	922,127.08 (0.19%)	891,704.32 (0.20%)	Growth
<b>Totals</b>	<b>\$ 480,680,711.70</b> <b>(100%)</b>	<b>452,106,268.56</b> <b>(100%)</b>	<b>N/A</b>

15. At paragraph 9 of the Second Tracy Affidavit, Mr Tracy relevantly states that the sale of the Bell Potter Securities, net of fees, has realised \$195,890.964.71 (**Bell Potter Proceeds**) which sum has been deposited into interest-bearing bank accounts for four of the five SMF unit classes. I reproduce those sums below, but with percentage figures inserted alongside them.

SMF unit class	Amount
Conservative class	\$29,811,886.42 (15.22%)
Balanced class	\$59,525,815.98 (30.39%)
Growth class	\$96,930,383.10 (49.48%)
High growth class	\$9,622,879.21 (4.91%)
ADPC	\$Nil




<b>Total</b>	<b>\$195,890,964.71 (100%)</b>
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16. By the Interim Distribution Application, the Keystone Appointees propose to distribute up to 75% of the value of the Bell Potter Proceeds attributable to each class of the SMF to the members of the SMF.
17. Section G of First Tracy Affidavit (comprising [48]-[52]) sets out a worked example of apportionments of the proposed interim distribution from the then hypothetical Bell Potter Proceeds, based on their market value as at 31 October 2025, between classes.
18. The proposed interim distribution provides nothing for holders of ADPC class units in the SMF.
19. The Interim Distribution Application seeks directions and judicial advice regarding the proposed interim distribution of the proceeds of sale of the recently realised listed equities (**Bell Potter Securities**) previously owned by Keystone as responsible entity for the SMF and held through Bell Potter Securities Limited (**Bell Potter**) to unitholders who hold units in four of the five classes of the SMF.

## **B. OVERVIEW OF CONTRADICTIONERS' POSITION**

20. On 11 December 2025, Mr Harlond and I were appointed as contradictors to the Interim Distribution Application by order of the Honourable Justice Moshinsky. We sought to be appointed as contradictors in circumstances where we held concerns that the proposed interim distribution:
  - (a) is premature given the status of the Keystone Appointees' investigations (in particular into the Chiodo Diversified Property Fund (**CDPF**)) and the early stage of the winding up; and
  - (b) may prejudice Falcon if:
    - (i) there has been comingling of CDPF funds with SMF funds and funds can be traced from Falcon or the CDPF to the Bell Potter Securities directly and/or the assets of the SMF generally; and/or
    - (ii) Falcon (as unitholder of the CDPF) has (or may have) claims against Keystone that gives Falcon recourse to the assets of the SMF (via subrogation to Keystone's right of indemnity against those assets).
21. For the reasons set out in section E below, we have concluded that:




- (a) based on comprehensive transaction matching, tracing and analysis, it is highly unlikely funds from Falcon or the CDPF were co-mingled with SMF unitholder funds and used to acquire the Bell Potter Securities; and
  - (b) the maximum amount that may have been comingled with the Bell Potter Securities is \$114,012, representing the amount that was transferred from Chiodo Corporation to the Advantage Diversified Property Fund (**ADPF**) in September 2022, which may have then been sent to the SMF investment classes as part of the \$386,904 in ADPF Redemptions made to the SMF investment classes.
22. However, notwithstanding our conclusion in respect of possible comingling, we consider some risk of prejudice to Falcon (and its underlying investors) by the interim distribution still exists in circumstances where:
- (a) the CDPF is not being wound up. The Keystone Appointees only have a “bare” appointment as receivers and managers over the CDPF (as property of Keystone). Proper investigations have not been conducted into the financial position of the CDPF, nor the conduct of Keystone as the trustee of the CDPF. The detailed transactions and dealings regarding the CDPF trust and assets since Keystone’s appointment as trustee of the CDPF presently unknown;
  - (b) given the above, no proper analysis and tracing exercise has been conducted in relation to the use of the CDPF’s funds (both before and after Keystone became the trustee of CDPF), including to identify whether any of the CDPF’s assets were realised and/or funds were used to benefit the SMF (for example, by paying expenses of the SMF); and
  - (c) our investigations into Falcon’s affairs generally, and into the CDPF in particular - including into the relationship between Falcon and Keystone and/or the CPDF and ADPF - are at an early stage, still ongoing, and likely to take some time to conclude (with further public examinations of two of Falcon’s directors, David Anderson and Simon Selimaj, scheduled to occur in April 2026).
23. For those reasons, and as expanded on below in Part F, it is our position that:
- (a) the Interim Distribution Application should be adjourned to provide for the Keystone Appointees to take steps to:
    - (i) wind up the CDPF; and/or
    - (ii) to conduct investigations into the affairs and financial position of the CDPF (in the same manner in which they have in respect of the SMF and the ADPF in



the Keystone Financial Position Report) and report to the court regarding the same,

- (b) alternatively, the Keystone Appointees should withhold a further \$82,497,115.65 from the proposed interim distribution, comprising of:
  - (i) the sum of \$63,847,115.65, being the apparent value of the assets of the CDPF as at the date of the Retirement Deed; and
  - (ii) the sum of \$18.65 million, being the amounts paid by Falcon to (or at the direction of) Keystone as trustee for the CDPF following and pursuant to the Retirement Deed,

to ensure Falcon is not prejudiced in the event that it is ultimately found, once the proper investigations into the CDPF have been conducted, that Falcon has a right to claim against the assets of the SMF.

### **C. APPOINTMENT TO FALCON AND APPOINTMENT AS CONTRADICTOR**

- 24. On 24 February 2025, the Australian Investments and Securities Commission (**ASIC**) commenced Federal Court of Australia proceeding VID 199/2025 against Falcon and one of its three directors, David Anderson (**Falcon Proceeding**). Another of its directors, Simon Selimaj (**Selimaj**), was later joined as a defendant.
- 25. On 9 April 2025, the Court made orders in the Falcon Proceeding (among others) (**Falcon Winding-up Orders**):
  - (a) winding up Falcon pursuant to section 461(1)(k) of the *Corporations Act 2001* (Cth) (**Act**);
  - (b) appointing me and Paul Harlond as joint and several liquidators of Falcon; and
  - (c) directing the Falcon Liquidators to wind up the:
    - (i) First Guardian Master Fund (ARSN 635 429 113) (**FGMF**);
    - (ii) First Guardian Global Income Fund;
    - (iii) First Guardian Australian Development Fund (**ADF**);
    - (iv) First Guardian Absolute Equities Fund;
    - (v) First Guardian Trulet Innovation Fund; and
    - (vi) First Guardian Global Equity Fund.

A copy of the Falcon Winding-up Orders is at pages **54** to **58** of **RAB-1**.



26. On 11 December 2025, the Honourable Justice Moshinsky made orders in this proceeding appointing the Falcon Liquidators as contradictors to the Interim Distribution Application.

#### **D. BACKGROUND TO FALCON, CDPF AND ADF**

##### **D1. Falcon**

27. Falcon was incorporated on 10 April 2006 as a private company.

28. On 28 June 2010, Falcon was converted to an unlisted public company. A copy of the ASIC current and historical search of Falcon is at pages **59** to **93** of **RAB-1**.

29. As explained further below, between 22 August 2016 and 11 June 2021, Falcon was the trustee of the CDPF. On 11 June 2021, Keystone replaced Falcon as trustee of the CDPF.

30. Since 23 August 2019, Falcon has been the responsible entity for, and the trustee of, the FGMF. The FGMF is a registered management investment scheme which takes the form of a unit trust.

31. The FGMF has a number of wholly-owned sub-trusts, including the sub-trusts identified in paragraphs 25(c)(ii) to 25(c)(vi) above of which Falcon is also the trustee.

32. At the date of our appointment, the FGMF had three main investment classes which primarily invested in the following related investment trusts:

- (a) First Guardian Global Income Fund;
- (b) First Guardian Global Equity Fund; and
- (c) ADF / First Guardian Global Property Fund.

33. We have been advised by the directors of Falcon that the ADF was subsequently renamed to the "First Guardian Global Property Fund". Whilst Falcon's books and records suggest that the ADF was not renamed, and instead that the First Guardian Global Property Fund was created with a new ABN. The Falcon Liquidators cannot locate any books and records associated with the new ABN suggesting that the First Guardian Global Property Fund is indeed the ADF (albeit not officially renamed).

34. There were also three other investment FGMF classes which purportedly invested in only one specific investment trust (in comparison to the three main classes which invested in all the investment trusts).

35. As at our appointment date, there were (and remain) 394,850,554 units on issue to in the FGMF, across six unit classes. The unitholders of those units comprised investors who invested either directly or indirectly as follows:



Platform	Defensive Class	Diversified Class	Growth Class	Global Equity Class	Global Income Class	Australian Development Class
YourChoice Super OneVue now Praemium Super – Diversa Trustees Limited	18,917,898	58,755,753	103,849,815			
NQ Super / Freedom of Choice a division of AMG Super – Equity Trustees Superannuation Limited	40,010,206		2,596,794			
Netwealth Superannuation – Netwealth Superannuation Services Pty Ltd		5,542,895	76,845,636			
Direct investor Units on Issue	2,101,893	31,348,077	32,891,574	1,309,095	8,374,915	12,306,003
<b>Total Units on Issue</b>	<b>61,029,997</b>	<b>95,646,725</b>	<b>216,183,819</b>	<b>1,309,095</b>	<b>8,374,915</b>	<b>12,306,003</b>

36. Our investigations indicate that:

- (a) Falcon operated two investor application accounts;
- (b) approximately \$642 million was received from investors across the two application accounts, and approximately \$197 million paid in redemptions between September 2019 and April 2025; and
- (c) the net amount of approximately \$446 million was moved from the application accounts to various FGMF and Falcon related accounts (and beyond).

37. On 27 May 2024, Falcon published an update to unitholders stating that applications and withdrawals would be suspended from 27 May 2024 until 1 August 2024 (or earlier), but that they would allow members to withdraw on the ground of financial hardship. A copy of the 27 May 2024 update is at pages **94** to **96** of **RAB-1**. On 3 June 2024 a ‘clarification’ was published to its 27 May 2024 update stating that “*the Responsible Entity will **not** allow hardship withdrawals.. the Responsible Entity intends processing withdrawal requests where the request is made to facilitate the payment of life insurance premiums by the unitholder...the Responsible Entity intends considering other withdrawal requests on a case-by-case, special needs basis.*” A copy of the 3 June 2024 update is at page **97** of **RAB-1**.




38. On 12 June 2024, a further update to unitholders was published which stated that *“The Responsible Entity has become aware that a number of pensioner unitholders rely on regular withdrawals to cover their living expenses. The Responsible Entity recognises that these unitholders need to continue to be able to make withdrawals, and has accordingly expanded the permitted withdrawal situations... The Investment Manager is currently in the process of completing a large transaction that it expects will deliver significant value to unitholders in coming weeks.”* A copy of the 12 June 2024 update is at page **98** of **RAB-1**.
39. We understand from information published by ASIC on its website regarding its investigation into Falcon that around 6,000 underlying investors invested their money, including retirement savings, into FMGF. We have received over 570 case notifications from the Australian Financial Complaints Authority (**AFCA**) in relation to complaints made against Falcon Capital Limited (In Liquidation). The AFCA complaint process must be determined before a claim can be lodged for compensation with the Compensation Scheme of Last Resort (**CSLR**). We have also received hundreds of investor queries since our appointment; a number of which have included details of personal hardship being suffered.
40. Falcon’s management accounts record that the total assets of the FGMF as at 31 March 2025 were \$591 million. However, our investigations have revealed that the value of the majority of investments held by the FGMF were substantially overstated. We have encountered a number of significant challenges in realising Falcon’s assets. Our investigations in this regard remain ongoing. A copy of our Statutory Report to Creditors of Falcon as the Responsible Entity of the FGMF dated 8 July 2025 setting out our preliminary investigations is at pages **99** to **168** of **RAB-1**.
41. On 2 December 2025, we issued a further report to the creditors of Falcon and unitholders of the FGMF providing an update on the status of the liquidation (**December Report**). In the December Creditors Report we advised creditors that:
- (a) the Falcon Liquidators’ estimate an amount of approximately \$446 million represents the outstanding value of cash invested net of redemptions to Unitholders; and
  - (b) *“Having regard to the identified issues, assessment of investments, anticipated further investigations and actions required to effect recoveries in the Liquidation... the Liquidators consider reasonable prospects of a surplus may exist in the Liquidation to enable a distribution to Unitholders. ... While an estimate of a return for Unitholders has not been provided, the Liquidators temper expectations as to the quantum of a return to Unitholders and consider that only a partial return of*



*unredeemed funds may eventuate. Indeed, a substantial shortfall of asset recoveries to outstanding and unredeemed funds invested is likely”.*

A copy of the December Report is at pages **169 to 224** of **RAB-1**.

## **D2. CDPF**

42. One sub-trust of the FGMF (though the ADF) is the CDPF. Keystone is the current trustee of the CDPF, having taken over that role from Falcon in June 2021. There is an historical relationship and dealings between Paul Chiodo, David Anderson, Falcon, and/or their associated entities, that pre-dates the creation of the SMF, which is explained in part further below.
43. The CDPF is a unit trust apparently established on 22 August 2016, with Falcon appointed as trustee. I have located, and exhibit copies of:
- (a) an unexecuted Trust Deed for the CDPF dated 22 August 2016 at pages **225 to 271** of **RAB-1**;
  - (b) the CDPF Constitution dated 9 August 2019 at pages **272 to 317** of **RAB-1**; and
  - (c) a subsequent trust deed for the CDPF executed on 15 June 2021 (being around the time Keystone replaced Falcon as trustee) at pages **318 to 367** of **RAB-1**.
44. Based on our investigations including reviewing the books and records of Falcon, upon its establishment, the CDPF was named the "First Guardian Low Density Real Estate Development Fund". It was subsequently renamed to the CDPF on 13 May 2019. A copy of a Deed of Variation giving effect to this change of name appears is at pages **368 to 369** of **RAB-1**.
45. Between 9 September 2019 to 14 April 2021, Falcon, in its capacity as responsible entity and trustee of the FGMF, invested approximately \$55.1 million into the CDPF through a series of payments from:
- (a) an account held by it as responsible entity of the FGMF; to
  - (b) an account held by it as a trustee of the CDPF.
46. On 14 April 2021, Falcon, Keystone, Chiodo Corporation Pty Ltd (**Chiodo Corporation**) and others entered into a deed (**Retirement Deed**). The recitals to the Retirement Deed state that:

*“The parties have resolved to end the Funds Management Agreement and the Development Management Agreement on the terms set out in this Deed with the intent of entering a new investment agreement whereby Falcon as trustee of the Australian*

*Development Fund will invest into a new wholesale scheme operated by KAM which will become the new Trustee of the CDPF.”*

A copy of the Retirement Deed is at pages **370** to **380** of **RAB-1**.

47. We discuss the Development Management Agreement and the Funds Management Agreement later in the affidavit.
48. We understand that, on 11 June 2021, in accordance with the Retirement Deed, Falcon retired as the trustee of the CDPF and was replaced by Keystone. A copy of the Deed of Variation giving effect to the retirement of Falcon and the appointment of Keystone as trustee of the CDPF is at pages **381** to **388** of **RAB-1**. I note that, notwithstanding the Deed of Variation is dated 11 June 2021 (and the change of trustee is said to have occurred on the date of the deed), Keystone does not appear to have signed the resolution accepting the appointment as trustee of the CDPF until a week later on 19 June 2021.
49. I understand that prior to the Retirement Deed and the change of trustee, the unitholders in the CDPF were either retail or wholesale investors, rather than Falcon itself. As I set out in further detail below, it appears that around April 2021 (at around the time of the Retirement Deed), the unitholders in the CDPF transferred their units in the CDPF to Falcon (as trustee of the ADF) and were issued units in the FGMF in their place. However, to the best of my knowledge, Falcon now holds its interest in its units on issue in the CDPF as trustee of the ADF, which is a wholly-owned sub-trust of the FGMF. This appears to have been the intention of the Retirement Deed (referred to at paragraph 46 above), which relevantly provides that:

*“The First Guardian Australian Development Fund will be the sole unitholder in the CDPF.”* [clause 3.1(d)]
50. On 12 June 2025, the Keystone Appointees provided written confirmation that Keystone’s records indicate that, as at 30 June 2024, Falcon held (without referring to in which capacity) 63,344,456 units in the CDPF. A copy of the correspondence from the Keystone Appointees appears at pages **389** to **390** of **RAB-1** and a copy of the redacted unit holder register as at 1 July 2024 showing that Falcon holds approximately 98.7% of the units in the CDPF appears at pages **391** to **392** of **RAB-1**.
51. As discussed in more detail below, our investigations have also identified that Falcon, as trustee for the CDPF, advanced approximately:



- (a) \$18.8 million to (or on behalf of) various special purpose vehicles for the purchase and development of seven property developments in Victoria and Queensland between 14 September 2016 and 14 May 2021;
  - (b) \$37.4 million to CF Property Capital Pty Ltd (now known as CF Capital Investments Pty Ltd) (In Liquidation) (**CF Capital**) between 16 May 2019 and 16 March 2021. We understand that CF Capital acted as the investment manager of the CDPF; and
  - (c) \$276,515 to Chiodo Corporation between 11 November 2016 and 4 April 2019.
52. At this stage, and for a number of reasons (including that we have limited available funds in the liquidation of Falcon and the transfer of the role of trustee to Keystone in 2021 resulting in a lack of access to books and records) we have not been able to complete the tracing exercises to determine where these funds have ultimately been applied. Importantly, the book value of Falcon's investment in the CDPF as detailed in the Update Report to Creditors and Unitholders dated 2 December 2025 represents 46% of the book value of Falcon's total Australian investments which have not yet crystallised, and 22% of the book value of all Falcon's investments which have not yet crystallised (Australian and foreign), which demonstrates the importance of our concerns in ensuring we protect and maximise the recovery of this asset.

### **D3. ADF**

53. The ADF is another wholly owned sub-trust of the FGMF. The ADF is the subject of the Falcon Winding-up Orders.
54. The ADF is a unit trust established by constitution dated 3 July 2017. A copy of the constitution is at pages **393 to 438** of **RAB-1**.
55. Falcon, through its custodian, One MIF, is the beneficial owner of all units in the ADF.
56. As discussed in more detail below, our investigations have also identified that Falcon, as trustee for the ADF, advanced approximately:
- (a) \$1.94 million (net \$1.82 million) to (or on behalf of) various special purpose vehicles for the purchase and development of four property developments in Victoria and Queensland between 5 September 2017 and 5 March 2019;
  - (b) \$5.13 million to CF Capital between 21 May 2019 and 15 June 2021;
  - (c) \$406,043 to Chiodo Corporation between 6 September 2017 and 30 June 2021; and
  - (d) \$9.55 million to Keystone ATF CDPF between 22 July 2021 and 4 February 2022.

57. At this stage, and for a number of reasons (including that have limited available funds in the liquidation of Falcon and the transfer of the role of trustee to Keystone in 2021 resulting in a lack of access to books and records) we have not been able to complete the tracing exercises to determine where these funds have ultimately been applied.

#### **D4. Falcon POD in the Keystone liquidation**

58. On 5 September 2025, Falcon, including in its capacity as trustee for the ADF, lodged a proof of debt in relation to Keystone for \$99.63 million, being the value (based on Falcon's books and records) of Falcon's investment in the CDPF as at 25 February 2024 (**Falcon POD**). The Falcon POD is based on contingent claims Falcon may have, as unitholder of the CDPF, against Keystone. A copy of the Falcon POD is at page **439** of **RAB-1**.

59. Given the early stage of our investigations and the lack of available funds in the liquidation, the Falcon POD is necessarily expressed in general terms.

60. The Keystone Liquidators have not yet adjudicated on the Falcon POD. We recognise they face similar impediments to us regarding required investigations, evidence and knowledge in being able to formally adjudicate.

#### **E. CONTRADICTIONERS' ANALYSIS ON POTENTIAL COMINGLING**

61. One of our preliminary concerns with the Interim Distribution Application was that the Keystone Appointees had not conducted sufficient investigations into the possibility of comingling between the assets of Falcon and/or the CDPF, on the one hand, and on the other hand, the assets of the SMF, in circumstances where:

(a) there are clearly issues with the way in which Falcon and Keystone (and their directors) have historically managed their respective funds, and the significant losses that investors in these funds are likely to suffer;

(b) the CDPF and SMF have shared the same trustee / responsible entity (Keystone) since 2021; and

(c) the Keystone Appointees have indicated to me that they have not been appointed to wind up the CDPF and are not in the process of winding up the CDPF.

62. Following our appointment as contradictors to the Interim Distribution Application, with the assistance of our staff, we conducted a comprehensive review of:

(a) the Keystone Appointees' analysis of the sources of the funds transacting through the SMF;

(b) the underlying source documentation supporting the Keystone Appointees' analysis;



- (c) how the funds were allocated into each of the classes within the SMF; and
  - (d) how the funds were ultimately used to make investments into the underlying investments, including the Bell Potter Securities.
63. Our focus was on addressing the following issues:
- (a) whether any funds from Falcon, the FGMF or the CDPF have been comingled with SMF unitholder funds and used by Keystone in its capacity as the responsible entity of the SMF to acquire the Bell Potter Securities (**Issue One**);
  - (b) whether there has been any comingling of CDPF property at all in the SMF and whether any funds from Falcon, the FGMF or the CDPF can be traced into assets of the SMF generally (**Issue Two**); and
  - (c) if it was found that funds from the SMF and CDPF were comingled at the ADPF level, whether these funds are subsequently comingled with funds used to acquire the Bell Potter Securities (**Issue Three**).
64. The details of this review and our findings on these three issues are set out in the Confidential Blakeley Affidavit.

**F. POTENTIAL FOR CLAIMS AGAINST KEYSTONE AS TRUSTEE OF THE SMF**

65. Notwithstanding our findings on the issue of comingling between Falcon/CDPF and SMF funds set out in the Confidential Blakeley Affidavit, we remain concerned that the proposed interim distribution is premature (at least without retaining a further provision), in circumstances where we have identified various issues which require further investigations by the Keystone Appointees (particularly in relation to the CDPF), and which may give rise to claims against Keystone in its capacity as trustee of the SMF (and potentially recourse to the assets of the SMF via subrogation to Keystone's right of indemnity).
66. These concerns arise from the following observations and documents that we have identified during our appointment as liquidators of Falcon and contradictors to the Interim Distribution Application, and the resulting questions and information gaps.

**F1. Documents evidencing the relationship between the CDPF, ADPF and the SMF**

67. As set out above, the CDPF appears to have been established in around August 2016 with Falcon as trustee and was, at the time, known as the First Guardian Low Density Real Estate Development Fund (although I will continue to refer to it as the CDPF).



68. It is our understanding from investigations that we have conducted in the liquidation of Falcon that the CDPF was established by Falcon together with Mr Chiodo for the purposes of investing in property development.
69. It appears that units were offered in the CDPF under an information memorandum dated 1 July 2017 (**Initial CDPF IM**) which provided, amongst other things:
- (a) the trustee is Falcon, the manager and investment manager is First Guardian Capital Pty Ltd (**FGC**) and the Developer is Chiodo Corporation (page 6);
  - (b) the Fund is an Australian, unregistered open ended unit trust open to Wholesale Clients. The Fund will provide investors with an opportunity to access returns from a diversified portfolio of Australian property development assets, developed directly by the Fund (page 6);
  - (c) the Fund will be invested in a select portfolio of residential development projects, managed by a dedicated project management team (page 6); and
  - (d) Chiodo Corporation, the 'Developer' appointed by Falcon, "*...is a rapidly expanding property developer, applying established principles of intelligent design and quality construction throughout Melbourne, currently having projects under development over \$60M. Chiodo's capabilities are based on the strengths of its founding directors, Paul and Sam Chiodo, together bringing 50 years of experience to the firm. Having been active in successful residential developments, Paul and Sam's skills cover every step of the process, providing expert property development, project management and architectural services to a range of clients, making Chiodo an end-to-end provider of project based solutions.*" (page 9).

A copy of the Initial CDPF IM is at pages **440 to 507** of **RAB-1**.

70. FGC, the investment manager of the CDPF, was incorporated in April 1996 with a number of directors, including Simon Selimaj (who is also a director of Falcon). Mr Selimaj is currently the sole director and shareholder of FGC. Mr Anderson was also a director of FGC between 17 February 2018 and 13 February 2025.
71. Chiodo Corporation was incorporated on 18 March 2016. Paul Chiodo has effectively controlled that company since incorporation as the sole director, and as sole director of Chiodo Corporation's sole shareholder, Pure Development and Project Management Pty Ltd (**Pure Development**). A copy of the current and historical ASIC search for Chiodo Corporation and Pure Development is at pages **508 to 534** of **RAB-1**.



72. We have also identified within the books and records of Falcon a Development Management Agreement dated 18 August 2016 between FGC (as investment manager for the CDPF) and Chiodo Corporation (the Developer) (**Development Agreement**). A copy of the Development Agreement is at pages **535** to **545** of **RAB-1**.
73. The Development Agreement is vague and poorly drafted, however, the general intention appears to be that, consistent with the Initial CDPF IM, the CDPF would invest in property developments to be conducted by Chiodo Corporation. Page 2 of the Development Agreement appears to contemplate that Falcon (as the trustee for the CDPF) would *“purchase all land and will hold the titles for all projects”*.
74. It appears that, following the parties entering into the Development Agreement, between 2016 and 2018, the following special purpose vehicles (amongst others) (**SPVs**) were established for the purposes of certain property development projects (**Projects**):
- (a) **33 Davidson** Port Douglas Pty Ltd (receivers and managers appointed);
  - (b) **Nicholson Street** Bentleigh Pty Ltd (receivers and managers appointed);
  - (c) **Augustine Terrace** Glenroy Pty Ltd (receivers and managers appointed);
  - (d) **Augustine Terrace Glenroy Operations** Pty Ltd;
  - (e) **Norwood Ponds (Land)** Pty Ltd (controllers appointed);
  - (f) **Norwood Pond Operations** Pty Ltd (In Liquidation);
  - (g) **Red Hill Terraces (Land)** Pty Ltd (receivers and managers appointed);
  - (h) **Red Hill Terraces Operations** Pty Ltd;
  - (i) **Warrigal Road** Ashburton Pty Ltd (controllers appointed); and
  - (j) **75 Port Douglas** Pty Ltd (receivers and managers appointed).
75. From our review of the ASIC current and historical company searches for each of the SPVs, I understand that the corporate information for each of the SPVs is as follows:

SPV	Incorporation Date	Current Director(s)	Former Director(s)	Shareholder(s)	Former Shareholder(s)
33 Davidson	2 May 2017	Paul Chiodo		Chiodo Corporation (100%)	
Nicholson Street	28 November 2017	Paul Chiodo		Pure Development (100%)	




SPV	Incorporation Date	Current Director(s)	Former Director(s)	Shareholder(s)	Former Shareholder(s)
Augustine Terrace	7 May 2018	Paul Chiodo		Chiodo Corporation (100%)	Falcon (100%)
Augustine Terrace Glenroy Operations	16 May 2018	Paul Chiodo		Pure Development (100%)	
Norwood Ponds	30 January 2017	Michael Sinclair Couper	Paul Chiodo	Pure Development (100%)	
Norwood Pond Operations	30 January 2017	Quanying Yu	Paul Chiodo	Pure Development (100%)	
Red Hill Terraces	28 September 2016	Paul Chiodo		Pure Development (100%)	Falcon (100%)
Red Hill Terraces Operations	27 September 2016	Quanying Yu	Paul Chiodo	Pure Development (100%)	Falcon (100%)
Warrigal Road	12 September 2017	Paul Chiodo		Pure Development (100%)	
75 Port Douglas	19 December 2018	Paul Chiodo	Ilya Frolov David Charles Knowles Anderson	Malana Management Pty Ltd (51%) Keystone (49%)	Falcon (100%)

A copy of the ASIC current and historical searches for each of the SPVs is at pages **546 to 616** of **RAB-1**.

76. In the course of our investigations, we have identified that, in the period between June 2017 and May 2021, a total of over \$18.8 million appears to have been transferred from an account held by Falcon (as trustee for the CDPF) either to the SPVs directly, or to pay expenses of the Projects (some of which appear to include deposits for purchases of land). This amount is comprised of the following:

SPV / Project	Amount	Date of payments
33 Davidson	\$3,703,082.24	13 Jun 2017 - 14 May 2021
75 Port Douglas	\$5,262,307.69	21 Dec 2018 - 21 Sep 2020
Augustine Terrace	\$458,358.21	27 Apr 2018 - 26 Jun 2019
Nicholson Street	\$2,419,616.58	2 Jan 2019 - 4 Apr 2019



Norwood Ponds	\$2,755,439.60	10 May 2017 - 23 Apr 2019
Red Hill Terraces	\$2,871,460.80	14 Sep 2016 - 28 Jun 2019
Warrigal Road	\$1,336,549.00	25 Oct 2018 - 1 Apr 2019
<b>TOTAL</b>	<b>\$18,806,814.12</b>	

A copy of the bank statements evidencing these transactions by Falcon is at pages **617** to **813** of **RAB-1**.

77. In addition to the above, during the course of our investigations, we have identified various payments from an ANZ account held in the name of Falcon as trustee for the ADF (the sole or significant majority unitholder in the CDPF), totalling over \$1.93 million (net \$1.8 million after receipts from those SPVs/projects are taken into account) to either to the SPVs directly, or to pay expenses of the Projects. This amount is comprised of the following:

SPV / Project	Payment to	Receipt from	Net	Date of payments
33 Davidson	\$90,000.00	\$30,000.00	\$60,000.00	28 Sep 2017 – 27 Aug 2018
75 Port Douglas	\$183,345.34	-	\$183,345.34	6 Sep 2017 – 5 Mar 2019
Nicholson Street	\$805,219.08	-	\$805,219.08	29 Nov 2017 – 3 Dec 2018
Warrigal Road	\$856,568.51	\$90,000	\$766,568.51	5 Sep 2017 – 4 Oct 2018
<b>TOTAL</b>	<b>\$1,935,132.92</b>	<b>\$120,000</b>	<b>\$1,815,132.93</b>	

A copy of the bank statements evidencing these transactions by Falcon is at pages **814** to **856** of **RAB-1**.

78. In the course of our investigations, we have not yet been able to:
- (a) confirm whether any consideration was received by Falcon for these payments; or
  - (b) identify any documentation relating to the basis for these payments by Falcon as the trustee for the CDPF (or as trustee for the ADF),
- other than, possibly, pursuant to the Development Agreement.
79. We have been able to identify from ASIC records that Falcon was previously the sole shareholder of four of the SPVs upon their incorporation, namely:



- (a) 75 Port Douglas;
- (b) Augustine Terrace;
- (c) Red Hill Terraces (Operations): and
- (d) Red Hill Terraces,

however, it is not clear why Falcon was issued shares in these four SPVs but not any other of the SPVs, nor why Falcon is no longer a shareholder in those four SPVs.

80. It appears from ASIC's records that Falcon's shares in Red Hill Terraces and Red Hills Terraces Operations were transferred to Pure Development in February 2017. We do not know if Falcon received any consideration for transferring its shares in these SPVs to Pure Development or why it agreed to transfer its shares in these SPVs. Set out below is a table showing the dates on which Falcon held shares in the SPVs (according to ASIC's registers:

SPV	Date Falcon issued shares and proportion of shares held	Date/s Falcon transferred shares and proportion of shares transferred	New shareholder
75 Port Douglas	19 December 2018 (100%)	20 November 2019 (51%) 14 April 2021 (49%)	Malana Management Pty Ltd (51%)  Keystone (49%)
Augustine Terrace	7 May 2018 (100%)	30 June 2021 (100%)	Chiodo Corporation (100%)
Red Hill Terraces (Operations)	27 September 2016 (100%)	16 February 2017 (100%)	Pure Development (100%)
Red Hill Terraces	28 September 2016 (100%)	16 February 2017 (100%)	Pure Development (100%)

81. On 10 May 2019, CF Capital was incorporated. At incorporation, Paul Chiodo and Ilya Frolov were appointed directors and its shares were held by Mr Chiodo, Mr Frolov, First Guardian Holdings Pty Ltd (a related entity of Falcon) and Mr Selimaj. A copy of the current and historical records maintained by ASIC for CF Capital are at pages 857 to 863 of RAB-1.
82. We have also identified in Falcon's books and records a document named "*Funds Management Agreement*" between *inter alia* CF Capital (which had just been incorporated), Falcon and FGC dated 13 May 2019 (**Funds Management Agreement**) which refers to:
- (a) the 'First Guardian Low Density Fund' being renamed to the 'Chiodo Diversified Development Fund' (the "**CDDF**");

- (b) the Projects held by the SPVs as being “held within the CDDF”; and
- (c) the ADF transferring to the “CDDF” the project relating to the property held by 75 Port Douglas Road Pty Ltd.

A copy of the Funds Management Agreement is at pages **864 to 874** of **RAB-1**.

83. Based on my review of the books and records of Falcon, and other documents provided to me, to the best of my knowledge:

- (a) notwithstanding the terms of the Funds Management Agreement, there is not and has never been trust known as the "Chiodo Diversified Development Fund" or the “CDDF”;
- (b) references to the "First Guardian Low Density Fund" and the "First Guardian Low Density Real Estate Fund" refer to one and the same trust, namely the First Guardian Low Density Real Estate Fund established by the CDPF Trust Deed on 22 August 2016; and
- (c) that trust was renamed the "Chiodo Diversified Property Fund" (i.e. the CDPF) on 13 May 2019.

84. It is not clear what occurred in the period between May 2019, when the CDPF was renamed from the First Guardian Low Density Real Estate Development Fund to the CDPF, and April 2021 (when the Retirement Deed was executed). However, as part of our investigations we conducted public examinations of David Anderson, one of the directors of Falcon on the afternoon of 22 December 2025. He gave evidence, when asked about the change in name from First Guardian Low Density Real Estate Development Fund to Chiodo Diversified Property Fund, that:

*This was the – one of the first steps in a – in a planned transition to resign as trustee and hand over the trustee and the management function to Chiodo et al, with a subsequent view to initiate a redemption program and redeem our position over time upon completion of projects... but we were advised step 1, name change deed, step 2, retirement of trustee/appointment of new trustee, and then there was – there was another component or two I believe as well. But to answer your question, it was, yes, step 1 of a multi-step process to remove this from the – from the trusteeship of Falcon, and have our position transition into that of just a pure wholesale unit holder awaiting a redemption.*

85. He also gave evidence that, at the time of the change of name to CDPF, the unitholders were direct, wholesale investors (as this was prior to the establishment of the FGMF). A copy of the relevant pages of the transcript of the public examination of David Anderson on 19 December 2025 is at pages **875 to 876** of **RAB-1**.

86. A further public examination of Mr Anderson is scheduled to take place on 2 April 2026 (and a further examination of Mr Selimaj on 1 April 2026).
87. It appears that, in around April 2021, Falcon may have commenced a “roll over” process with the then retail/wholesale unitholders in the CDPF. This is based on an email we have identified in Falcon’s books and records from First Guardian Capital which appears to have been sent to the then unitholders of the CDPF on around 6 April 2021 (notwithstanding the body of the email refers to the notice being dated 6 April 2020) containing a “roll over” notice. The “roll over” notice appears to have been regarding “*changes relating to the restructure of the CDPF*”, and proposed that the unitholders transfer their units in the CDPF to Falcon itself and in return for units in the FGMF. A copy of the email containing the rollover notice is at pages **877** to **882** of **RAB-1**.
88. In April 2021, the Retirement Deed appears to have been executed which included terms that:
- (a) Falcon would “hand over” the CDPF to Keystone (Falcon would resign as trustee, Keystone be appointed as trustee and the trust assets of the CDPF would be transferred to Keystone);
  - (b) Falcon as trustee for the ADF would become the sole unitholder in the CDPF;
  - (c) Falcon as the trustee for the ADF would pay a further \$20 million into the CDPF, which we understand, from Anderson’s evidence during his examination, was on the basis that Falcon was told this was “*additional funding to complete all projects and then repay First Guardian / Falcon all the proceeds upon completion*”; and
  - (d) CF Capital and Chiodo Corporation would manage completion of all the projects, and upon completion of all projects and after payments of all third-party development costs, then balance of the proceeds of the sale and settlement of all the lots shall be paid to Falcon.
89. On 14 April 2021, Falcon’s remaining shares in 75 Port Douglas were transferred to Keystone (Falcon had previously, on 20 November 2019, transferred 51% of its shareholding to Malana Management Pty Ltd). A copy of the Form 484 relating to the transfer is exhibited at pages **883** to **885** of **RAB-1**. We do not know if Falcon received any consideration for transferring its shares in 75 Port Douglas to Keystone or why it agreed to transfer its shares.
90. From the Keystone Financial Position Report, it is our understanding that the SMF was constituted with Keystone appointed as responsible entity and trustee on 28 April 2021.

91. In May 2021, according to ASIC's records, the shares in CF Capital held by FGH and Selimaj were transferred to Mr Frolov such that he and Mr Chiodo became the only two shareholders.
92. It is our understanding from the Deed of Variation (exhibited at pages **381 to 388 of RAB-1**) that Keystone was appointed trustee of the CDPF on 11 June 2021. That same day, a representative of CF Capital appears to have sent an email to a representative of First Guardian Capital, asking for her to arrange the re-signing of an application form "as part of the handover of the CDPF". The email states:

*the name I listed on the application was 'Chiodo Diversified Property Fund'. While this is the current name, once the handover happens, it will be renamed 'Advantage Diversified Property Fund', which is what our Administrator knows it as.*

93. A copy of this email (**June 2021 email**), together with the ADPF application form which is signed on behalf of Falcon is at pages **886 to 896 of RAB-1**.
94. On 30 June 2021, Falcon's shares in Augustine Terrace were transferred to Chiodo Corporation Pty Ltd. A copy of the Form 484 relating to the transfer is exhibited at pages **897 to 899 of RAB-1**. We do not know if Falcon received any consideration for transferring its shares in Augustine Terrace to Chiodo Corporation or why its shares were transferred (in particular to Chiodo Corporation rather than Keystone), but given the timing it is likely that this occurred as part of the "transfer" of CDPF assets from Falcon (as outgoing trustee of the CDPF) in accordance with the Retirement Deed.
95. We have also identified a PDS dated 14 September 2021, which Keystone appears to have prepared for an offer of units in the Advantage Diversified Property Class (**ADPC**) of the SMF (**ADPC PDS**), which on page 5 states that its investment strategy is as follows:

*The Advantage Diversified Property Class will invest in units in the Chiodo Diversified Property Fund" The Underlying Fund is an Australian, unregistered open-ended unit trust that is currently offered to wholesale clients. Keystone Asset Management Ltd is the trustee of the Underlying Fund. The Underlying Fund gives effect to the investment strategy by investing in real property development projects via special purpose vehicles ('SPVs'). Each development project will be managed via a separate SPV that the investment manager of the Underlying Fund controls....*

96. We do not know whether the PDS was ultimately issued by Keystone. A copy of the ADPC PDS is at pages **900 to 932 of RAB-1**.
97. It is our understanding from the Keystone Financial Position Report that the ADPF was constituted with Keystone appointed as trustee on 18 October 2021. We also understand from the Keystone Financial Report that Keystone is the sole unitholder in the ADPF. Having regard to the June 2021 Email suggesting that the CDPF was going to be renamed



the ADPF, and the apparent overlap between the SPVs in which those funds both invested, it is not presently clear to us what the relationship is between the CDPF and ADPF: that is, whether the CDPF are in fact one and the same fund (with the CDPF having been renamed ADPF as contemplated in mid-2021), whether the CDPF assets (whatever they comprised at that time) were transferred to the ADPF, whether ADPF's assets are or include a unitholding in the CDPF, or something else.

98. We have identified payments made by Falcon (as the trustee for the ADF) in the period between April 2021 and February 2022 totalling \$18.65 million which we understand (as set out in further detail below) to have been made pursuant to the Retirement Deed. A spreadsheet of these payments showing dates, amount, payee account and payer account is at page 933.

Payment From	Recipient	Amount	Date of Payments	Paragraph Reference
Falcon ATF ADF	CF Capital	\$4,500,000	13 April 2021 to 11 June 2021	98(a)
Falcon ATF ADF	CF Capital	\$500,000	15 June 2021 (after Keystone appointed as trustee for CDPF)	98(b)
Falcon ATF ADF	Keystone ATF CDPF	\$9,550,000	22 July 2021 to 4 February 2022	98(c)(i)
First Guardian Trust	Keystone ATF CDPF	\$4,100,000	8 July 2021 to 23 December 2021	98(c)(ii)
<b>TOTAL</b>		<b>\$18,650,000</b>		

99. The spreadsheet shows that:
- (a) from 13 April 2021 to 11 June 2021, \$4.5 million was advanced by Falcon as the trustee of the ADF to CF Capital (prior to Keystone taking over as trustee of the CDPF pursuant to the Retirement Deed). We note that CF Capital was controlled by Mr Chiodo);
  - (b) \$500,000 was advanced by Falcon as the trustee of the ADF to CF Capital on 15 June 2021 (after Keystone was appointed trustee of the CDPF);
  - (c) \$13.65 million was advanced to Keystone as the trustee for the CDPF after it took over the trustee role in June 2021 comprising:
    - (i) \$9.55 million advanced from Falcon as the trustee for the ADF to Keystone as trustee for the CDPF; and




- (ii) \$4.1 million which was first advanced from Falcon as trustee for the ADF to First Guardian Investments Pty Ltd as trustee for the First Guardian Trust and then the same day from the First Guardian Trust to Keystone as trustee for the CDPF. We understand, based on Falcon's books and records, that it had to conduct these transfers this way because of a transaction limit; and
- (d) of the \$13.65 million advanced to Keystone as trustee of the CDPF, \$6.65 million was advanced after the ADPF was established on 18 October 2021.

A copy of some of the ADF and First Guardian Trust bank statements are at pages **934 to 1023** of **RAB-1**.

- 100. We understand based on documents located in Falcon's books and records that this \$18.65 million was part payment of the \$20 million required to be paid by Falcon to the CDPF under the Retirement Deed, although the rationale for this additional investment by Falcon into the CDPF is unclear.
- 101. Based on our investigations to date (which remain ongoing), we believe Falcon obtained more units in the CDPF in consideration for payments of the funds set out at paragraph 98 above. Despite our investigations, we have not completed a tracing exercise (and we understand that the Keystone Appointees have not completed a tracing exercise) as to where the \$18.65 million was applied after it was transferred from Falcon in its capacity as the trustee of the ADF to CF Capital and Keystone as trustee for the CDPF.
- 102. It appears that, based on letters from Thomson Geer (acting for Falcon) addressed to Keystone, on 18 March 2022, Falcon submitted a redemption notice for its entire unit balance in the CDPF (**Redemption Notice**). Keystone has not complied with the Redemption Notice other than to the extent of 8%. A copy of the letters from Thomson Geer are at pages **1024 to 1025** of **RAB-1**.
- 103. We understand from the Keystone Financial Position Report that:
  - (a) the ADPF and SMF both commenced operations on 1 April 2022; and
  - (b) the SMF holds all the units in the ADPF; and
  - (c) the investments of the ADPF were loan and convertible note facilities with the SPVs, which were originally entered into in March 2022 and were subsequently secured in February 2024.
- 104. We are not aware of whether units in the ADPF were ever offered by Keystone to third party investors or whether any parties other than Keystone ever held any units in the ADPF.



## F2. Status of the CDPF

105. From our investigations, which remain ongoing, it is not clear what (if any) activities Keystone conducted in its capacity as trustee for the CDPF once it took over that role from Falcon in June 2021, having regard to the fact that, it was, around that same time and shortly afterwards, in the process of establishing the SMF and the ADPF (as responsible entity / trustee of those funds).

106. I have identified, in Falcon's books and records:

- (a) a balance sheet for the Trustee for the CDPF as at 13 April 2021 (the day before the Retirement Deed was signed) which records non-current assets of almost \$64 million comprised of, amongst other things amounts recorded as "investments" in respect of the Projects, and an amount of over \$37 million recorded as "Other General Project investments to CF Capital. This is the best (and closest in time) information I have been able to identify in Falcon's books and records as to the value of the CDPF's assets as at the date of its transfer to Keystone in June 2021;
- (b) the CDPF's annual report for the year ended 30 June 2023 which records:
  - (i) as at 30 June 2023, the CDPF had just \$35,569 in cash and cash equivalents, but over \$78 million in "financial assets", which based on the notes to the financial statements in the report was comprised of "equity instruments" relating to the SPVs; and
  - (ii) as at 30 June 2022, the CDPF had just \$315 in assets but over \$87 million in "financial assets", which based on the notes to the financial statements in the report was comprised of "equity instruments" relating to the SPVs; and
  - (iii) no new units were issued in the CDPF in the period 1 July 2022 to 2023, but it paid over \$900,000 in management fees.

A copy of the balance sheet for the Trustee for the CDPF as at 13 April 2021 and the annual report for the CDPF for the year ended 30 June 2023 is at pages **1026** to **1046** of **RAB-1**.

107. An extract from the CDPF's annual report for the year ended 30 June 2023, from which the figures above were extracted, is as follows:



6. Financial Assets

	As at 30 June 2023	As at 30 June 2022
	\$	\$
<i>Equity instruments at fair value through other comprehensive income</i>		
<b>Non - Current</b>		
Investment Cost - 33 Davidson Port Douglas Pty Ltd	5,643,660	5,643,660
Fair Value - 33 Davidson Port Douglas Pty Ltd	1,980,867	2,428,652
Investment Cost - 75 Port Douglas Road Pty Ltd	22,438,533	22,438,533
Fair Value - 75 Port Douglas Road Pty Ltd	10,748,364	16,623,089
Investment Cost - Augustine Terrace Glenroy Pty Ltd	3,366,693	3,366,692
Fair Value - Augustine Terrace Glenroy Pty Ltd	(17,639)	139,899
Investment Cost - Nicholson Street Bentleigh Pty Ltd	5,004,144	5,004,144
Fair Value - Nicholson Street Bentleigh Pty Ltd	2,078,084	2,369,122
Investment Cost - Norwood Ponds (Land) Pty Ltd	18,256,115	18,256,115
Fair Value - Norwood Ponds (Land) Pty Ltd	(7,836,114)	(4,389,233)
Investment Cost - Red Hill Terrace (Land) Pty Ltd	2,187,311	2,454,888
Fair Value - Red Hill Terrace (Land) Pty Ltd	1,134,710	(223,403)
Investment Cost - Warrigal Road Ashburton Pty Ltd	13,874,817	13,874,816
Fair Value - Warrigal Road Ashburton Pty Ltd	(443,040)	(414,281)
<b>Total Financial Assets</b>	<b>78,416,505</b>	<b>87,572,693</b>

108. As can be seen, for each of the seven projects, there is an amount listed for 'Investment Cost', and an additional amount listed for 'Fair Value'. Under AASB 9, investments are initially recognised at cost – usually being the amounts paid towards the investment – and subsequently remeasured to fair value. The difference between cost and fair value goes to 'other comprehensive income'. Using that mode of reporting, the 'Fair Value' line is not the total fair value of the asset, but instead is the adjustment by way of incremental gain or loss representing the difference between the total fair value of the asset and the cost.
109. On this basis, it appears that Falcon was reporting that it had contributed funds towards each of the investments as follows:
- (a) 33 Davidson Port Douglas — \$5,643,660
  - (b) 75 Port Douglas Road — \$22,438,533
  - (c) Augustine Terrace Glenroy — \$3,366,693
  - (d) Nicholson Street Bentleigh — \$5,004,144
  - (e) Norwood Ponds — \$18,256,115
  - (f) Red Hill Terrace — \$2,187,311
  - (g) Warrigal Road Ashburton — \$13,874,817.
110. The total of these amounts is \$70,771,273. It is possible, therefore, that the amounts actually paid by Falcon as trustee of the CDPF towards the projects was much greater than the payments referred to in paragraphs 76, 77 and 98 above (which total \$39,271,947.05).




111. I also understand that, although the Keystone Appointees are winding up the SMF and the ADPF, they are not winding up the CDPF. From my review of the orders dated 27 August 2024 (made on the application of ASIC) appointing the Keystone Appointees as receivers and managers of the property of Keystone, the appointment is expressed to be “for the purposes of”:

- (a) identifying, collecting and securing the Property of Keystone held in any of its Relevant Capacities (which are limited to “its capacity as responsible entity of the SMF, its capacity as trustee for the ADPF and its capacity as trustee for the Quantum PE Fund”);
- (b) ascertaining the amount of the Investor Funds (defined as “monies provided to Keystone in its capacity as responsible entity of the SMF”) received by Keystone;
- (c) identifying any dealings with, payments of, distributions of or uses made of the Investor Funds by the First Defendant;
- (d) identifying any Property purchased or acquired, directly or indirectly, with Investor Funds; and
- (e) recovering Investor Funds.

A copy of the orders appointing the Keystone Appointees dated 27 August 2025 is at pages **1047 to 1053** of **RAB-1**.

112. Given the way those orders appear to work, I understand the Keystone Appointees’ role in respect of the CDPF is simply a “bare” appointment, as the scope of the *purpose* of the receivership to be conducted by the Keystone Appointees by the 27 August 2024 orders does not extend to the CDPF at all.

113. On 5 November 2025, Norton Rose Fulbright (the Keystone Appointees’ solicitors) sent a letter to King & Wood Mallesons (our solicitors otherwise than in our role as court-appointed contradictors) stating that:

10 *Our clients are continuing to undertake investigations in relation to Keystone’s role as trustee of the CDPF. Our clients have not received co-operation from Keystone’s former managers in conducting their investigation. Our clients have recently issued subpoenas for the bank accounts of entities which may have handled CDPF funds (including Project SPVs and Filippini associated entities). They are in the process of obtaining production from the subpoenas in preparation for progressing a funds tracing analysis.*

11 *Consequently, our clients are not yet in a position to meaningfully respond to your clients’ queries regarding the uses of payments received from Falcon Capital.*

A copy of that letter is at pages **1054 to 1057** of **RAB-1**.



114. I understand that there has not been any substantive update in respect of the Keystone Appointees' investigations into the CDPF from the position set out in the 5 November 2025 letter, and that a dispute has since arisen in respect of the subpoenaed documents produced by the banks such that the Keystone Receivers have not yet obtained those documents.

### **F3. Further investigations required**

115. Based on our understanding of the factual background referred to at paragraphs 67 to 114 above, it is our view that further investigations need to be conducted by the Keystone Appointees (including in conjunction with the Falcon Liquidators) to determine whether Falcon may have a claim against Keystone in its capacity as responsible entity / trustee of the SMF for which Falcon may have recourse to the assets of the SMF (via subrogation to Keystone's right of indemnity). This is on the basis that:

- (a) Keystone was acting in multiple capacities including as trustee of the CDPF, ADPF and SMF simultaneously;
- (b) it appears, at least at some point, the CDPF was to be renamed (or rebranded) to the ADPF, and the difference between the two funds is unclear particularly in circumstances where:
  - (i) the ADPF was established shortly after the CDPF was "handed over" to Keystone;
  - (ii) no substantive investigations have yet occurred into the assets and activities of the CDPF following its transition from Falcon to Keystone; and
  - (iii) the principal investments of both funds appear to have been the same (namely, the SPVs and Projects).
- (c) pursuant to the Retirement Deed agreed between, inter alia, Keystone and Falcon, Falcon advanced a further \$18.65 million (including \$13.65 million paid directly to Keystone as trustee for the CDPF after it became trustee of the CDPF), which we understand was paid on the basis that it would be applied to complete the Projects and see a return to Falcon. However, it has not yet been determined (because the necessary investigations are yet to be conducted) where those funds ultimately went and who received the benefit of those funds (including the possibility that it was the SMF);
- (d) Falcon may have a claim against Keystone in respect of:



- (i) the assets of the CDPF that were handed over to Keystone as part of the Retirement Deed, depending upon what has occurred with those assets; and
  - (ii) that \$18.65 million which we understand Falcon paid under the terms of the Retirement Deed; and
- (e) in any event it is our understanding that:
- (i) the CDPF is not presently being wound up;
  - (ii) no substantive investigations into the affairs of the CDPF (including its financial position and/or any relationship to the ADPF) have been commenced by the Keystone Appointees, including whether any of the \$18.65 million advanced by Falcon pursuant to the Retirement Deed was applied to pay expenses of the SMF (which was, in the same period, in the process of being constituted, registered and established). We note in this regard that the SMF 'other outflows' analysis in the Keystone Financial Position Report does not seem to account for the payment of any legal fees, marketing fees, accounting/auditing fees, administration services fees (noting those services were provided by Unity Fund Services as set out at 3.15 of the Keystone Financial Position Report report), registry services (noting those services were provided by One Registry Services as per 3.17 of the report), or custodian services (provided by Certane CT as per 3.21 of the report) incurred by Keystone as trustee of the SMF.

116. Until proper investigations have been conducted in the ordinary course of the winding up of an entity wearing as many hats as Keystone was, and in particular:

- (a) investigations into, and the winding up of, the CDPF; and
- (b) a tracing exercise conducted to identify whether any assets of the CDPF have been realised and/or any funds from Falcon paid to CF Capital and Keystone ATF the CDPF have been applied (in particular whether any amounts have been applied for the benefit of the SMF),

we consider that it ought not be determined, and the Interim Distribution as currently proposed ought not proceed on the basis, that Falcon has no right to claim against the assets of the SMF (including the Bell Potter Proceeds by reason of Keystone's right of indemnity).

117. For the reasons set out above, we consider that the appropriate and prudent approach is

- (a) for the Keystone Appointees to take steps to wind up the CDPF; and



(b) to conduct investigations into the affairs and financial position of the CDPF (in the same manner in which they have in respect of the SMF and the ADPF in the Keystone Financial Position Report) and report to the court regarding the same, so as to determine, to the extent possible, what has occurred in respect of the CDPF and whether Falcon has any claim as a trust creditor of the SMF.

118. If the Interim Distribution is to proceed without those steps having been taken, we seek to have a further \$82,497,115.65, comprising of:

- (a) the sum of \$63,847,115.65, being the apparent value of the assets of the CDPF as at the date of the Retirement Deed; and
- (b) the sum of \$18.65 million, being the amounts paid by Falcon to (or at the direction of) Keystone as trustee for the CDPF following and pursuant to the Retirement Deed,

from the Appointees' proposed distribution to account for the possibility of Falcon having a claim against Keystone as the trustee for the SMF of (at least) that amount, and recourse to the assets of the SMF via subrogation to Keystone's right of indemnity.

#### **G. POTENTIAL PREJUDICE TO FALCON**

119. If the interim distribution is made before further investigations have been conducted in relation to the matters set out above, Falcon may be prejudiced if, after those investigations have been conducted, it is found that Falcon has a claim to the assets of the SMF and there are no funds available to meet Falcon's claim.

120. As set out above, Falcon is the responsible entity for the FGMF. Net of redemptions, FGMF raised at least \$446 million from its investors, including 'direct' investors, who invested their superannuation funds into the FGMF.

#### **H. CONCLUSION**

121. For the reasons set out in this affidavit, it is my view that it is necessary for further investigations to be conducted by the Keystone Appointees and ourselves in relation to the CDPF. It is therefore appropriate, in our view, for the application to be adjourned to enable this investigation to take place. If the application is not adjourned, in our view a further \$82,497,115.65 should be withheld from the funds realised from the Bell Potter Securities to ensure the funds are available if it is ultimately found that Falcon has a claim to the assets of the SMF in that amount. If, once those investigations have occurred, it is conclusively determined that Falcon has no such claim, then those funds can be distributed at that time.



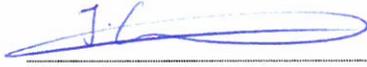
122. The contents of this affidavit are true and correct and I make it known that a person making a false affidavit may be prosecuted for the offence of perjury.

Affirmed by the deponent  
at Melbourne  
in the state of Victoria  
on 16 February 2026  
Before me:

)  
)  
)  
)  
)



Signature of Ross Andrew Blakeley



Signature of witness

JESSICA CELESTE GORDON  
Level 6, 530 Collins Street  
Melbourne, Victoria, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

Rule 29.02(1)

## Annexure Certificate

Federal Court of Australia

No. VID536/2024

District Registry: Victoria

Division: Corporations

### AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

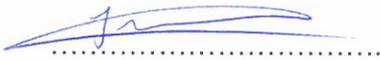
Plaintiff

**KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED)  
(IN LIQUIDATION) (ACN 612 443 008) and another named in the schedule**

Defendants

This is the annexure marked "**RAB-1**" produced and shown to **ROSS ANDREW BLAKELEY** at the time of affirming his affidavit on 16 February 2026.

before me:



JESSICA CELESTE GORDON  
Level 6, 530 Collins Street  
Melbourne, Victoria, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

**RAB-1**  
**Bundle of Documents**