

NOTICE OF FILING

Details 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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Form 59
Rule 29.02(1)

Affidavit

No VID536 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

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

Defendants

Affidavit of: **Jason Mark Tracy**
Address: Level 25, 20 Bond Street, Sydney NSW 2000
Occupation: Registered Liquidator
Date: 29 January 2026

I, **JASON MARK TRACY**, of Level 25, 20 Bond Street, Sydney, registered liquidator, affirm:

A INTRODUCTION

- 1 I am a chartered accountant, registered liquidator and a managing director of Alvarez & Marsal Australia (**A&M**).
- 2 I make this affidavit in further support of paragraphs 4 and 5 of our amended interlocutory process filed 12 December 2025 (**Amended IP**), which amended an initial interlocutory process filed 7 November 2025 (**Initial IP**).
- 3 I have affirmed fifteen other affidavits in this proceeding. I refer to my earlier affidavits, including my twelfth affidavit affirmed on 7 November 2025 in support of the Initial IP (**Twelfth Affidavit**).

Filed on behalf of (name & role of party)	Jason Tracy and Glen Kanevsky, court-appointed receivers and managers, liquidators
Prepared by (name of person/lawyer)	Kim MacKay and Natasha Toholka
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- 4 In this affidavit, I adopt the defined terms in my Twelfth Affidavit.
- 5 References in this affidavit to “the Receivers”, “we”, “us”, “our” or “ourselves” are references to Mr Kanevsky, Ms Palaghia and me as appointees under the orders made by this Court on 26 June 2024, 27 August 2024, 5 September 2024 and 31 March 2025 as administrators and liquidators of Keystone from time to time.
- 6 Except where expressly stated, I make this affidavit from my own knowledge and experience, including based on my review of the books and records of Keystone, the Receivers’ investigations of Keystone’s affairs and information conveyed to me by our team and advisors. Where I depose to matters on the basis of information and belief, I believe those matters to be true.
- 7 In making this affidavit I do not intend to waive any privilege. To the extent that any part of this affidavit constitutes a waiver of privilege, I withdraw that part of the affidavit and we do not rely on it.
- 8 Produced and shown to me at the time of affirming this affidavit is a bundle of documents which I refer to in this affidavit marked “JMT-19”.

B UPDATES SINCE MY TWELFTH AFFIDAVIT

B1 Liquidation of Bell Potter Securities

- 9 Following the Court’s order dated 19 December 2025, we instructed Bell Potter to liquidate the Bell Potter Securities. All the Bell Potter Securities have now been sold and the below amounts (net of brokerage fees of 0.2% plus GST) (**Bell Potter Proceeds**) have been deposited in interest-bearing accounts for the respective SMF Classes.

Conservative class	\$29,811,886.42
Balanced class	\$59,525,815.98
Growth class	\$96,930,383.10
High growth class	\$9,622,879.21
ADPC	\$Nil
Total	\$195,890,964.71

- 10 Following the above realisations, and including funds already in the accounts for the Classes that may be receiving the Interim Distribution, being the Conservative,

Balanced, Growth, High growth Classes (**Qualifying Classes**), the cash at bank for each Qualifying Class as at 27 January 2026 is:

Conservative class	\$30,190,867.52
Balanced class	\$60,266,490.00
Growth class	\$98,619,957.96
High growth class	\$10,414,903.93
Total	\$199,492,219.41

B2 Position of ETSL

- 11 I refer to paragraphs 40 and 84 of my Twelfth Affidavit, where I referred to ETSL's support for the making of an Interim Distribution.
- 12 Since my Twelfth Affidavit, ETSL has informed us that it considers that it may have a conflict of interest in relation to the Interim Distribution arising from the interests of members of its superannuation funds in the First Guardian Master Fund (**FGMF**) and the appointment of the liquidators of the responsible entity of the FGMF as contradictors to this application.
- 13 On 28 January 2026, by email from its solicitors Quinn Emanuel to NRFA and a letter, ETSL modified its position in relation to the Interim Distribution to one of conditional support in the following terms:

"In light of the potential conflict between ETSL's fiduciary duties to its members with interests in Shield and those with interests in FGMF that arises from Falcon Capital's position, and noting that some of ETSL's members may be interested in both funds, ETSL restates its position in relation to the proposed interim distribution as follows:

- *ETSL considers that the interim distribution would be in the interests of its members insofar as they have invested in Shield through ETSL's platforms, and*



may go some way to alleviating the very great hardship being suffered by some of those members; and

• *ETSL continues to support the making of an interim distribution provided that it is not established by Falcon that an interim distribution would prejudice the interests of FGMF."*

A copy of a letter from ETSL to NRFA and Quinn Emanuel's covering letter is at **pages 46 to 47 of JMT-19.**

- 14 I consider that this adjustment to ETSL's position does not alter the primary rationale for the Interim Distribution, being to reduce hardship being experienced by underlying investors in the SMF.

C RISK OF PREJUDICE TO CREDITORS ARISING FROM AN INTERIM DISTRIBUTION

- 15 In this section of my affidavit, I give the Court further information in relation to the risk of prejudice to creditors from an Interim Distribution.

C1 Subordination of unitholder claims

- 16 I refer to paragraphs 83 to 90 of my Twelfth Affidavit in which I stated that the Receivers had requested that BSCL, MIML, MFL, ETSL, TTCL and HCNL, comprising all the unitholders in the Classes which hold the Bell Potter Proceeds (which are the Qualifying Classes), enter short form deeds irrevocably undertaking not to claim a dividend or prove in competition with Keystone's other creditors in respect of any Unitholder Damages Claims payable from SMF property.

- 17 As at the date of this affidavit:

- (a) an advanced draft of the deed is being discussed with BSCL, MIML and MFL (**Macquarie Parties**);

A copy of the proposed deed is at **pages 48 to 55 of JMT-19.**

- (b) draft deeds have been proposed to ETSL, TTCL and HCNL;
- (c) ETSL has confirmed that it remains agreeable in-principle to such a deed notwithstanding the matters at paragraph 13 above;
- (d) NRFA have been contacted by TTCL indicating that we will shortly receive their underlying client's comments on the deed; and

A copy of an email from the TTCL is at **pages 56 to 59 of JMT-19.**

- (e) NRFA have been informed by representatives of HCNL that their underlying client has not yet provided comments on the deed.

A copy of a letter from the HCNL is at **page 60 of JMT-19**.

- 18 As at the date of this affidavit, we are continuing to engage with the Macquarie Parties and ETSL regarding the execution of deed polls. It is our expectation that deed polls will be executed by at least the Macquarie Parties and ETSL, who together hold 97% of the units in the Qualifying Classes. We are currently unable to make this assumption for TTCL and HCNL and I discuss this further at paragraph 124 to 125 below. We are also continuing to seek to obtain substantive responses from TTCL and HCNL. We will update the Court and the contradictor prior to the final hearing.
- 19 We did not seek similar subordination undertakings from unitholders in the ADPC Class of the SMF. The ADPC Class does not hold any Bell Potter Proceeds. Under clause 5.5 of the Constitution, it therefore has no interest in the Bell Potter Proceeds. As described in my Twelfth Affidavit, members of the ADPC Class will not receive any share of the Interim Distribution.
- 20 In the event that unitholders in the ADPC Class established damages claims against Keystone that were characterised as SMF trust liabilities, I consider that I would have to allocate those amounts as "Class Expenses" of the ADPC Class under clause 20.20 of the SMF Constitution, which provides as follows:

"Subject to the Applicable Standards, where a Class of Units is on issue, the Responsible Entity, acting reasonably, may decide that all or part of an expense is a Class Expense, and if no decision is made under this clause, any expense under clause 20 must be apportioned to all Units on an equal basis."

- 21 Whilst I note that clause 20.20 is not phrased in mandatory terms, I consider that it would be inconsistent with Keystone's duty under section 601FC(1)(d) to treat different classes fairly to pay damages claimed by members of the ADPF Class from the property of other Classes.

C2 Potential claims by Underlying Investors in the SMF

- 22 I refer to paragraphs 101 to 108 of my Twelfth Affidavit where I describe the Receivers' consideration of the risk that any claims by the **"Underlying Investors"** who invested in the SMF indirectly through a platform provided by MIML or ETSL (**Underlying Investor Claims**) might be entitled to have those claims paid from SMF trust assets through subrogation to Keystone's right of indemnity from trust assets. If such claims did have

access to Keystone's right of indemnity, the risk of prejudice to Keystone's creditors would be greater because we do not propose to retain any Bell Potter Proceeds to pay Underlying Investor Claims (for the reasons at paragraphs 82 and 96 of my Twelfth Affidavit).

- 23 On 9 December 2025, Mills Oakley, the solicitors for the contradictors, sent NRFA a letter which posited that Investor Damages Claim may have access to Keystone's right of indemnity and referred to the decision of Justice Button in *Morgan, re Traditional Values Management Ltd (in liq)* [2024] FCA 74.

A copy of Mills Oakley's letter is at pages 5 to 10 of exhibit ACB-1 to Ms Borland's affidavit affirmed on 10 December 2025.

- 24 We have not received any Investor Damages Claims which articulate the basis on which the claim is made. As stated at paragraph 91(ii) of my Twelfth Affidavit, we have received four proofs of debt from Underlying Investors and one proof from a direct investor in the ADPC Class that appear to assert a claim in the nature of damages, but these are all limited to very brief statements that Keystone is liable for forms of compensation for loss, such as interest or lost investment growth.

Redacted copies of the proofs of debt containing damages claims are at **pages 61 to 66 of JMT-19**.

- 25 Keystone has also been notified of a number of complaints made against it to the Australian Financial Complaints Authority (**AFCA**), some of which also include brief statements that Keystone should provide compensation to the complainant.

Copies of redacted AFCA complaint notices are at **pages 67 to 97 of JMT-19**.

- 26 In the absence of any case theory having been put to Keystone in respect of Underlying Investor Claims, it is difficult to anticipate the nature or total quantum of potential Underlying Investor Claims. However, for the purposes of this application, the Receivers assume that Underlying Investors may claim damages against Keystone reflecting their total losses as a result of investing in the SMF. As best as the Receivers can ascertain presently:

- (a) the Underlying Investor Claims would not be made by unitholders – namely, BCSL, ETSL, HCNL and TTCL – but rather by underlying investors (noting any damages claims by unitholders in the Qualifying Classes will likely be largely subject to the subordination undertakings discussed at paragraph 18), so Underlying Investor Claims would not be based on causes of action which are

only available to a member of a registered scheme or a beneficiary of a trust, for example section 601MA of the Corporations Act;

- (b) however, Underlying Investor Claims could be made based on defective product disclosure statements (**PDSs**) for the Qualifying Classes or other misleading or deceptive conduct by Keystone under provisions including section 1022B (or alternatively sections 953B or 1041H) of the Corporations Act and sections 12DA and 12DF of the ASIC Act;
- (c) Keystone issued several iterations of PDSs for the Qualifying Classes between early 2022 and early 2024 (being the period in which members of MIML's or ETSL's investment services were able to invest in units in the SMF);

Copies of supplementary PDSs for the Qualifying Classes dated 3 November 2021 are at **pages 98 to 225 of JMT-19**.

Copies of supplementary PDSs for the Qualifying Classes dated 4 April 2022 are at **pages 226 to 357 of JMT-19**.

Copies of PDSs for the Qualifying Classes dated 1 July 2023 are at **pages 358 to 681 of JMT-19**.

Copies of PDSs for the Qualifying Classes dated 21 November 2023 are at **pages 682 to 1001 of JMT-19**.

- (d) without making any admissions, there are at least some statements and omissions in the above PDSs that may be misleading or constitute significant non-disclosures, for example:
 - (i) as described at paragraphs 344 to 387 of the affidavit in this proceeding of Andrea Perrywood affirmed on 17 June 2024 (**Perrywood Affidavit**), the target asset class allocations in the PDSs do not accurately reflect the proportion of the Qualifying Classes' assets that were invested in the ADPF;
 - (ii) statements in the PDSs that Keystone's arrangements with related entities in relation to the Classes' assets are on arm's-length commercial terms (for example on **pages 380, 461, 542 and 623 of JMT-19**). These statements appear to be inconsistent with arrangements in the ADPF where, as described further below:

- (A) as at 30 November 2023 (being the date in the ADPF's accounts nearest to the date of the most recent PDSs) Keystone as trustee of the ADPF had advanced approximately \$212 million to related-party SPVs under loans to fund development projects without taking security until February 2024;
- (B) the placing of ADPF-sourced funds in accounts of Chiodo Corporation Pty Ltd (**Chiodo Corporation**) and the subsequent use of those funds was, at best, highly irregular;
- (e) as described at paragraphs 347 and 348 of the Perrywood Affidavit, the investment manager of the SMF, CF Capital Investments Pty Ltd (**CF Capital**), prepared monthly fact sheets for the Qualifying Classes. The text of the monthly fact sheets indicates that they were prepared for external distribution. The monthly fact sheets assert percentage increases in the value of the SMF's units and state the proportion of the SMF's assets comprised by interests in the ADPF. In light of the matters in our financial position reports on the SMF and ADPF dated 27 July 2024 and 25 September 2024 (the **Financial Position Report** and **Further Report** respectively), and without making admissions, it appears that the representations in the monthly fact sheets regarding the value of units in the SMF may have overvalued the SMF's units in the ADPF where a large share of the funds advanced to the ADPF had been dissipated.

Copies of examples of monthly fact sheets are at **pages 1002 to 1011** of **JMT-19**

A copy of the Financial Position Report is in exhibit "Confidential JMT-2" to my affidavit dated 12 August 2024.

A copy of our Further Report is at tab 1 of exhibit "Confidential JMT-8" to my affidavit dated 25 March 2025.

- (f) I note that, whilst for the purposes of this application I am assuming that Underlying Investors may have significant claims against Keystone, I do not know:
 - (i) the extent to which any Underlying Investors relied on information from Keystone when investing in the SMF; or
 - (ii) other claimant-specific factual matters that would affect the prospects and quantum of claims by Underlying Investors.



- 27 Notwithstanding our assumption that Underlying Investors may have significant claims against Keystone, we seek directions to make an Interim Distribution on the basis that Keystone would not be entitled to claim an indemnity from SMF trust assets (and therefore, those claims would not have access to Keystone's indemnity), because the claims are likely to involve conduct by Keystone in conflict of interest (or related breaches) and / or in bad faith. I explain our reasons for this view below.

Likelihood that Underlying Investors' claims would arise from ADPF losses

- 28 In the event that Underlying Investors have damages claims against Keystone, it is likely that claimants' losses would principally arise from Keystone's conduct in relation to the ADPF.
- 29 The largest losses from the SMF's investments are likely to have been incurred with respect to its units in the ADPF. As shown in the summary table on page 327 of JMT-14, the SMF invested approximately \$305 million in the ADPF where the net amount invested in the SMF by unitholders was approximately \$482 million. Our current view is that, unless the Receivers are successful in litigation to relation to the ADPF, the amount to be recovered from the ADPF would be limited to returns from the ADPF Developments (defined below) and could be below the low-case recovery estimate of the \$20,566,345 in our significant event notice to unitholders dated 22 November 2024 (at page 333 of JMT-14).
- 30 In contrast to the units in the ADPF, the overall recovery from the SMF's other assets is likely to be comparatively good. These recoveries include amounts received from the liquidation of the Bell Potter Securities following the 19 December 2025 orders in the amount of \$195,890,964.71.
- 31 The SMF invested a total of approximately \$196 million in non-ADPF assets and we expect to realise approximately \$200 million in respect of non-ADPF SMF assets. This is driven by the recent liquidation of the Bell Potter Securities for \$198 million, with the SMF's other investments likely to result in losses.

Overview of the ADPF

- 32 Between 6 April 2022 and 31 May 2024, Keystone in its capacity as responsible entity for the SMF transferred \$304,948,416 to accounts held by Keystone in its capacity as trustee of the ADPF for the purchase of units in the ADPF for the benefit of the SMF. The SMF held all of the units in the ADPF.



- 33 The ADPF is governed by a trust deed dated 18 October 2021 (**ADPF Trust Deed**). A copy of the trust deed is at **pages 1012 to 1057 of JMT-19**. Clause 3.1 of the trust deed provides:

"The Investment Strategy for the Trust will be the strategy determined by the trustee and notified to Unitholders (Investment Strategy) and if a Disclosure Document has been issued to a Unitholder, the Investment Strategy will be that set out in the Disclosure Document or any replacement Disclosure Document thereof. The trustee may vary the Investment Strategy from time to time in accordance with the Operating Standards."

- 34 On 1 March 2022, Keystone issued an information memorandum for the offer of units in the ADPF which is a Disclosure Document for the purpose of clause 3.1 of the ADPF Trust Deed. A copy of the information memorandum is at **pages 1058 to 1081 of JMT-19**. Clause 5.2 of the information memorandum provides:

"The Investment Manager, in cooperation with the selected developer will identify, assess and develop projects within Australia. Importantly, the Advantage Diversified Property Fund will be exposed predominately to investments in residential, commercial and accommodation property developments which are illiquid and not actively traded."

- 35 An extract from the ADPF's draft management accounts stating loan balances in respect of each ADPF Development for each month end between 31 July 2022 and 31 May 2024 is at **page 1082 of JMT-19 (ADPF Management Accounts)**.
- 36 Between 11 April 2022 and 14 June 2024, Keystone in its capacity as trustee of the ADPF made payments of at least \$305,691,108 to Chiodo Corporation. Our investigations indicate that direct transfers from the ADPF constituted at least 88.6% of all deposits into Chiodo Corporation's accounts. A further 9.2% of deposits into Chiodo Corporation's accounts were from the ATO, and these may also relate to ADPF activities.
- 37 Of the amounts transferred to Chiodo Corporation, at least \$289,672,803.36 (being the figure as at 31 May 2024 in the ADPF Management Accounts) were recorded in the ADPF's accounting record as amounts drawn under loans for the purpose of funding property development projects (or in the case of sub-paragraph (k) below, a property acquisition) (**ADPF Developments**) by each of the following entities (**SPVs**):

- (a) 75 Port Douglas Road Pty Ltd (receivers and managers appointed) (**75 Port Douglas**);

- (b) 33 Davidson Port Douglas Pty Ltd (receivers and managers appointed) (**33 Davidson**);
- (c) Augustine Terrace Glenroy Pty Ltd (receivers and managers appointed) (**Augustine Terrace**);
- (d) Nicholson Street Bentleigh Pty Ltd (receivers and managers appointed) (**Nicholson Street Bentleigh**);
- (e) Norwood Ponds (Land) Pty Ltd (controllers appointed) (**Norwood Ponds**);
- (f) Warrigal Road Ashburton Pty Ltd (controllers appointed) (**Warrigal Road**); and
- (g) Red Hill Terraces (Land) Pty Ltd (receivers and managers appointed) (**Red Hill Terraces**);
- (h) Luxurious Resort (Fiji) Pte Limited (a Fiji company) (**Luxurious Resort**);
- (i) Chiodo K'Gari Pty Ltd (**Chiodo K'Gari**);
- (j) 417 Bellmere Road Pty Ltd (**Bellmere**); and
- (k) Chiodo Corporation, in respect of a proposal to acquire a hotel in Venice (**Proposed Venice Transaction**).

See the ADPF Management Accounts.

- 38 Except for the Proposed Venice Transaction, most of the loan and security documents for the ADPF Developments are in similar forms. The initial form of the loan agreements provided for interest to be payable on completion of the development projects, and this was amended in February 2024 in a manner indicating interest may be repayable on demand. It does not appear that any interest was collected, and the ADPF Developments were not generating cash from which interest could have been paid.

Copies of the suite of loan and security documents for 75 Port Douglas are at **pages 1083 to 1275 of JMT-19**.

- 39 Despite the very large amounts being advanced under the loans, no security was taken by Keystone in respect of the loans until February 2024. Further, the lending occurred while third parties held first-ranking security over the land subject to the development projects for the below SPVs:

- (a) Norwood Ponds: mortgage registered 17 July 2020;

(b) Warrigal Road: mortgages registered 19 November 2021; and

(c) Nicholson Street: mortgages registered 27 May 2022.

PPSR searches and title searches of the development properties for the Australian SPVs (except Chiodo Corporation) are at **pages 1276 to 1345 of JMT-19**.

Role of Paul Chiodo and Ilya Frolov

40 Paul Chiodo:

- (a) was a director of Keystone between 27 April 2020 and 27 May 2024 and was described in the Qualifying Class PDSs as an executive director;
- (b) has been an indirect 50% shareholder of Keystone (through Malana Management Pty Ltd (**Malana**) and Pure Development & Project Management Pty Ltd (**Pure Development**)) at all times during the SMF's operation;
- (c) was a director of CF Capital, which was appointed by Keystone as investment manager for the SMF, between 10 May 2019 and 17 June 2024, and was described in Qualifying Class PDSs as its investment director;
- (d) is the sole director and indirectly the sole shareholder in Chiodo Corporation;
- (e) was the sole director of each SPV except:
 - (i) Luxurious Resort, where he was a director;
 - (ii) Bellmere, where a Billal Elehlou was sole director;
- (f) is a shareholder (either directly or indirectly) in the SPVs except Luxurious Resort as follows:

SPV	Shareholder(s) of SPV	Paul Chiodo's interest in the SPV
33 Davidson	100% Chiodo Corporation	The sole shareholder in Chiodo Corporation is Pure Development, of which Paul Chiodo is the sole shareholder.
75 Port Douglas	51% Malana 49% Keystone	The sole shareholder in Keystone is Malana. Pure Development is a 50% shareholder in Malana.

		Paul Chiodo is the sole shareholder in Pure Development.
Augustine Terrace	100% Chiodo Corporation	The sole shareholder in Chiodo Corporation is Pure Development, of which Paul Chiodo is the sole shareholder.
Bellmere	20% Chiodo Holdings Pty Ltd 20% LLR Pty Ltd 20% AANF Pty Ltd 20% ASM Family Holdings Pty Ltd 20% Aleksim Investments Pty Ltd	The sole shareholder of Chiodo Holdings Pty Ltd is Paul Chiodo.
Chiodo K'Gari	100% Malana	Pure Development is a 50% shareholder in Malana. Paul Chiodo is the sole shareholder in Pure Development.
Nicholson Street Bentleigh	100% Pure Development	Paul Chiodo is the sole shareholder in Pure Development.
Norwood Ponds	100% Pure Development	Paul Chiodo is the sole shareholder in Pure Development.
Red Hill Terraces	100% Pure Development	Paul Chiodo is the sole shareholder in Pure Development.
Warrigal Road	100% Pure Development	Paul Chiodo is the sole shareholder in Pure Development.

An ASIC extract Keystone is at **pages 1346 to 1380 of JMT-19.**

An ASIC extract for CF Capital is at **pages 1381 to 1389 of JMT-19.**

An ASIC extract for Chiodo Corporation is at **pages 1390 to 1412 of JMT-19.**

An ASIC extract for Chiodo Holdings Pty Ltd is at **pages 1413 to 1434 of JMT-19.**

An ASIC extract for Malana is at **pages 1435 to 1453 of JMT-19.**

An ASIC extract for Pure Development is at **pages 1454 to 1472 of JMT-19;**

An ASIC extract for each SPV is at **pages 1473 to 1596 of JMT-19.**

41 Ilya Frolov:

- (a) was a director of Keystone between 27 April 2020 and 29 December 2023 and was described in the Qualifying Class PDSs as an executive director;
- (b) has been an indirect 50% shareholder of Keystone (through Malana and Malik Investments Pty Ltd (**Malik**)) at all times during the SMF's operation;
- (c) was a director of CF Capital between 10 May 2019 and 29 December 2023 and was described in PDSs as CF Capital's executive director;

An ASIC extract for Malik is at **pages 1597 to 1617 of JMT-19.**

42 During the operation of the SMF until Mr Frolov ceased to be a director of Keystone and CF Capital:

- (a) Mr Chiodo and Mr Frolov were the only directors of CF Capital;
- (b) Mr Chiodo, Mr Frolov and Mark Yorston were the only directors of Keystone. Mr Yorston is described in the Qualifying Class PDSs as a non-executive director.

Keystone's breaches of duty in conduct of the ADPF

43 Our investigations have shown that a significant portion of the funds invested by the SMF in the ADPF were improperly diverted to non-development purposes or other non-investment purposes by Chiodo Corporation:

- (a) approximately \$158 million was paid to accounts held by Robert Filippini and City Built Pty Ltd (**City Built**) (of which Mr Filippini was the sole director and shareholder) where:
 - (i) there are no written contracts between Chiodo Corporation and City Built or Robert Filippini with respect to any of the ADPF Developments;



- (ii) between 17 January 2022 and 28 May 2024, City Built issued invoices to Chiodo Corporation which referred to construction costs and expenses purportedly incurred in connection with the ADPF Developments and other developments with a purported total value of \$142,798,772.90 (including GST);
- (iii) Robert Filippini did not hold a building licence until 29 May 2024;
- (iv) our investigations, including through expert reports valuing the work done on the ADPF Developments, indicate that the value of construction work undertaken on the ADPF Developments was approximately as follows:
 - (A) 33 Davidson: \$3,604,795 excluding GST;
 - (B) Norwood Ponds: \$7,542,000 excluding GST;
 - (C) Warrigal Road: \$1,525,000 excluding GST;
 - (D) Nicholson Street: \$4,248,000 excluding GST;
 - (E) Augustine Terrace: \$1,099,000 excluding GST;
 - (F) Red Hill Terrace: no construction work from 21 January 2022;
 - (G) 75 Port Douglas: no construction work from 23 January 2022;
 - (H) Luxurious Resort: no construction work undertaken;
 - (I) Chiodo K'Gari: no construction work undertaken;
 - (J) Proposed Venice Transaction: no construction work;
- (b) at least \$65 million was paid to lead generators in the business of sourcing new investors;
- (c) at least \$7.5 million was paid towards personal expenses of Mr Chiodo or operating expenses of Chiodo Corporation;
- (d) at least \$15.7 million was paid to other entities controlled by Mr Chiodo and Mr Frolov;
- (e) at least \$4.8 million was paid towards celebrity appearance fees, agents fees, travel costs and operating costs by 24Calibre Pty Ltd (**24Calibre**). 24Calibre is a



related entry of Keystone through Louie Kortesis, who was a common director of 24Calibre from when he became a Keystone director on 29 December 2023.

- 44 We (as Receivers) have caused Keystone as trustee of the SMF to commence proceedings:
- (a) against Robert Filippini and City Built, their related parties, Chiodo Corporation and Mr Chiodo with respect to the payments described at paragraph 43 above (**Filippini Proceeding**), claiming approximately \$158 million including making proprietary claims over the traceable proceeds of those funds, including between \$110-160 million in bank accounts and real property which are, along with other assets, subject to freezing orders; and
 - (b) against Mr Frolov and related parties in relation to payments to Mr Chiodo and Mr Frolov's related entities at paragraph 43(d) above (**Frolov Proceeding**).
- 45 In the Filippini Proceeding and Frolov Proceeding, we allege that Keystone breached its fiduciary duties as responsible entity of the SMF and trustee of the scheme property to avoid conflicts of interest and duty and not improperly use its position to gain an advantage for itself or cause detriment to the members of the SMF by investing SMF funds in the ADPF and acquiescing in the payments from the ADPF to the Chiodo Corporation. The respondents to those claims have filed defences and the proceedings are ongoing.

A copy of the further amended statement of claim in proceeding VID978 of 2024 is at Tab 17 of JMT-14.

A copy of the latest defences in proceeding VID978 of 2024 are at **pages 1618 to 1678 of JMT-19** (noting that the eight and ninth respondents did not file defences in response to the further amended statement of claim).

A copy of replies in proceeding VID978 of 2024 are at **pages 1679 to 1696 of JMT-19**.

A copy of the further amended statement of claim in proceeding VID1330 of 2024 is at Tab 18 of JMT-14.

A copy of the latest defences in proceeding VID1330 of 2024 are at **pages 1697 to 1777 of JMT-19** (noting defences have not been filed in response to the further amended statement of claim).

A copy of replies in proceeding VID1330 of 2024 are at **page 1778 to 1806 of JMT-19.**

46 In the defences to the Filippini Proceedings:

- (a) the respondents related to Mr Filippini and City Built (being the first to seventh respondents) do not plead in response to the allegations of breaches of duty by Keystone as responsible entity of the SMF; and
- (b) Mr Chiodo and Chiodo Corporation plead a bare denial to those allegations.

47 In the defences to the Frolov Proceedings, certain respondents deny that Keystone breached its duties as responsible entity of the SMF and plead clauses 18.3(b) and 18.4 of the SMF Constitution and 16.9 of the ADPF Trust Deed in relation to dealings between Keystone and its related parties. The other respondents make bare denials of those allegations. The relevant pleadings are at paragraphs 66 of the defences.

48 In addition to the transactions described at paragraph 43 above, Keystone as trustee of the ADPF advanced EUR 16.1 million to Chiodo Corporation under a loan agreement for a deposit for the Proposed Venice Acquisition (including advances beyond the loan amount in the loan documents) without taking security (**Venice Loan**). Keystone as trustee of the ADPF also entered a further loan agreement to advance Chiodo Corporation up to EUR 154 million to complete the Proposed Venice Transaction, but there were no advances under this further loan agreement.

Copies of the Venice Loan documents are at **pages 1807 to 1843 of JMT-19.**

A copy of the EUR 154m loan agreement is at **page 1844 to page 1860 of JMT-19.**

49 On 17 June 2024, Minter Ellison provided advice to Keystone as trustee of the ADPF that the proposed terms for the ADPF to fund the Proposed Venice Transaction were not arm's length and noted, among other things, that the proposed transaction involved the ADPF providing 100% of the equity funding for the acquisition of the Venice hotel while Mr Chiodo would receive a 49.9% equity interest in the hotel.

A copy of a draft advice from Minter Ellison is at **pages 1861 to 1879 of JMT-19.**

50 We consider that:



- (a) as the Proposed Venice Transaction involved an investment outside Australia, it was outside the terms of the ADPF's investment strategy under the ADPF Trust Deed; and
- (b) the transaction involved breach of Keystone's fiduciary duties as trustee of the ADPF given Mr Chiodo's personal interest in the transaction.

51 We caused Keystone as trustee of the ADPF to commence a claim against Chiodo Corporation and Mr Chiodo in respect of the Venice Loan in proceeding VID1348/2024 in this Court. The respondents filed a defence, which included a bare denial of breach of duty by Keystone as trustee of the ADPF. On 23 May 2025, the parties entered a settlement deed on a no-admissions basis where Chiodo Corporation assigned its rights in relation to the EUR 16.1 million deposit to Keystone. We are currently taking steps in Italy to seek to recover the deposit from the counterparties to the Proposed Venice Transaction but are yet to make any recovery.

A copy of the statement of claim in proceeding VID1348/2024 is at **pages 1880 to 1902 of JMT-19**.

A copy of the defence in proceeding VID1348/2024 is at **pages 1903 to 1911 of JMT-19**.

A copy of the reply in proceeding VID1348/2024 is at **pages 1912 to 1917 of JMT-19**.

A copy of the settlement deed is at **pages 1918 to 1927 of JMT-19**.

Receivers' conclusions on SMF breaches of duty

52 The Receivers consider that Keystone breached its duties as responsible entity of the SMF in a manner that would disentitle it from being indemnified from SMF trust property in respect of the liability of those breaches and related claims. The Receivers base their view on the following considerations:

- (a) allowing the transfer of approximately \$305 million of SMF funds to the accounts of the ADPF, and from there to Chiodo Corporation's accounts, involved a conflict between Keystone's duties and its officers' interests and was plainly not in the best interests of the SMF's members, in circumstances where:
 - (i) until 4 February 2024, when security was taken, Keystone was aware that the loan documents for the ADPF Developments were unsecured;



- (ii) Paul Chiodo was the sole director of Chiodo Corporation and most of the SPVs, giving him control of the funds and reducing the oversight of the funds' uses; and
 - (iii) the amount of approximately \$305 million was plainly disproportionate to the amount of development work and expenses that had been undertaken or incurred with respect to the ADPF Developments, such that the advancing of this amount under the ADPF Loans was plainly unnecessary for its legitimate uses;
- (b) Mr Chiodo's knowledge of the below matters would be attributed to Keystone:
- (i) making the payments from Chiodo Corporation's accounts described at paragraph 43 above;
 - (ii) the discrepancy between the amount of the payments to Mr Filippini and City Built and the work performed on the ADPF Developments described at paragraph 43(a) above;
- (c) in respect of the payments to lead generators described at paragraph 43(b) above, Mr Frolov's awareness of these payments is apparent from emails between Mr Chiodo and Mr Frolov which refer to the payments to the relevant entities (which are listed in the Financial Position Report at paragraph 54).

Copies of example emails are at **pages 1928 to 1932 of JMT-19**

- (d) in respect of the Venice Loan described at paragraph 48, the substantial amount lent on an unsecured basis and Mr Chiodo's personal interest in the Proposed Venice Transaction;
- (e) in respect of the loan to Luxurious Resort, it relates to a project outside Australia in breach of the terms of the ADPF Trust Deed set out at paragraphs 33 and 34 above.

C3 Other relevant matters in relation to prejudice to investors

53 In this section of my affidavit, I raise two other matters relevant to the risk of prejudice to creditors who might benefit from subrogation to any right of Keystone to indemnity from SMF trust assets.

Clear accounts rule



- 54 I am aware of the "clear accounts rule", which was described in the following terms in *ASIC v Letten (No 17)* [2011] FCA 1420 at [20] as follows:

"essentially a mathematical exercise setting off the trustee's right to indemnity against its liability with respect to previous breaches of trust [...] Put another way, the quantum of the trustee's right to indemnity may be diminished by breaches unrelated to the liabilities for which the right of indemnity is claimed."

- 55 We are not in a position to calculate the effect of the clear accounts rule on Keystone's right to indemnity, but I consider that there is a prospect of it significantly diminishing the amount of Keystone's right of indemnity and therefore any amount that Keystone's creditors could recover through that indemnity.
- 56 To illustrate the potential impact of the clear accounts rule, the below table notes several categories of claim where Keystone might claim a right of indemnity against SMF trust assets and categories of liability where Keystone may have a liability in respect of breaches of trust. Given the potential size of Keystone's liabilities in respect of losses in the ADPF, and the likelihood of some correlation between the amount of these losses and the amount of investor claims against Keystone, there is a significant prospect that such claims would not be fully indemnified from SMF trust assets even if they otherwise could be subrogated to Keystone's indemnity.

Potential Keystone claims on SMF	Potential Keystone liabilities to SMF
Any indemnification for Unitholder Damages Claims or Investor Damages Claims	Losses with respect to the ADPF discussed at paragraphs 29 and 30 above.
Any management fee entitlements	Losses arising from any breaches of trust in relation to other SMF assets
SMF trust creditors (eg trade creditors)	

- 57 Given our inability to quantify the effect of the clear accounts rule (due to our inability at this stage to quantify Keystone's potential claims on the SMF and Keystone's potential liabilities to the SMF), it is unclear to what extent the clear accounts rule may affect Keystone's creditors who might otherwise benefit from any Keystone indemnity from SMF trust assets. However, it appears reasonably likely that the value of any Keystone indemnity from SMF trust assets will be reduced by the clear accounts rule.

58 Any Underlying Investor Claims may be affected by double proof issues with respect to damages claims by their custodian unitholders (which may be subordinated by the proposed deeds described above). In the event that both Underlying Investors and their custodian unitholders asserted claims, I consider that:

- (a) there would likely be a significant degree of overlap in the relevant losses, particularly where they related to the shortfall between the subscription price of units and the amount returned to unitholders in respect of them;
- (b) we would need to decide which is the better claim that should receive a dividend in respect of the overlapping loss. Whilst we cannot determine this issue in the abstract, we may consider:
 - (i) the unitholders being the parties with direct legal relations with Keystone and with the rights of members or beneficiaries of the SMF;
 - (ii) the economic effect that the Underlying Investors are the out-of-pocket party.

59 As with the clear accounts rule, the potential effect of the rule against double proofs is not clear at this stage, but there appears a real prospect that it could affect the claims of Underlying Investors.

D AMOUNTS TO BE RETAINED IF AN INTERIM DISTRIBUTION IS MADE

60 In this section of my affidavit, I explain the proposed amount of the Interim Distribution and the amount we propose to retain to reduce the risk of the interim distribution to creditors.

61 We propose making an Interim Distribution in the amount of up to \$100,812,382.63 (**Interim Distribution Amount**) (with a lesser amount to be distributed if required based on Keystone's potential tax liabilities).

62 The Interim Distribution Amount is calculated on the basis of distributing all the Bell Potter Proceeds and available cash at bank for the Qualifying Classes after retaining for estimated costs and expenses of the liquidation and receivership and potential creditor claims, with estimates calculated on a conservative basis. A summary of our calculations is below.

Item	Amount
Invoiced custodian fees	\$19,957.19



Invoiced NRFA fees and disbursements	\$4,206,186.11
Forecast custodian fees	\$480,000
Forecast NRFA fees and disbursements	\$17,911,334.62
Forecast receivership and liquidation remuneration and expenses	\$10,971,095.63
Adverse costs exposure in Filippini Proceeding	\$16,500,000
Cross-undertaking exposure arising from freezing orders obtained in Filippini Proceeding	\$Nil
Adverse costs exposure in Frolov Proceeding	\$3,000,000
Potential responsible entity management fees	\$11,911,938.19
Potential taxation liability	TBD. See paragraphs 115 - 118 below
Creditor claims	\$21,647,637.02
Contingency	\$12,000,000.00
Total reserved claims (before potential tax liability)	\$98,648,148.76 plus potential tax liability
Qualifying Class cash at bank (including Bell Potter Proceeds)	\$199,460,531.39
Proposed Interim Distribution amount (before potential tax liability)	Up to \$100,812,382.63



63 A copy of a spreadsheet containing breakdowns of the above table are at **pages 1933 to 1944 of JMT-19 (Retention Calculations)**. The supporting annexures to the Retention Calculations are not exhibited but will be made available to the contradictor. The Retention Calculations include “low case” (more conservative) and “high case” (less conservative) estimates. We propose provisioning based on the “low case” estimates, and these are the estimates I explain below.

64 Throughout the Retention Calculation, we assume that the liquidation and receivership of the SMF may continue until 27 August 2031, and that by that date the SMF would be fully wound up under its Constitution. This date is 7 years from the making of the orders appointing us as Receivers. I consider this to be a reasonable estimate of the possible duration of the liquidation and receivership, noting:

- (a) the ongoing litigation in respect of the Filippini Proceeding and the Frolov Proceeding, and the possibility of appeals in those proceedings,
- (b) the potential for further litigation, including against BDO as the SMF’s auditor;
- (c) the possibility of future criminal proceedings against respondents to claims by Keystone, which could have the effect of delaying the progress of Keystone’s claims;
- (d) the prospect that, in addition to finalising recovery attempts in relation to the ADPF, there may be a significant exercise in relation to determining claims on ADPF property between the SMF and the CDPF; and
- (e) similarly complex external administrations of mismanaged funds (for example Provident Capital or Banksia Securities) have taken up to a decade or longer to conclude.

65 In the next sections of this affidavit, I provide explanations of the how the above figures have been arrived at.

D1 Invoiced custodian fees

66 The amount of \$19,957.19 comprises invoiced but unpaid Certane CT Pty Ltd (**Certane**) fees for custodianship service

D2 Invoiced NRFA fees and disbursements

67 The amount of \$4,206,186.11 comprises invoiced but unpaid Norton Rose Fulbright Australia fees and disbursements for legal services.



D3 Forecast custodian fees

68 Forecast Certane fees are calculated in the Retention Calculations at **page 1935 of JMT-19**.

69 The forecast liability of \$20,000 per quarter (inclusive of GST) is based on the amount of the most recent Certane quarterly invoices (being \$19,957.19 including GST).

D3 Forecast NRFA fees and disbursements

70 Forecast NRFA fees and disbursements for the receivership and liquidation are calculated in the Retention Calculations at **pages 1936 to 1937 of JMT-19**.

71 In estimating NRFA fees and disbursements, we have used a "run rate" approach. We consider that this approach is appropriate where:

- (a) the receivership and liquidation of Keystone are legally complex and involve many legal workstreams including, by way of example:
 - (i) the Frolov Proceeding and Filippini Proceeding;
 - (ii) public examinations;
 - (iii) other applications to collect Keystone's books and records;
 - (iv) advice on our investigations and possible claims;
 - (v) applications for judicial advice in relation to the discharge of our duties;
 - (vi) applications for approval of our remuneration in the Receivership; and
 - (vii) frequent ad hoc advice on issues arising in the liquidation and receivership,
 - (b) given the variety of workstreams, and where the nature of future work is not totally predictable, we do not consider that costing each known workstream would be likely to produce a more accurate estimate of future legal costs.
- 72 We have taken the following approach to estimating NRFA fees and estimates:
- (a) taken NRFA's average monthly billing over August to October 2025, being \$846,871;
 - (b) assumed a potential increase and then gradual decrease in NRFA's billings in the liquidation and receivership as issues are progressively resolved:

- (i) assumed a 10% increase to \$931,558.77 per month for the period January 2026 up to and including March 2026 to cover a busy period including preparation for a mediation in the Filippini proceeding and this application;
- (ii) assumed a 10% decrease to \$762,184.45 per month for the period April 2026 up to and including December 2026;
- (iii) assumed a 30% decrease to \$592,810.13 per month for the period January 2027 up to and including June 2027;
- (iv) assumed a 75% decrease to \$211,717.90 per month for the period July 2027 up to and including December 2027;
- (v) assumed an 85% decrease to \$127,030.74 per month for the period January 2028 up to and including December 2028;
- (vi) assumed a 90% decrease to \$84,687.16 per month for the period January 2029 up to and including December 2029;
- (vii) assumed a 95% decrease to \$42,343.58 per month for the period January 2030 up to and including September 2031;

73 While I consider this to be a conservative provisioning for the future legal costs of the receivership and liquidation, I note that if we arrived in a position where we did not have adequate funding for pursuing claims for the benefit of unitholders and creditors, we would seek funding from a litigation funding or MFL as the major beneficial unitholder in the SMF.

D4 Forecast receivership and liquidation remuneration and expenses

74 Forecast receivership and liquidation remuneration are calculated in the Retention Calculations at **page 1938 of JMT-19**.

75 In estimating our future remuneration as receivers and liquidators, we have used a "run rate" approach. This "run rate" approach considers the various workstreams expected to be completed and is based on our experience in dealing with matters of similar size and complexity. We consider this to be appropriate for equivalent reasons as apply to NRFA's fees and disbursements at paragraph 71 above where the receivership and liquidation include many workstreams and the nature of future work is not totally predictable.



- 76 As with NRFA's fee and disbursements, while I consider that this is a conservative approach to provisioning for our future remuneration and expenses, if it proved to be inadequate then we could seek funding for the future progress of claims being brought for the benefit of unitholders and creditors.

D5 Potential adverse costs claims and cross-undertaking liabilities

Adverse costs exposure

- 77 I am informed by Kim MacKay, one of the partners at NRFA with carriage of their work for the Receivers, that:

- (a) in her experience the below amounts represent conservative provisions for Keystone's liability in the event of adverse costs orders if the Filippini Proceeding or Frolov Proceeding is unsuccessful:
 - (i) Filippini Proceeding: \$16.5 million;
 - (ii) Frolov Proceeding: \$3 million;
- (b) the above estimates take into account the legal costs incurred by the Filippini Parties to date which have been disclosed to us, the approach of the respondents to date, the number of parties and jointly represented parties, the amount in dispute and the likely number of witnesses and documents. The significant difference in the amounts being provisioned for the proceedings largely arises from:
 - (i) the significantly greater amount claimed in the Filippini Proceeding (approximately \$158 million as against approximately \$15.7 million);
 - (ii) the fact that there are two groups of separately represented respondents in the Filippini Proceeding, as opposed to all parties being jointly represented in the Frolov Proceeding;
 - (iii) the quantum of legal fees incurred to date by the Filippini Parties and which have been disclosed to us (and included in evidence filed and read in Court in the Filippini Proceeding in connection with freezing orders); and
 - (iv) the quantity of interlocutory applications in the Filippini Proceeding so far (and one appeal from an interlocutory ruling) indicating that the

proceeding will include a heightened amount of legal work and may progress more slowly.

- 78 In the event that we commence further claims, we would consider whether any potential adverse costs liability could be accommodated within the total amount provisioned in light of updated future costs estimates or the contingency amount described at paragraph 138 below. We might also seek funding or an indemnity from a litigation funder or MFL.

Cross undertaking exposure

- 79 Pursuant to orders made in the Filippini Proceeding on 18 September 2024, we have given an undertaking to pay compensation as assessed by the Court arising out of all asset freezing orders obtained in that proceeding (**Filippini Undertaking**) by orders made on 11 September 2025 (**All Assets Freezing Order**).
- 80 The All Assets Freezing Order provides that the first to seventh respondents (**Filippini Parties**) must not remove from Australia or in any way dispose of, deal with or diminish the value of any of their assets in Australia up to the unencumbered value of AUD\$158 million. The known assets of the Filippini Parties identified as captured by the All Assets Freezing Order include:
- (a) 52 bank accounts containing a total of at least \$117 million;
 - (b) 14 properties; and
 - (c) 15 vehicles.
- 81 Each of the above assets are itemised in schedules 1 – 3 of the All Assets Freezing Order.

A copy of the Filippini Undertaking is at **pages 1945 – 1949 of JMT-19**.

A copy of the All Assets Freezing Order is at **pages 1950 – 1961 of JMT-19**.

- 82 Pursuant to the orders made on 18 September 2024:
- (a) any liability under the Filippini Undertaking would be payable out of the assets of the SMF; and
 - (b) to the extent that the assets of the SMF and / or Keystone are insufficient to pay the liability under the Filippini Undertaking, we are not personally liable, and the Filippini Parties would have no right of recourse against us personally.



- 83 As such, it is appropriate to make provision out of the SMF assets for potential compensation claims that could be made pursuant to the Filippini Undertaking.
- 84 I understand that losses may be recoverable on a claim made pursuant to such an undertaking where the loss flows directly from the freezing order and the loss is of a kind that could have been foreseen at the time when the undertaking was given.
- 85 The All Assets Freezing Order contains exceptions for:
- (a) payments in the ordinary and proper course of the business of the affected Filippini Parties and for property management expenses (subject to the Receivers' consent, which must be reasonably given); and
 - (b) the sale of frozen real property.
- 86 Since the All Assets Freezing Order was made on 11 September 2025, the Receivers have not received any requests for consent under the above exceptions.
- 87 We are not aware of any business conducted by the Filippini Parties that could require the frozen funds in a manner not provided for by the exceptions to the All Assets Freezing Order.
- 88 The funds frozen under the All Assets Freezing Order are not in high interest bearing accounts. In the course of obtaining the All Assets Freezing Order, NRFA proposed draft orders to Corrs Chambers Westgarth (**Corrs**), the solicitors for the Filippini Parties, which contained provisions for the frozen bank accounts to be consolidated and placed in term deposit accounts on a rolling basis. The Filippini Parties submitted to the Court that they no longer wished for this to occur and the relevant orders were not made.

An email from NRFA to Corrs dated 5 September 2025 (including attachment) is at **page 1962 to page 1976 of JMT-19**.

An email from Corrs to the Court dated 7 September 2025 (including attached redline orders and submissions (see [39]), excluding other attachments) is at **page 1977 to page 2018 of JMT-19**.

- 89 On 23 January 2026, NRFA wrote to Corrs requesting that by 6 February 2026 Corrs provide information on any losses their clients consider are being suffered because of the All Assets Freezing Order. No response has been provided to date and further evidence will be provided if a response is received.

A copy of NRFA's letter is at **pages 2019 – 2021 of JMT-19**.



90 Pending a response to NRFA's letter to Corrs, our provisional view is that the matters described in paragraphs 85 to 87 above mean there is a sufficiently low prospect of a claim on the Filippini Undertaking that we can responsibly not provision for it. Given that we are not aware of any activities by the Filippini Parties that could lead to claims that special investment opportunities have been lost by the Filippini Parties, the scope of the exception to the All Assets Freezing Order, and the Filippini Parties declining our proposal to move the frozen funds to accounts that would attract higher interest, we do not currently see how a significant claim on the undertaking would be framed.

91 We have also given the usual undertaking for damages in the Filippini Proceeding to Chiodo Corporation, the ninth respondent, in relation to freezing orders obtained on 18 September 2025 which resulted in Chiodo Corporation paying the sum of \$514,641.10 to Court. The sum of \$514,641.10 represents the proceeds of a \$500,000 term deposit plus interest (**Term Deposit Funds**).

A copy of the order made on 18 September 2025 in the Filippini Proceeding, which identifies the undertaking at note G, is at **pages 2022 – 2026 of JMT-19**.

92 The Term Deposit Funds are currently held by the Court's Litigant's Fund which is not an interest-bearing account. On 28 January 2026, NRFA wrote to Velocity Legal, solicitors for Chiodo Corporation, requesting that by 6 February 2026 they provide information on any losses their client considers are being suffered because of the All Assets Freezing Order, and seeking consent for the Term Deposit Funds to be placed in interest-bearing accounts. No response has been provided to date and further evidence will be provided if a response is received. A copy of NRFA's letter is at **pages 2027 – 2028 of JMT-19**

93 For the reasons detailed above, we have not reserved for potential damages claims arising from the cross-undertakings relating to the All Assets Freezing Orders and the freezing of the Term Deposit Funds.

D6 Responsible entity management fees

94 Potential responsible entity management fees are calculated in the Retention Calculations at **pages 1939 to 1940 of JMT-19**.

95 I refer to the discussion at paragraphs 109 to 115 of my Twelfth Affidavit, where I discussed Keystone's entitlement to management fees under the Constitution and the

possibility that such fees could be available to Keystone's creditors who do not have recourse to SMF trust assets.

96 When making an Interim Distribution, we propose to retain the amount of \$11,911,938.19 in case Keystone has any right to draw managements fees from SMF assets. In the rest of this section of my affidavit, I explain the basis for the calculation of the responsible entity management fees.

97 Clause 20 of the Constitution deals with the fees payable to, and expenses recoverable by Keystone. In relation to the fees payable to Keystone, cl 20.1 of the Constitution states:

"Subject to clause 20.14, in respect of each Class of Units, the Responsible Entity is entitled to be paid the fees set out in Schedule 1 setting out the fees payable in respect of a Class."

98 Section 4 of Schedule 1 of the Constitution titled "Fees payable in respect of Units" states relevantly, in relation to the management fees to which Keystone is entitled under cl 20.1:

"Management Fee

2. Subject to clause 20.14, the Responsible Entity is entitled to be paid out of the Class Assets of a Class a management fee equal to up to 2% per annum of the Gross Asset Value of the Class Assets. The Management Fee is calculated and payable monthly in arrears."

99 Clause 20.14 of the Constitution provides:

"The rights of the Responsible Entity to be paid fees or recover expenses under this constitution, including clauses 7.21 and 20, and Schedule 1, are subject to the Responsible Entity properly performing its duties in connection with the Trust."

100 The PDSs relating to each Class do not disclose a management fee entitlement under the Constitution "equal to up to 2% per annum of the Gross Asset Value of the Class Assets".

101 The PDSs dated 21 November 2023 for the Qualifying Classes say the following of a "trustee fee", which appears to correspond to a management fee, under the heading "Additional explanation of fees and costs" (at **pages 720,800,880,960 of JMT-19** respectively):

"MANAGEMENT FEES AND COSTS

Generally

Management fees and costs are the fees and costs for managing your investment and include all direct and indirect costs for managing the Fund. This figure is an estimate. It includes:

- *The trustee fee, from which all expenses are paid, and*
- *An indirect costs estimate.*

Investment Management Fee

The Investment Manager does not charge any investment management fee at Fund level for managing the assets of the Fund. It may earn investment management and other fees for managing assets which may form part of the portfolio of the Fund (for example, any special purpose vehicles through his real property exposure may be obtained), and the cost of this is reflected in the indirect cost estimate.

Expenses

The trustee pays all expenses in relation to the Fund, although it is important to note that as is usual, the Constitution provides that the Trustee is entitled to be indemnified out of the assets of the Fund for any liability incurred by it in properly performing any of its duties and in properly exercising any of its powers in relation to the Fund.

The Trustee and the Investment Manager pay their respective personal costs. When expenses relate to related parties, these are always on at least arm's length terms. Many expenses have taxes and duties associated with them, such as GST and stamp duty, which are paid as part of the expense."

- 102 The 21 November 2023 PDSs for the Qualifying Classes also contain an estimate of management fees under a heading "Type of fee or cost" (at **pages 717,797,877,957 of JMT-19** respectively):

<i>Type of fee or cost</i>	<i>Amount</i>	<i>How and when paid</i>
Management fees and costs <i>the fees and costs for managing your investment</i>	0.70% estimate, comprising: <ul style="list-style-type: none"> • <i>Trustee Fees: 0.21% pa</i> • <i>Indirect Costs: 0.49%pa</i> 	<i>Trustee Fees are calculated, accrued daily and payable monthly in arrears on the net asset value for the class, and are not negotiable. Indirect costs are estimated</i>
Management Fee <i>amounts deducted from your investment in relation to the management of the assets of the Fund</i>	<i>Nil</i>	<i>n/a</i>
Performance Fee <i>amounts deducted from your investment in relation to the performance of the Fund</i>	<i>Nil estimate</i>	<i>n/a</i>
Transaction costs <i>the costs incurred by the</i>	<i>Nil estimate</i>	<i>These costs are expressed net of the</i>



Fund when buying or selling assets

buy-sell spread, and are generally paid as incurred.

- 103 The 21 November 2023 PDSs for the Qualifying Classes also contain an example of annual fees and costs in the following form (respectively at **pages 719, 799, 879 and 959** of **JMT-19**):

“EXAMPLE OF ANNUAL FEES AND COSTS

This table gives an example of how the fees and costs for the Fund can affect your investment over a one-year period. You should use this table to compare the Fund with other managed investment products. It is important to read the assumptions and notes below the table [sic].

Example [Class]		Balance of \$50,000 including a contribution of \$5,000 during the year
Contribution fees	<i>nil</i>	<i>For every additional \$5,000 you put in, you will be charged \$0.</i>
PLUS Management fees and costs	<i>0.70% estimate¹</i>	<i>And you will be charged or have deducted from your investment \$350 each year.</i>
PLUS Performance Fee	<i>nil</i>	<i>And you will be charged or have deducted from your investment nil in performance fees</i>
PLUS Transactions costs	<i>nil estimate¹</i>	<i>And, you will be charged or have deducted from your investment nil in transaction costs, which are disclosed here net of the buy-sell spread.</i>
EQUALS <i>Cost of the Fund</i>		<i>If you put in \$50,000 at the beginning of the year and your balance was \$50,000, then you would be charged fees of \$350 each year. What it costs you will depend on the fees you negotiate.</i>

Remember, estimates may prove to be incorrect. Actual fees and costs could be lower or higher than any estimate. Please refer to the Trustee's website for any updates law requires.

This example uses assumptions: it assumes the \$5,000 contribution was made at the beginning of the year, as part of the \$50,000 investment, no other investments or any withdrawals or distributions were made through the year and the investment value remained unchanged.

If you would like to calculate the effect of fees and costs on your investment you can visit the ASIC Moneysmart website (www.moneysmart.gov.au) and use their managed investment fee calculator.

¹The management fees and costs are an estimate only. Indirect costs are generally speaking the additional cost you pay for not investing directly yourself, for example because investments of the Fund have their own costs, such as management fees, performance fees and expenses relating to underlying funds, and those also relating to any associated vehicles through which the Fund invests (for which the Trustee and all the Investment Manager may also act). Actual indirect costs could be higher or lower than the estimate and this figure is based on figures known to the Trustee and/or as it may reasonably estimate. See section 9 ("Fees and Costs") for more detail."

- 104 The PDSs for the ADPC Class are in a different form to those for the Qualifying Classes. There appear to have been several iterations of this PDS during the SMF's period of operation.

A copy of PDS dated 21 September 2022 (with that dating based on the document's electronic filename) is at **pages 2029 to 2058 of JMT-19**.

A copy of PDS dated 1 September 2022 is at **pages 2059 to 2087 of JMT-19**.

A copy of PDS dated 14 September 2021 is at **pages 2088 to 2121 of JMT-19**.

- 105 In the PDS for the ADPC Class dated 21 September 2022. The estimate of the management fee for the ADPC Class is contained under the heading "Fees and costs summary" (at **page 2050 of JMT-19**):

9.1 Fees and costs summary

Shield Master Fund – Advantage Diversified Property Class

<u>Type of fee or cost</u>	<u>Amount</u>	<u>How and when paid</u>
<u>Ongoing annual fees and costs</u>		
Management fees and costs	1.1% pa	The management fee component of management fees and costs are calculated and accrued each Pricing Day and paid from the Advantage
The fees and costs for managing your investment.	See the sub-section titled 'Explanation of Fees and Other Costs' for further information.	

Diversified Property Class monthly in arrears and are reflected in the Unit Price. Otherwise, the fees and costs are variable and reflected in the Unit Price as they are incurred.

The management fee component of management fees and costs can be negotiated, ask the Promotor or your financial advisor. Any indirect management fees and costs from the Underlying Assets of the ADP Class are reflected in the value of the ADP Class's investment in the relevant Underlying Asset and are therefore reflected in the Unit Price.

Performance fees

Nil

Amounts deducted from your investment in relation to the performance of the Fund.

estimate

No performance fees are payable at the Advantage Diversified Property Class level. A performance fee can be payable at the Underlying fund level on preferred equity investments. This fee varies depending on the rate of return, with 0% performance fees up to an 18% p.a. return, scaling up to 65% if over a 40% p.a. return. There is no reasonable basis to estimate performance fees however – they depend on each investment. See the Management fees and costs discussion below.

Transaction costs

Nil

No transaction costs are paid at the Advantage Diversified

The costs incurred by the Fund when buying or selling assets

Property Class or the Underlying Fund level.

- 106 The 21 September 2022 PDS also includes the following statements (at **page 2053** of **JMT-19**):

"9.2. Explanation of Fees and Other Costs

Management fees and costs

The management fees and costs figure includes amounts payable for administering and operating the Advantage Diversified Property Class, investing the assets of the Advantage Diversified Property Class, expenses and reimbursements in relation to the Advantage Diversified Property Class, as well as indirect costs associated with any investments into Underlying Assets which are borne by investors.

Management fees and costs do not include performance fees or transaction costs which are disclosed separately.

The 'indirect costs' component of management fees and costs reflects the indirect management fees and costs associated with the Advantage Diversified Property Class Investments. Given the different management fees and costs charged by the Underlying Assets, the total 'indirect costs' will be a function of the Underlying Assets invested in and the relative weighting of each Underlying Asset within the Advantage Diversified Property Class portfolio. As the Advantage Diversified Property Class is first offered in the current financial year, the indirect costs are a reasonable estimate based on information that has been provided to us and adjusted for our calculations. Actual indirect costs for the current and future years may differ. [...]"

- 107 The 21 September 2022 PDS also contains an example of annual fees and costs in the following form (at **page 2052** of **JMT-19**):

EXAMPLE OF ANNUAL FEES AND COSTS

This table gives an example of how the ongoing annual fees and costs in the Advantage Diversified Property Class for this product can affect your investment over a 1-year period. You should use this table to compare this product with other managed investment schemes.

Example – Advantage Diversified Property Class of the Shield Master Fund		BALANCE OF \$50,000 WITH A CONTRIBUTION OF \$5,000 DURING YEAR
Contribution Fees	Nil	For every additional \$5,000 you put in you will be charged \$0.

PLUS Management fees and costs	1.1% per annum of the NAV of the Class	And , for every \$50,000 you have in the Advantage Diversified Property Class you will be charged \$550 each year.
PLUS Performance fee	0.0% per annum of the NAV of the Class (estimate)	And , you will be charged or have deducted from your investment \$0 in performance fees each year
PLUS Transactions costs	nil	And , you will be charged or have deducted from your investment \$0 in transaction costs.
EQUALS Cost of the Advantage Diversified Property Class of the Shield Master Fund		If you had an investment of \$50,000 at the beginning of the year and you put in an additional \$5,000 during that year, you would be charged fees of: \$550* What it costs you will depend on the fees you negotiate.

**Additional fees may apply. Please note that this example does not capture all the fees and costs that may apply to you.*

- 108 The earlier iterations of the PDSs exhibited at paragraphs 26(c) and 104 above do not disclose any higher management fees than the most recent PDSs discussed at paragraphs 101 to 107 above. The below table summarises the “management” or “trustee” fees disclosed in the earlier PDSs.

PDS	Management fee	JMT-19 page
Qualifying Classes – 1 July 2023	0.7% per annum of the NAV of the Class	365, 446, 527, 608



Qualifying Classes – 4 April 2022	<i>0.7% per annum of the NAV of the Class</i>	250, 283, 316, 349
Qualifying Classes – 3 November 2021	<i>0.7% per annum of the NAV of the Class</i>	121,153, 185, 217
ADPC - 1 September 2022	<i>1.1% per annum of the NAV of the Class</i>	2081
ADPC - 14 September 2021	<i>0.0% per annum of the NAV of the Class</i>	2111

109 I consider that a reader of the above extracts from the PDSs would understand:

- (a) the management fees in respect of the Qualifying Classes were no more than 0.21% per annum of net asset value in the respective Class, and the reference to 0.49% per annum for indirect costs (see paragraph 102 above) is a separate estimate of expenses to be recovered by Keystone;
- (b) the management fee in respect of ADPC Class was no more than 1.1% per annum of net asset value in the ADPC Class.

110 I consider that Keystone's entitlement to management fees can be no more than the rates in the above paragraph. I refer to:

- (a) sections 1013C(1)(a)(i) and 1013D(d) of the Corporations Act, under which a PDS must disclose the amount of fees of the relevant financial product;
- (b) section 601FC(1)(k) of the Corporation Act, under which all payments out of scheme property must be in accordance with the scheme's constitution and the Corporations Act;
- (c) clause 20.14 of the Constitution, under which Keystone's right to fees is subject to its property performing its duties with respect to the SMF.



111 I refer to section 7.59 to 7.61 of the Financial Position Report, where we stated as follows:

"7.59 The draft management account balance sheets for the investment classes of the SMF disclose management fees as a liability totalling \$344,429 as at 31 May 2024.

7.60 While we have not undertaken a detailed reconciliation of the management fees, we have also not been provided with any information to suggest that this amount is not accurate.

7.61 In light of the above, and in the absence of any further information, we consider that the management fees represent a liability of the SMF. [...]"

112 Our investigations indicate that Keystone's books and records were inadequate, which makes me cautious to accept the figure as to SMF's liability to Keystone in respect of management fees in its draft management accounts. Further, we have not located evidence in Keystone's financial records of a management fee having regularly been paid to Keystone prior to 31 May 2024. For this reason, I consider the \$344,429 figure to be unreliable.

113 Based on the above considerations, we have calculated Keystone's maximum possible claim for management fees as follows:

- (a) from 1 April 2022, being when the SMF commenced operations, to 27 August 2031, by which date we expect to have fully wound up the SMF;
- (b) at a rate of 0.21% p.a. on the total amount of unit subscriptions in the Qualifying Classes; and
- (c) at a rate of 1.1% p.a. on the total amount of unit subscriptions in the ADPC

114 I consider this provisioning to be conservative because:

- (a) the effect of clause 20.14 may be that Keystone is not entitled to draw a management fee due to breaches of its duties discussed above;
- (b) of the likelihood that the net asset value of the SMF was significantly less than the value of subscriptions in SMF units at the relevant times due to the uncertainty in relation to recoveries from the ADPF described at paragraphs 29 and 30 above; and

- (c) it assumes the net asset value of the SMF is equal to the peak total value of subscriptions at all times, and so does not take into account that the value of subscriptions built up as investors invested in the SMF, and was reduced by redemptions, or the effect of the Interim Distribution in reducing net asset value;
- (d) whilst, as noted above, I consider that the reference to an estimate of 0.49% per annum for indirect costs is separate to the management fee, I consider there to be no need to make any separate provision for this item because past and ongoing expenses of operating the SMF (the indirect costs) will be reflected in Keystone's creditors and our Receivership expenses, which we are separately provisioning for. To the extent that Keystone had paid any pre-appointment indirect costs from its own funds and had a right of recoupment, my understanding is that Keystone would not have had a source of funds other than its management fee to make these payments, so provisioning for Keystone's full potential management fee entitlement is sufficient to cover any such claims.

D7 Potential taxation liabilities

- 115 We have and are continuing to obtain professional advice in relation to Keystone's potential taxation liabilities. There is significant complexity in Keystone's taxation position for reasons including inadequacies in its books and records, historical breaches of administrative requirements of an "attribution managed investment trust" under the tax laws and Constitution, and the situation where the SMF's investment in the ADPF was predominantly not used for the intended investment purposes.
- 116 I understand that, given the amounts that were invested by the SMF, differences in tax treatment could lead to very different assessment of its potential tax situation.
- 117 Given the complexity of determining Keystone's tax position, I consider it appropriate to engage with the ATO in order to seek reasonable comfort that the ATO will not object to the basis on which we will provision for Keystone's tax position. We have instructed our tax representatives to prepare to approach to ATO.
- 118 In light of the above, we seek the orders at paragraph 4 and 5 of the Amended IP on the basis that we will retain the appropriate amount for tax after any feedback from the ATO.

D8 Creditor claims and interest

- 119 The proposed retention for creditor claims is shown in the Retention Calculations at **pages 1942 to 1944 of JMT-19.**



Retention for creditor claims

- 120 We propose to retain the below amounts totalling \$13,966,433.99 against the possibility that creditor claims may have recourse to SMF trust assets:
- (a) \$834,838.54 in respect of admitted claims;
 - (b) \$2,402,057.96 in respect of claims that have not yet been adjudicated (except the proof of debt of Falcon Capital, discussed below);
 - (c) \$1,077,374.92 in respect of adjudicated and rejected creditor claims which remain within the appeal period;
 - (d) \$9,189,426.10 of the claim of Chiodo Corporation Ptd Ltd, which was rejected and is now subject to an appeal before the Supreme Court of Victoria including the costs of that appeal;
 - (e) \$312,204.47 in respect of other claims that were incurred while Keystone was subject to the Court's orders dated 26 June 2024;
 - (f) \$150,432.00 in respect of other claims that appear on Keystone's books and records but where no proof of debt has been received; and
- 121 We do not propose to retain any amount in respect of claims that have been rejected and where the 14-day timeframe under rule 5.6.54(1)(b) of the Corporations Regulations has expired.
- 122 As noted at paragraph 116 of my Twelfth Affidavit, there is a risk that further creditors might come forward that we are not provisioning for. Further creditors could submit a proof of debt at any time until the period provided for under r 5.6.65 of the Corporations Regulations if we give notice of an intention to declare a dividend. Further, creditors whose proofs of debt we have rejected could re-submit their proofs and proceed to appeal our further rejection. However, as discussed in my Twelfth Affidavit, I consider that we have taken all reasonable steps to identify potential claims for the purposes of this application. We also consider that our decisions to reject proofs of debt have been well-founded. As a result, we have not reserved any amounts for these potential claims.
- 123 On 23 January 2026, NRFA wrote to the AFCA and the Compensation Scheme of Last Resort Limited (**CSLR**) recording our view that the CSLR is not a party with a potential claim against Keystone. No response has been received as at the date of this affidavit. As a result, we have not reserved any amounts for claims related to the CSLR.



Copies of NRFA's letter is at **pages 2121 to 2123 of JMT-19.**

Unitholder Damages Claims by HCNL and TTCL

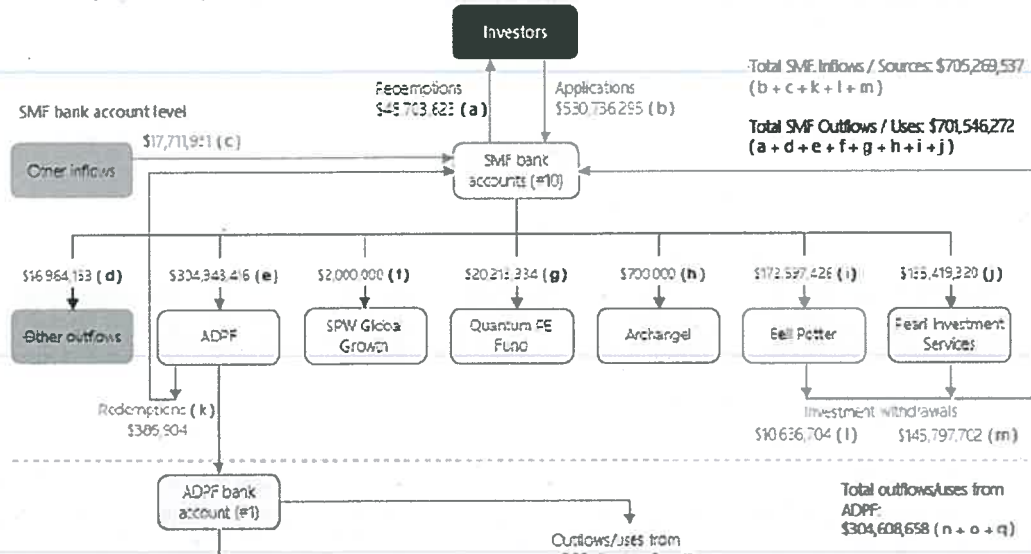
- 124 As noted above at paragraph 18, we are not able to assume that we will obtain subordination undertakings that have been sought from HCNL and TTCL.
- 125 Whilst we have sought these undertakings to increase our comfort that an Interim Distribution will not prejudice creditors, the view explained at paragraphs 27 to 52 above that Underlying Investor Claims are unlikely to have recourse to SMF trust assets applies equally to Unitholder Damages Claims. As noted in at paragraph 26(a), Unitholder Damages Claims may be based on different causes of action to Underlying Investor Claims but, as discussed above, the losses claimed are likely to arise predominately from Keystone's conduct in relation to the ADPF that would disentitle it from relying on its right of indemnity. We therefore do not propose to retain funds for claims by HCNL and TTCL.

Falcon Capital

- 126 I refer to paragraphs 72 to 77 of my Twelfth Affidavit.
- 127 Given the \$99.63 million quantum of Falcon Capital's claim, which would be impossible to provision for while still making an Interim Distribution in a worthwhile amount, we have sought to resolve the question of whether Falcon Capital could have recourse to SMF trust assets. This is in contrast to the approach taken for other creditors, where we have conservatively assumed that they may have recourse to SMF trust assets.
- 128 We have confirmed our view that there was no material co-mingling of SMF and CDPF property, and therefore Falcon Capital as a potential CDPF trust creditor will not have recourse to the Bell Potter Proceeds.
- 129 Below I extract part of the summary of our SMF sources and uses analysis on page 10 of the Financial Position Report.



Figure 1: Sources and uses of funds for the Shield Master Fund and the Advantage Diversified Property Fund from 6 April 2022 to 31 May 2024 and 11 April 2022 to 31 May 2024 respectively and the Chiodo Corporation for the period 11 April 2022 to 19 February 2024



130 As illustrated above, our analysis only points to two external sources of inflows into SMF accounts:

- (a) \$530,736,295 in investor application funds;
- (b) \$386,904 in ADPF redemptions;

131 I note that the \$17,771,931 in "other inflows" is explained at paragraphs 5.17 to 5.22 of the Financial Position Report. All of these funds are accounted for by the following explanations, which do not represent potential intermingling with CDPF assets:

- (a) \$3,534,96 in income from the Bell Potter Securities;
- (b) \$1,276,431 in interest on cash at bank;
- (c) \$12,900,537 where inflows are matched with subsequent outflows, which we understand to represent unit application funds received and refunded and incorrect account transfers. Whilst this amount is unusually high, the matched outflows would indicate that the SMF did not retain the funds if they were sourced from co-mingled funds.

132 As such, the amount of inflows into the SMF that could potentially represent intermingled CDPF assets is \$386,904, and I consider that our \$12 million retention for contingencies (see paragraph 138 below) is sufficient to cover this possibility.

Interest under section 563B of the Corporations Act

[Handwritten signature]

- 133 Under section 563B of the Corporations Act and rule 5.6.70A of the Corporations Regulations, in the event that all claims in the winding up of Keystone are satisfied, interest would be payable on those claims from 28 August 2024 at the rate of 8% per annum.
- 134 Based on the information currently available to us, we cannot exclude the possibility that all claims may be satisfied. This could for the case if, for example:
- (a) trust creditors were determined to have access to Keystone's right of indemnity to SMF assets in a significant amount;
 - (b) any right of Keystone to a management fee (discussed below) were sufficient to pay the claims of non-trust creditors.
- 135 We have calculated interest on the amount of the creditor claims in the amount of \$7,681,203.03 for the period 28 August 2024 to 27 August 2031.
- 136 In relation to Falcon Capital's claim for \$99.63 million, we have not adjudicated that claim as our investigations of the CDPF are ongoing. We therefore do not currently know if it will be admitted, partially rejected or rejected in full. Where we do not consider that claim will have access to SMF trust assets, I consider it highly unlikely that it would be satisfied in the amount of \$99.63 million if only Keystone own-account assets were available to pay it. However, I cannot exclude the possibility that the claim might be paid in full if it were admitted in a lesser amount.
- 137 As I do not consider that any more than the amount of the management fee could be available from SMF trust assets for paying Falcon Capital, that amount would also have to cover any interest in respect of Falcon Capital's claim. We therefore do not propose to retain any more than the amount we are retaining in respect of Keystone's potential management fee entitlement in respect of interest on Falcon Capital's claim.




D9 Contingency


- 138 In order to ensure that the retention of funds is on a conservative basis, and to manage the risk of unknown factors impacting on the costs and expenses or claims that arise in the matter, we propose to also retain a contingency amount of \$12 million.

Affirmed by JASON MARK TRACY
at Melbourne
in the State of Victoria
on 29 January 2026
Before me:

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)
)
)
)



Signature of deponent



Signature of witness

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Certificate identifying annexure

No VID536 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**KEYSTONE ASSET MANAGEMENT LTD (RECEIVERS AND MANAGERS APPOINTED)
(ADMINISTRATORS APPOINTED) (ACN 612 443 008) and another**

Defendants

ANNEXURE "JMT-19"

This is the annexure marked "JMT-19" now produced and shown to Jason Mark Tracy at the time of affirming his affidavit on 29 January 2026.



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