

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/08/2022 2:45:28 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: NSD939/2020  
File Title: J & J RICHARDS SUPER PTY LTD AS TRUSTEE FOR THE J & J RICHARDS SUPERANNUATION FUND v LINCHPIN CAPITAL GROUP LTD (IN LIQUIDATION) ACN 163 992 961 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 31/08/2022 4:06:24 PM AEST

Registrar

### Important Information

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

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Second-Third Further Amended Statement of ~~claim~~Claim**

Amended pursuant to leave of the Court granted on 30 August 2022

No. NSD 939 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: Commercial

**J & J Richards Super Pty Ltd ACN 169 275 156 as trustee for the J & J Richards  
Superannuation Fund**

Applicant

**Linchpin Capital Group Limited (in Liquidation) ACN 163 992 961 and others named in the  
Schedule**

Respondents

The applicant pleads its case as follows:

**A. THE APPLICANT AND GROUP MEMBERS**

- 1 J & J Richards Super Pty Ltd as trustee for the J & J Richards Superannuation Fund (**the applicant**) commences this proceeding as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on its own behalf and on behalf of the group members (as defined in paragraph 2).
- 2 The applicant and the persons represented by the applicant (**Group Members**) each:
  - a. on or after about 23 January 2014, purchased units in an unregistered managed investment scheme called the 'Investport Income Opportunity Fund' (**the Unregistered Fund**), of which Linchpin Capital Group Limited (ACN 163 992 961) (**Linchpin**) was the trustee; and/or
  - b. on or after about 25 March 2015, purchased units in a registered managed investment scheme, also called the 'Investport Income Opportunity Fund' (**the Registered Fund**), of

3467-1882-2173v2

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Filed on behalf of (name & role of party)	<b>J &amp; J Richards Super Pty Ltd as trustee for the J &amp; J Richards Superannuation Fund, Applicant</b>		
Prepared by (name of person/lawyer)	Michael Catchpoole		
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which Endeavour Securities (Australia) Ltd (ACN 079 988 819) (**Endeavour**) was the responsible entity; and

- c. have entered into a Representative Proceeding Funding Agreement with LCM Funding Pty Ltd.

3 As at the date of the commencement of this proceeding, there are seven or more persons who have claims against the defendants in respect of the matters set out in this pleading.

## **B. THE DEFENDANTS AND OTHER PARTIES**

4 Linchpin, the first defendant:

- a. was registered as a corporation pursuant to the *Corporations Act 2001* (Cth) (**the Corporations Act**) on 28 May 2013;
- b. was so registered in the State of Queensland;
- c. accordingly, is and was at all material times a company duly incorporated pursuant to the Corporations Act and capable of being sued;
- d. carried on the business of a professional trustee and was remunerated for services provided in its capacity as a professional trustee;
- e. from 28 May 2013, had:
  - i. Mr Paul Nielsen (**Nielsen**), the second defendant, as a director and secretary;
  - ii. Mr Ian Comrie Williams (**Williams**), the third defendant, as a director;
  - iii. Mr Paul Anthony Raftery (**Raftery**), the fourth defendant, as a director;
  - iv. each of Nielson, Williams and Raftery as its agents;
- f. from 2 October 2013, had Mr Peter Eugene Daly (**Daly**), the fifth defendant, as a director;
- g. by order of the Federal Court of Australia on 7 August 2018, had Jason Tracy and David Orr appointed as receivers and managers to its assets; and
- h. by order of the Federal Court of Australia on 15 March 2019, was placed into liquidation with Jason Tracy and David Orr appointed as liquidators.

4A By reason of the matters set out in paragraphs 4e and 4f, Nielsen, Williams, Raftery and Daly were officers of Linchpin within the meaning of s 9 of the Corporations Act.

- 5 Endeavour, the sixth defendant:
- a. from 8 December 2014, had:
    - i. Nielsen, the second defendant, as a director and secretary;
    - ii. Williams, the third defendant, as a director;
    - iii. Raftery, the fourth defendant, as a director;
    - iv. each of Nielsen, Williams and Raftery as its agents;
  - a1. since the registration of the Registered Fund, had Williams, Raftery and Daly as members of its investment committee;
  - b. by order of the Federal Court of Australia on 7 August 2018, had Jason Tracy and David Orr appointed as receivers and managers to its assets; and
  - c. by order of the Federal Court of Australia on 15 March 2019, was placed into liquidation with Jason Tracy and David Orr appointed as liquidators.
- 5A By reason of the matters set out in paragraph 5a, each of Nielsen, Williams, Raftery and Daly were officers of Endeavour within the meaning of s 9 of the Corporations Act.
- 6 Linchpin is the ultimate holding company of Endeavour.
- 7 At all material times the following entities were all part of what is known as the '**Linchpin Capital Group**':
- a. Linchpin;
  - b. Endeavour;
  - c. Beacon Financial Group Pty Ltd ACN 162 734 152 (**Beacon**);
  - d. The Financiallylink Group Pty Ltd ACN 055 622 967 (**FLG**);
  - e. Libertas Financial Planning Pty Ltd ACN 160 419 134 (**Libertas**);
  - f. Investport Pty Ltd ACN 160 710 190 (**Investport Company**);
  - g. Risk and Investment Advisors Australia Pty Ltd ACN 104 922 394 (**RIAA**);
  - h. CPG Research & Advisory Pty Ltd ACN 052 348 026 (**CPG**); and
  - i. ISARF Pty Ltd ACN 138 673 962 (**ISARF**).

- 8 At all relevant times:
- a. Nielsen, Daly and Williams were directors of:
    - i. Beacon;
    - ii. Investport Company; and
    - iii. RIAA;
  - b. Nielsen and Daly were directors of:
    - i. FLG; and
    - ii. Libertas;
  - c. Williams and Nielsen are and were directors of:
    - i. CPG; and
    - ii. ISARF;
  - d. Investport Company:
    - i. was the investment manager for the Registered Fund; and
    - ii. was the manager of the Unregistered Fund;
    - iii. was de-registered on 14 March 2020;
    - iv. had Williams as a director from 24 January 2014;
    - v. had Daly as a director from 11 March 2014;
    - vi. had Nielsen as a director from 24 January 2014; and
    - vii. was partly owned by Linchpin.
  - e. Linchpin was the sole shareholder of:
    - i. Beacon;
    - ii. [not used]
    - iii. RIAA;
    - iv. CPG; and

- v. ISARF
  - f. Beacon was the sole shareholder of:
    - i. FLG; and
    - ii. Libertas.
- 9 AIG Australia Limited (**AIG**), the seventh respondent, is a company that is:
- a. incorporated in Australia; and
  - b. primarily engaged in the business of providing insurance products.
- 9A ~~Hamilton RiverStone~~ Managing Agency Limited (**RiverStone**) ~~(formerly known as Pembroke Managing Agency Limited) (Hamilton)~~, the eighth respondent, is and has been from at the latest 1 June 2022, the managing agent acting for and on behalf of all the underwriting members of Lloyd's Syndicate 2014 (**Acapella Group**).

#### Particulars

At all material times prior to, at the latest, 1 June 2022, Hamilton Managing Agency Limited (formerly known as Pembroke Managing Agency Limited) (Hamilton) was the managing agent acting for and on behalf of the Acapella Group.

### **C. THE FUNDS**

- 10 Upon its registration, the Registered Fund had an investment committee of which Williams, Raftery and Daly were the members.
- 11 From about 25 March 2015:
- a. Williams, Raftery and Daly treated the Registered Fund and the Unregistered Fund as one fund;
  - b. the investment committee of the Registered Fund determined the investments to be made by the Unregistered Fund.

### **D. DUTIES OWED BY THE DEFENDANTS**

- 12 As trustee of the Unregistered Fund, Linchpin owed duties under section 23(2)(a) of the *Trusts Act 1973* (Qld) (**Trusts Act**), in exercising a power of investment, because its business included acting as a trustee or investing money for other persons, to exercise the care,

diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons.

- 13 As the Responsible Entity in respect of the Registered Fund, Endeavour owed duties by subsection 601FC(1)(b) of the Corporations Act, to exercise the degree of care and diligence that a reasonable person would exercise if they were in the same position.
- 14 As officers of Endeavour, each of Nielsen, Williams, Raftery and Daly owed duties in respect of the Registered Fund, by subsection 601FD(1)(b) of the Corporations Act, to exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer's position.

## **E. PURPOSE AND OBJECT OF FUNDS**

### ***The Unregistered Fund***

- 15 On and from 23 January 2014, Linchpin issued an Information Memorandum (**IM**) offering for investors to purchase units in the Unregistered Fund.
- 16 The IM provided that:
  - a. Linchpin would be a Corporate Authorised Representative under an existing Australian Financial Services Licence (**AFSL**);
  - b. Linchpin would be the Responsible Entity (**RE**) and trustee of the Unregistered Fund and would charge a management fee and other expenses; and
  - c. Investport Company would be the fund manager of the Unregistered Fund and would be paid in connection with that role.

### **Particulars**

IM section 1.2; section 11

- 17 The IM provided that the Unregistered Fund would invest monies received from investors:
  - a. progressively to achieve a diversified loan portfolio across property and corporate sectors on a secured basis that are income producing;
  - b. in a range of assets, but predominantly mortgages in particular commercial and development loans;
  - c. on the basis that loans made by the fund would be secured by either registered mortgages and/or security interests;

- d. in accordance with a lending policy and process outlined in Linchpin's "Lending Manual",  
(**IM Purpose**).

#### **Particulars**

IM section 3, "Investment Strategy", cl. 5.3, cll. 5.3 and 5.4, and sections 3, "Investment Strategy" and 8, cl. 9.1.

#### ***The Registered Fund***

- 20 On or from 27 April 2015, Endeavour issued a Product Disclosure Statement in respect of the Registered Fund (**First PDS**).
- 20A Investport Company was the investment manager of the Registered Fund.
- 21 The First PDS provided that Endeavour would invest monies received from investors:
- a. progressively to achieve a diversified loan portfolio across property and corporate sectors on a secured basis that are income producing;
  - b. to "Primary Target Borrowers" on terms that the Responsible Entity and the Investment Manager would, amongst other types of lending, target loans to assist financial planners buy client books to expand their businesses, take security over the client books of the planner's existing business as well as the new client book and usual directors' guarantees and company charges;
  - c. on the basis that loans made by the Registered Fund would be capable of being secured by either registered mortgages or registered security interests,

(**PDS Purpose**).

#### **Particulars**

First PDS section 3, "Investment Strategy", cll. 5.3 and 5.4.

- 22 On or about 1 October 2015, Endeavour issued a second Product Disclosure Statement in materially the same terms as the PDS (**Second PDS**).

#### **Particulars**

The Second PDS was the same save for the description of "Who can invest?" (section 3).



- 23 On or about 24 June 2016, Endeavour issued a third Product Disclosure Statement in materially the same terms as the Second PDS (**Third PDS**).

**Particulars**

The Second PDS was the same save for the description of “Who can invest?” (section 3), the definition in section 3 of “Primary Target Borrowers” was amended to read “[f]rom time to time, the offer to borrow for business purposes, subject to all relevant securities, guarantees and external audit assessment, may extend to qualified Authorised Representatives of The FinancialLink Group Pty Ltd, AFSL 240938, or Risk and Investment Advisors Pty Ltd, AFSL 238141”.

- 23A In or about January 2018, Endeavour issued a fourth Product Disclosure Statement in materially the same terms as the Third PDS (**Fourth PDS**).

**Particulars**

The Fourth PDS was substantially the same save for:

- i. The disclosure that the entities outlined at paragraph 7 above are wholly owned by the Linchpin Group either directly or indirectly or through other subsidiaries (section 1, clause 1.3);
- ii. The definition in section 3 of “Investment Strategy” was amended to include the following sentence, “[a]t the date of this PDS, all loans are made through a unregistered wholesale fund in which the Fund has invested”;
- iii. The description of “About Us” (section 4);
- iv. The description of “The Fund” in particular the inclusion of clauses 5.7 to 5.9 (section 5); and
- v. The inclusion of clause 10.3 (section 10) which reads, “[t]he risks set out in Section 10 in relation to the Fund apply equally to the wholesale fund in which the Fund has invested”.

- 23AA Each of the First, Second, Third and Fourth PDS provided that Endeavour would be paid for its role as Responsible Entity of the Registered Fund.

**Particulars**

Section 11 of the First, Second, Third and Fourth PDS

23AB Each of the First, Second, Third and Fourth PDS provided that Investport Company would be paid for its role as investment manager of the Registered Fund.

**Particulars**

Section 11 of the First, Second, Third and Fourth PDS

**F. THE TRANSACTIONS AND CONDUCT**

23B From about February 2014 to November 2017, Linchpin (as trustee of the Unregistered Fund) entered into loan deeds, loan deed variations and security agreements.

**Particulars**

Particulars of the loan deeds, loan deed variations and security agreements are set out in **Annexure A** to this Further Amended Statement of Claim.

24 – 153 [Not used]

154. In respect of the monies made available from the Unregistered Fund for the advances under the loans set out in Annexure A to this Further Amended Statement of Claim (the **Loans**):

- a. no security was given or alternatively, inadequate security was granted by the borrowers under the Loans;
- b. no security was registered either at all or in time to provide any or adequate security;
- c. the funds advanced under the Loans were not applied in accordance with the IM Purpose;
- d. the Loans were not loans that would be made by a trustee exercising its ordinary care, skill and diligence and in accordance with the requirements of the IM

**Particulars**

- i. The funds were not applied to achieve a diversified loan portfolio across property and corporate sectors.
- ii. No security or inadequate security was obtained.

155. In respect of the monies made available from the Registered Fund for the advances under the Loans:

- a. no security was given or alternatively, inadequate security was granted by the borrowers under the Loans;

- b. no security was registered either at all or in time to provide any or adequate security;
- c. the funds advanced under the Loans were not applied in accordance with the PDS Purpose.

**Particulars**

- i. The funds were not applied to achieve a diversified loan portfolio across property and corporate sectors.
- ii. No security or inadequate security was obtained.

156. Between 29 June 2015 to 31 July 2018, Endeavour transferred, or alternatively Investport Company as investment manager authorised the transfer of, \$16,457,704 (comprising Registered Fund Group Members' funds) to the Unregistered Fund purportedly in exchange for units in the Unregistered Fund (**Inter Fund Investment**).

157. By 7 December 2017:

- a. the principal asset held by the Registered Fund was the Inter Fund Investment being units of the Unregistered Fund;
- b. the Inter Fund Investment was valued in the books and records of Endeavour at \$15,910,848.

**Particulars**

- i. Investor Register dated 7 December 2017
- ii. Balance Sheet as of November 2017
- iii. Profit & Loss Statement for July 2017-November 2017

158. In respect of the Inter Fund Investment:

- a. no security was granted by Linchpin;
- b. the transaction was not documented by any written agreement between Endeavour and Linchpin;
- c. the funds advanced were not applied in accordance with the PDS Purpose.

**Particulars**

- i. The funds were not applied to achieve a diversified loan portfolio across property and corporate sectors.

- ii. No security was obtained.

#### **H. THE ASIC PROCEEDINGS, RECEIVERSHIPS AND WINDINGS UP**

- 160. On 27 June 2018, arising from the ASIC Investigation, ASIC commenced proceeding no. QUD 439/2018 in the Federal Court of Australia against Linchpin and Endeavour (**ASIC Proceeding**).
- 161. On 26 July 2018, orders were made in the ASIC Proceeding including asset preservation orders in relation to the assets of Linchpin and Endeavour.
- 162. On 7 August 2018, orders were made in the ASIC Proceeding appointing receivers to the assets of Linchpin and Endeavour pursuant to section 1323 of the Corporations Act.
- 163. On 15 March 2019, orders were made in the ASIC Proceeding, with the consent of Linchpin and Endeavour, that each of:
  - a. Linchpin;
  - b. Endeavour;
  - c. the Unregistered Fund; and
  - d. the Registered Fund,be wound up under section 461(1)(k) of the Corporations Act.
- 164. Also on 15 March 2019, declarations were made in the ASIC Proceeding, that Endeavour had, including by reason of the conduct referred to in paragraphs 154 to 158 above associated with the Loans and the Inter Fund Investment:
  - a. contravened section 601FC(1)(b) of the Corporations Act because it had failed to exercise reasonable care and skill as responsible entity of the Registered Fund of which Endeavour was the responsible entity;
  - b. contravened section 601FC(1)(h) of the Corporations Act because it had failed to comply with its compliance plan;
  - c. contravened section 601FC(1)(j) of the Corporations Act because it failed to ensure that the property of the Registered Fund was valued at regular intervals;
  - d. contravened section 601FC(1)(k) of the Corporations Act because it had contravened the requirement to ensure that payments were made out of scheme property in accordance with the Corporations Act;

- e. contravened section 912A(1)(a) of the Corporations Act because it failed to ensure that the financial services it provided in respect of the Registered Fund were provided efficiently and fairly; and
  - f. contravened section 912A(1)(aa) of the Corporations Act because it did not have in place adequate arrangements for the management of conflicts of interest.
165. Each of Nielsen, Williams and Raftery were directors, and Daly was an officer, of Endeavour during the time that Endeavour engaged in the conduct that was the subject of the declarations of contraventions made in the ASIC Proceeding.
166. The Group Members have not received any distribution from the winding up of Endeavour, Linchpin, the Unregistered Fund or the Registered Fund.

## I. THE FAILURES

- 167A Linchpin entered into, and each of Investport Company, Nielsen, Williams, Raftery and Daly caused or allowed Linchpin to enter, or alternatively failed to prevent Linchpin from entering into the Loans in the circumstances pleaded in paragraphs 154 to 155 above (the **Loan Failures**).
- 167B Endeavour entered into the Inter Fund Investment and each of Investport Company, Nielsen, Williams, Raftery and Daly caused or allowed Endeavour, or alternatively failed to prevent Endeavour from entering into the Inter Fund Investment, in the circumstances pleaded in paragraphs 156 to 158 above (the **Investment Failure**).
- 167C Linchpin failed to ensure that security in respect of the Loans was obtained, adequate, registered and enforceable and each of Investport Company, Nielsen, Williams, Raftery and Daly failed to ensure that Linchpin ensured that security in respect of the Loans was obtained, adequate, registered and enforceable, in the circumstances pleaded in paragraphs 154 to 155 above (the **Security Failures**).
- 167D Linchpin failed to make any or any proper enquires in relation to the capacity of the borrowers under the Loans to repay the Loans in accordance with their terms or at all and each of Investport Company, Nielsen, Williams, Raftery and Daly failed to ensure that Linchpin made any or any proper enquires in relation to the capacity of the borrowers to repay the Loans in accordance with their terms, in the circumstances pleaded in paragraphs 154 to 158 above (**Enquiries Failures**).
- 167E On and following 23 January 2014, Linchpin failed to comply with the IM Purpose in the respects pleaded above and each of Investport Company, Nielsen, Williams, Raftery and Daly failed to ensure that Linchpin complied with the IM Purpose in those respects, and in the circumstances pleaded in paragraphs 15 to 17 above (**IM Failures**).

167F On and following 27 April 2015, Endeavour failed to comply with the PDS (including as amended by the Second PDS, the Third PDS and Fourth PDS) in the respects pleaded above and each of Investport Company, Nielsen, Williams, Raftery and Daly failed to ensure that Endeavour complied with the PDS Purpose, in those respects and in the circumstances pleaded in paragraphs 20 to 23A above (**PDS Failures**).

***The Unregistered Fund***

168. By reason of the Loan Failures, the Investment Failure, the Security Failures, the Enquiries Failures and the IM Failures, Linchpin:

- a. failed to act in accordance with section 23(2)(a) of the Trusts Act by exercising a power of investment with the care, diligence and skill a prudent person engaged in the same profession, business or employment would exercise in managing the affairs of other persons;
- b. failed to act in accordance with section 22(1)(a) of the Trusts Act by exercising a power of investment in compliance with a provision of the instrument creating the trust, namely the IM.

***The Registered Fund***

169. By reason of the Loan Failures, the Investment Failure, the Security Failures, the Enquiries Failures, the PDS Failures, each of Nielsen, Williams, Raftery and Daly:

- a. contravened, or alternatively were involved in a contravention of, subsection 601FD(1) of the Corporations Act because they failed to exercise the degree of care and diligence that a reasonable person would exercise if they were in the officer's position (by subsection 601FD(1)(b) of the Corporations Act); and
- b. accordingly, contravened subsection 601FD(3) of the Corporations Act.

170. By reason of the Investment Failure and the PDS Failures, Endeavour:

- a. contravened, or alternatively was involved in a contravention of, subsection 601FC(1) of the Corporations Act because it failed to exercise the degree of care and diligence that a reasonable person would exercise it were in the Responsible Entity's position (by subsection 601FC(1)(b) of the Corporations Act); and
- b. accordingly, contravened subsection 601FC(5) of the Corporations Act.

170A By reason of the Investment Failure and the PDS Failures, Investport Company:

- a. was involved in a contravention by each of Nielsen, Williams, Raftery and Daly of subsection 601FD(1) of the Corporations Act; and
- b. accordingly, contravened subsection 601FD(4) of the Corporations Act.

170B By reason of the Investment Failure and the PDS Failures, each of Investport Company, Nielsen, Williams, Raftery and Daly:

- a. was involved in a contravention by Endeavour of subsection 601FC(1) of the Corporations Act; and
- b. accordingly, contravened subsection 601FC(5) of the Corporations Act.

## **J. CAUSATION AND LOSS AND DAMAGE**

171. Each of the applicant and the Unregistered Fund Group Members made an investment in the Unregistered Fund on or after 23 January 2014.

172. By reason of the conduct pleaded in paragraphs 167A, 167C to 167E and 168 above (**Linchpin Contravening Conduct**), by 15 March 2019 all monies invested by the Unregistered Fund Group Members in the Unregistered Fund became irrecoverable.

173. Had the Linchpin Contravening Conduct not occurred:

- a. the Loans would not have been made; and
- b. the monies invested by the Unregistered Fund Group Members in the Unregistered Fund would not have been lost.

174. By reason of the conduct pleaded above in paragraphs 171 to 173 above, the applicant and the Unregistered Fund Group Members suffered loss and damage:

- a. in an amount representing the value of their initial investments; or alternatively
- b. in an amount that the applicant and the Unregistered Fund Group Members would have received had the alleged conduct not occurred.

175. Each of the applicant and the Registered Fund Group Members made an investment in the Registered Fund on or after 27 April 2015.

176. By reason of the conduct pleaded in paragraphs 167B, 167F and 170 above (**Endeavour Contravening Conduct**), by 15 March 2019 all monies invested by the Registered Fund Group Members in the Registered Fund became irrecoverable.

- 176A. By reason of the Endeavour Contravening Conduct, Nielsen, Williams, Raftery and/or Daly contravened section 601FD(1)(b) of the Corporations Act in respect of their roles as officers of Endeavour, the responsible entity of the Registered Fund.
- 176B. By reason of the Endeavour Contravening Conduct, Nielsen, Williams, Raftery and/or Daly contravened section 601FD(1)(c) of the Corporations Act in respect of their roles as officers of Endeavour, the responsible entity of the Registered Fund.
177. Had the Endeavour Contravening Conduct not occurred:
- a. the Inter Fund Investment would not have occurred; and
  - b. the monies invested by the Registered Fund Group Members in the Registered Fund would not have been lost.
178. By reason of the conduct pleaded in paragraphs 175 to 177 above, the applicant and the Registered Fund Group Members suffered loss and damage:
- a. in an amount representing the value of their initial investments; or alternatively
  - b. in an amount that the investors would have received had the alleged conduct not occurred.
179. In the premises pleaded above:
- a. pursuant to section 1325 of the Corporations Act, Endeavour is liable to compensate the applicant and the Registered Fund Group Members for the loss and damage caused by its conduct in contravention of section 601FC of the Corporations Act;
  - b. pursuant to section 1325 of the Corporations Act each of Nielsen, Williams, Raftery and Daly are liable to compensate the applicant and the Registered Fund Group Members for the loss and damage caused by their conduct in contravention of section 601FC of the Corporations Act;
  - c. Linchpin is liable as trustee to pay damages and/or equitable compensation for breach of trust to the applicant and the Unregistered Fund Group Members;
  - d. Nielsen, Williams, Raftery and/or Daly are liable to pay for loss and damage arising from their contravention of sections 601FD(1)(b) and (c) by operation of 1317H of the Corporations Act and/or are liable, pursuant to section 1325 of the Corporations Act, to compensate the applicant and Registered Fund Group Members for loss and damage caused by its conduct in contravention of sections 601FD(1)(b) and (c); and



- e. pursuant to sections 1317H and/or 1325 of the Corporations Act, Investport Company is liable to pay for loss and damage arising from its contravention of sections 601FC and/or 601FD of the Corporations Act and/or is liable to compensate the applicant and the Registered Fund Group Members for the loss and damage caused by its conduct in contravention of sections 601FC and/or 601FD of the Corporations Act.

## **K. MISLEADING OR DECEPTIVE CONDUCT**

### ***The IM***

180. Through the IM, Linchpin made the following representations (**Linchpin Representations**):

- a. Linchpin was:
- i. a corporate authorised representative under AFSL240938,
  - ii. the Responsible Entity and trustee of the Unregistered Fund;
  - iii. duly authorised to act as the Responsible Entity and trustee with respect to the Unregistered Fund,

#### **(Linchpin Authorisation Representations)**

##### **Particulars**

IM section 1.2 and section 3.

- b. The investment strategy of the Unregistered Fund was to invest funds progressively:
- i. to achieve a diversified loan portfolio;
  - ii. across property and corporate sectors;
  - iii. on a secured basis that are income producing,

#### **(Linchpin Strategy Representations).**

##### **Particulars**

IM sections 3 and 7

- c. The Unregistered Fund would:
- i. invest in a range of diversified assets;

- ii. predominantly invest in commercial and development loans, secured by registered mortgages, commercial and corporate loans secured by registered fixed and floating charges,

**(Linchpin Investment Representations).**

**Particulars**

IM sections 5.3 and 5.4

- d. The Unregistered Fund would seek investment opportunities across a range of loans and assets that would provide investors with:
  - i. Premium income returns; and
  - ii. Capital stability,

**(Linchpin Range Representation).**

**Particulars**

IM sections 3 and 7.2

181. At the time that Linchpin made the Linchpin Representations, those representations were false and were therefore misleading and deceptive or, in respect of future matters, the representations were made in circumstances where Linchpin had no reasonable basis to consider that the representations were correct because:
- a. in respect of the Linchpin Authorisation Representation, Linchpin was not:
    - i. a corporate authorised representative;
    - ii. the Responsible Entity and trustee of the Unregistered Fund;
    - iii. duly authorised to act as the Responsible Entity and trustee with respect to the Unregistered Fund,
  - b. in respect of the Linchpin Strategy Representations:
    - i. the funds were not invested in a diversified loan portfolio;
    - ii. the funds were not invested across property and corporate sectors;
    - iii. the funds were not invested on a secured or adequately secured basis that was income producing,

- c. in respect of the Linchpin Investment Representations, the funds were not invested in a range of diversified assets,
- d. in respect of the Linchpin Range Representations, Linchpin did not seek investment opportunities across a range of loans and assets.

182. The applicant read and relied on each of the Linchpin Representations prior to acquiring their respective units in the Unregistered Fund either by themselves or by their agents.

183. If the Linchpin Representations, or any of them, had not been made, no reasonable person in the position of an investor would have invested in the Unregistered Fund.

184. If the Linchpin Representations, or any of them, had not been made, the applicant would not have invested in the Unregistered Fund.

### ***The product disclosure statements***

185. Pursuant to section 1012B of the Corporations Act Endeavour was required to give a client a disclosure document or statement for an investment in the registered scheme.

189. In issuing the First PDS, Second PDS, Third PDS and Fourth PDS (referred to in paragraphs 20 to 23A above) (the **PDS Documents**), Endeavour made the following representations (**Endeavour Representations**):

- a. The investment strategy of the Registered Fund would be to invest funds progressively to achieve a diversified loan portfolio across property and corporate sectors on a secured basis that are income producing (**Endeavour Strategy Representations**).

### **Particulars**

PDS Documents sections 3 and 7

- b. The Registered Fund would:
  - i. invest in a range of diversified assets;
  - ii. predominantly be invested in mortgages in commercial and development loans, secured by registered mortgages, commercial and corporate loans secured by registered fixed and floating charges; and
  - iii. might also be invested in similar Managed Investment Schemes and in cash,

**(Endeavour Investment Representations).**

### Particulars

PDS Documents sections 5.3 and 5.4

- c. The Registered Fund would seek investment opportunities across a range of loans and assets that will provide investors with:
- i. premium income returns; and
  - ii. capital stability,

**(Endeavour Range Representation).**

### Particulars

PDS Documents sections 3 and 7.2

- d. in relation to any prospective investment by the Registered Fund in any other managed investment scheme:
- i. the primary goal of such an investment would be to invest in schemes that would provide stable income returns and capital stability;
  - ii. Endeavour and Investport Company as manager, would observe strict guidelines for selecting managed investment schemes, whether listed, unlisted, registered or unregistered, based on:
    - A. demonstrated management experience in the sector within which they invest;
    - B. a strong track record in investment management in the particular asset class; and
    - C. vigorous investment processes and guidelines,

**(Endeavour MIS Representations).**

### Particulars

PDS Documents section 9.2

190. At the time that Endeavour made the Endeavour Representations, those representations were false and were therefore misleading and deceptive or, in respect of future matters, the representations were made in circumstances where Endeavour had no reasonable basis to consider that the representations were correct because:

- a. in respect of the Endeavour Strategy Representations, Endeavour did not invest funds progressively to achieve a diversified loan portfolio across property and corporate sectors on a secured basis that were income producing.
  - b. in respect of the Endeavour Investment Representations, Endeavour did not:
    - i. invest in a range of diversified assets;
    - ii. invest predominantly in mortgages in commercial and development loans, secured by registered mortgages, commercial and corporate loans secured by registered fixed and floating charges; and
    - iii. did not invest in similar Managed Investment Schemes.
  - c. in respect of the Endeavour Range Representation, Endeavour did not seek investment opportunities for the Registered Fund across a range of loans and assets.
  - d. in respect of the Endeavour MIS Representations, Endeavour did not invest the funds from the Registered Fund in any other managed investment scheme but rather made the Inter Fund Investment.
191. The applicant relied on the Endeavour Representations in determining whether to acquire their respective units in the Registered Fund, either by themselves or by their respective agents.
192. If the Endeavour Representations, or any of them, had not been made, the applicant would not have invested in the Registered Fund.
193. If the Endeavour Representations, or any of them, had not been made, no reasonable person in the position of an investor would have invested in the Registered Fund.
194. The Second PDS, the Third PDS and/or the Fourth PDS did not identify the significant risks associated with an investment in the Registered Fund where that fund had invested exclusively in the Unregistered Fund and the Unregistered Fund:
- a. only held assets in the form of loans;
  - b. provided loans, not to a diversified range of borrowers, but instead to borrowers all within one group of financial planners (related to its trustee);
  - c. had not conducted proper due diligence before making the loans including as to the capacity of the borrower to repay the loans; and
  - e. had not received valuable security for the repayment of the loans and had failed to register the security that was offered,

**(Omitted Risks).**

196. The Omitted Risks were:
- a. 'significant risks' and 'significant characteristics or features' for the purposes of section 1013D(1)(c) and (f) of the Corporations Act;
  - b. accordingly, required to be disclosed in the Second PDS, the Third PDS and/or the Fourth PDS; and
  - c. in fact not disclosed in the Second PDS, the Third PDS and/or the Fourth PDS.
197. Alternatively, the matters identified in paragraph 194 above were required to be disclosed in the Second PDS, the Third PDS and/or the Fourth PDS pursuant to section 1013E of the Corporations Act.
198. Further, or alternatively, the matters identified in paragraph 194 above were required to be disclosed in the Second PDS, the Third PDS and/or the Fourth PDS pursuant to section 1017B of the Corporations Act.
199. Each PDS was defective within the meaning of section 1022A of the Corporations Act because:
- a. they each contained a misleading or deceptive statement (as pleaded at paragraphs 189 to 190 above); or
  - b. they omitted material required by section 1013C of the Corporations Act (as pleaded at paragraph 194 above).
200. In contravention of section 1017B of the Corporations Act, Endeavour did not notify the investors in one of the ways specified in s 1017B(3) of the changes to the significant risks and features of their investment in the Registered Fund occasioned by:
- a. the substantial investment by that fund in the Unregistered Fund; and
  - b. the nature of the investment activities by the Unregistered Fund.
201. If the Second PDS, Third PDS or alternatively Fourth PDS had not been defective, the applicant and the Registered Fund Group Members would not have invested in the Registered Fund.

## **Contraventions**

### *Linchpin, Investport Company and its officers*

202. By the conduct pleaded at paragraphs 180 to 181 above, Linchpin engaged in misleading or deceptive conduct:

- a. in contravention of section 1041H of the Corporations Act; or
- b. alternatively, in contravention of section 12DA of the ASIC Act.

202A. Each of Investport Company, Nielsen, Williams, Raftery and/or Daly were involved in Linchpin's contravention of section 1041H of the Corporations Act or alternatively section 12DA of the ASIC Act.

### *Endeavour, Investport Company and its officers*

203. In the circumstances pleaded at paragraphs 189 to 190 above, Endeavour engaged in misleading or deceptive conduct:

- a. in contravention of section 1013D(1)(f) and 1013E of the Corporations Act;
- b. in contravention of section 1017B(1) of the Corporations Act;
- c. in contravention of section 1022B, or alternatively section 1041H, of the Corporations Act;
- d. alternatively, in contravention of section 12DA of the ASIC Act.

203A. Each of Investport Company, Nielsen, Williams, Raftery and/or Daly were:

- a. involved in the preparation of the PDS Documents and directly or indirectly caused the PDS Documents to be, or contributed to the PDS Documents being, defective within the meaning of section 1022B(3)(b)(ii); and/or
- b. involved in Endeavour's contravention of section 1041H of the Corporations Act or section 12DA of the ASIC Act.

## **L. CAUSATION AND LOSS AND DAMAGE**

204. Had Linchpin not made the Linchpin Representations, the applicant would not have invested in the Unregistered Fund.

205. Had Endeavour not made the Endeavour Representations, the applicant would not have invested in the Registered Fund.

206. Other Group Members may have also suffered loss on the basis of reliance on the Linchpin Representations and / or the Endeavour Representations.

206A. In the circumstances pleaded in this Further Amended Statement of Claim, no reasonable person would have invested in the Unregistered Fund or Registered Fund.

207. In the premises, pursuant to section 1022B(2) of the Corporations Act, the applicant and the Group Members are entitled to recover from a liable person the loss and damage caused by:

- a. the defects in each of the PDS, the Second PDS, the Third PDS and/or the Fourth PDS;  
or
- b. the conduct in contravention of section 1017B of the Corporations Act.

208. In the premises pleaded at paragraphs 204 to 206 above, pursuant to section 1041I or 1325 of the Corporations Act, or alternatively section 12GF of the ASIC Act, the applicant and the Group Members are entitled to recover the loss and damage caused by the conduct in contravention of section 1041H of the Corporations Act, or alternatively section 12DA of the ASIC Act.

## **M. INSURANCE POLICIES**

### **Directors and Officers Liability Insurance Policy**

209. On or about 20 December 2017, AIG provided a policy of insurance in respect of certain liability of directors and officers (**D&O Policy**).

#### **Particulars**

The D&O Policy is a written policy of insurance dated 20 December 2017 and signed on behalf of AIG bearing policy number 0300021329.

210. The “Insurer” under the D&O Policy is AIG.

#### **Particulars**

Page 31 of the D&O Policy.

211. The “Policyholder” under the D&O Policy was Linchpin.

#### **Particulars**

Pages 5 and 34 of the D&O Policy.



212. The period of coverage under the D&O Policy was for 12 months commencing on 31 October 2017 and concluding on 31 October 2018.

**Particulars**

Pages 5, 6 and 41 of the D&O Policy.

**Key definitions in D&O Policy**

213. Each of Nielsen, Raftery, Williams and Daly is an “Insured” within the meaning of that term under the D&O Policy.

**Particulars**

- i. “Insured” is defined on page 31 of the D&O Policy to be any Manager, Outside Entity Director and Insured Entity.
- ii. “Manager” is defined on page 32 of the D&O Policy to be any natural person who, relevantly, is a director, officer or committee member of any Insured Entity when and to the extent that such person is acting for and on behalf of the Insured entity in that capacity.
- iii. “Insured Entity” is defined on page 31 of the D&O Policy to be the Policyholder, any Subsidiary and any Plan.
- iv. “Subsidiary” is defined on page 36 of the D&O Policy to be any entity which a Policyholder controls, either directly or indirectly through one or more entities, on or before the inception date of the D&O Policy.
- v. By reason of the matters pleaded at paragraph 6, Endeavour was an “Insured Entity”.
- vi. By reason of the matters pleaded at paragraphs 4(e), 4(f), 4A, 5(a), 5(a1) and 5A above, each of Nielsen, Raftery, Williams and Daly were directors and/or officers of Linchpin and/or Endeavour and were accordingly “Insureds”.

214. The term “Loss” is defined in the D&O Policy to mean “any amount that the Insured is legally liable to pay, including Defence Costs, awards of damages (including punitive and exemplary damages), awards of costs or settlements (including plaintiff’s legal costs and expenses), Compensation Orders, pre- and post- judgment interest on a covered judgment or award, and the multiplied portion of multiple damages”.

**Particulars**

Pages 31 and 32 of the D&O Policy.

215. The term “Wrongful Act” is defined in the D&O Policy to mean “any actual, alleged or proposed act, error or omission, breach of duty, breach of trust, misstatement, misleading statement or breach of warranty of authority by an Insured”.

**Particulars**

Page 36 of the D&O Policy.

216. The term “Management Liability” is defined in the D&O Policy to include “any “Claim” against a “Manager”:
- a. for any “Wrongful Act” of any “Manager”; or
  - b. arising solely because of any person’s status as a Manager”.

**Particulars**

Page 32 of the D&O Policy.

217. The term “Manager” is defined in the D&O Policy to include any natural person who was, is or becomes a director, officer or committee member of either Linchpin or Endeavour.

**Particulars**

Pages 31 and 32 of the D&O Policy.

218. The term “Claim” is defined in the D&O Policy to include a:
- a. “written demand; or
  - b. civil, regulatory, mediation, administrative or arbitration proceeding, including a counter claim, seeking compensation or other legal or equitable remedy...”

**Particulars**

Page 28 of the D&O Policy.

**Insuring Clause and declinature by AIG**

219. Under the Management Liability insuring promise in the D&O Policy, AIG has agreed to pay the “Loss” for, or on behalf of, any “Insured” for any Management Liability, irrespective of any other indemnification available to the Insured.

**Particulars**

Page 19 of the D&O Policy.

220. Each of Nielsen, Raftery, Williams and Daly has committed a “Wrongful Act” or “Wrongful Acts” within the meaning of the D&O Policy.

**Particulars**

The Applicant refers to and repeats paragraphs 167A to 167F, 168 to 170B, 176A, 176B and 202 to 203A above.

221. The applicant has suffered “Loss” within the meaning of the D&O Policy, as a result of the Wrongful Act or Wrongful Acts of Nielsen, Raftery, Williams and/or Daly.

**Particulars**

The applicant refers to and repeats paragraphs 171 to 178, and 204 to 208 above.

222. During the term of the policy, AIG was notified of circumstances that could give rise to a “Claim” under the D&O Policy.

**Particulars**

- i. Letter from MinterEllison to MegaCapital, the broker for AIG, dated 28 September 2018 (**Notification Letter**).
- ii. Email from Willis Towers Watson to AIG dated 5 October 2018, attaching Notification Letter.
- iii. Email from AIG to Willis Towers Watson dated 9 October 2018.
- iv. Letter from MinterEllison to AIG dated 29 October 2018.
- v. Email from AIG to Willis Towers Watson dated 31 October 2018.

223. In the premises, AIG is required under the D&O Policy to indemnify each of Nielsen, Raftery, Williams and Daly for any liability to the applicant under the applicant’s claims against them.

224. AIG has determined that coverage is not available under the D&O Policy to Nielsen, Raftery, Williams and/or Daly in respect of the relief sought in this proceeding.

**Particulars**

Letter or letters from AIG to Nielsen, Raftery, Williams and/or Daly dated on or about 2 March 2021.

225. In determining that coverage is not available to Nielsen, Raftery, Williams and/or Daly under the D&O Policy in respect of the relief sought in this proceeding, AIG has:

- a. breached the terms of the D&O Policy; or
- b. otherwise failed to perform its obligations under the D&O Policy.

226. In the premises, the applicant is entitled to recover its loss directly from AIG as AIG is obliged to pay under the D&O Policy in respect of the Wrongful Acts committed by Nielsen, Raftery, Williams and/or Daly.

### **Particulars**

Section 4 of *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW)*

### **Professional Indemnity Policy**

227. On or about 5 December 2017, the Acapella Group provided a policy of insurance in respect of certain prospective professional liability (**PI Policy**).

### **Particulars**

The PI Policy is a written policy of insurance dated 5 December 2017 and signed on behalf of Acapella Group bearing policy number IL1705770.

228. The “Insurer” under the PI Policy is the Acapella Group.

### **Particulars**

Final page (not numbered) of the PI Policy.

229. The “Policy Period” under the PI Policy was from 16:00 (Australian Eastern Standard Time (**AEST**)) on 30 September 2017 until 16:00 AEST on 30 September 2018.

### **Particulars**

Schedule attached to the PI Policy.

### **Key definitions in PI Policy**

230. Each of Linchpin, Endeavour, Investport Company, Nielsen, Raftery, Williams and Daly is an Insured under the PI Policy.

### **Particulars**

- i. "Insured Organisation" is defined in the Schedule to the PI Policy at definition (f) as the Principal Organisation and any Subsidiary.
- ii. "Subsidiary" is defined in the Schedule to the PI Policy at definition (m) as relevantly any organisation in which one or more Insured Organisations controls or controlled the composition of the organisation's board, is or was in a position to coast, or control the casting, of more than 50% of the maximum number of votes that might be cast at a general meeting of the organisation or holds or held more than 50% of the issued share capital of the organisation (excluding any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital".
- iii. "Principal Organisation" is defined in the Schedule to the PI Policy at definition (k) as the entity that is named in Item 1 of the Schedule.
- iv. Linchpin and Investport Company are nominated as "Insured" in the Schedule to the PI Policy.
- v. By reason of the matters pleaded at paragraph 6 above, Endeavour is a subsidiary of Linchpin and is accordingly an Insured Organisation under the PI Policy.
- vi. "Insured" is defined in the Schedule to the PI Policy at definition (f) as the Insured Organisation and the Insured Persons or any one of them.
- vii. "Insured Persons" is defined in the Schedule to the PI Policy at definition at definition (f) as any past, present or future director, officer or employee of the Insured Organisation in his or her capacity as a director, officer or employee of the Insured Organisation.
- vii. By reason of the matters pleaded at paragraphs 4(e), 4(f) and 5(a) above, each of Nielsen, Raftery, Williams and Daly were directors of Linchpin and/or Endeavour and were accordingly "Insureds".

231. The term "Loss" is defined in the PI Policy to mean the "total amount which any Insured becomes legally obligated to pay on account of each Claim and for all Claims in each Policy Period, made against the Insured for Wrongful Acts for which coverage applies, including but not limited to, damages, judgments, settlements, costs and Defence Costs.

### **Particulars**

Definition (g) under the PI Policy.

232. The term “Claim” is relevantly defined in the PI Policy to mean:

- a. a civil proceeding commenced by service of a complaint, summons, statement of claim or similar pleading; or
- b. a written demand.

**Particulars**

Definition (a) under the PI Policy.

233. The term “Wrongful Act” is defined in the PI Policy to mean “any error, misstatement, misleading statements, act, omission, neglect, breach of trust, breach of duty or breach of chapter 7 of the *Corporations Act 2001* (Cth) committed, attempted, or allegedly committed or attempted, by the Insured or a Representative of the Insured which arises solely from the Insured or its Representative performing Professional Services including a failure to perform Professional Services”.

**Particulars**

Definition (n) under the PI Policy.

234. The term “Professional Services” is defined in the PI Policy to mean “services performed or required to be performed by the Insured for or on behalf of a customer of the Insured pursuant to an agreement between such customer and the Insured for a fee, commission, or other monetary consideration or other remuneration which inures to the benefit of the Insured”.

**Particulars**

Definition (l) under the PI Policy.

235. The term “Representative” is defined in the PI Policy to have the meaning provided in s 910A of the Corporations Act.

**Particulars**

Definition (o) under the PI Policy.

236. Each of Nielsen, Raftery, Williams and Daly are a Representative of Linchpin, Investport Company and/or Endeavour within the meaning of the PI Policy.

**Particulars**

- i. Definition (o) under the PI Policy.

- ii. The Applicant refers to and repeats paragraphs 4(e), 4(f), 4A, 5(a), 5(a1), 5A, 8(a) and 8(d) above.
- iii. Section 910A(b) of the Corporations Act.

237. Each of Linchpin and Investport Company performed services, or were required to provide services, for the Applicant as a customer pursuant to the IM between the Applicant and Linchpin and Investport Company in respect of the Unregistered Scheme.

**Particulars**

Application form made pursuant to the terms of the IM and signed on behalf of the Applicant and dated 25 March 2015.

Letter from Investport Company to the Applicant dated 8 April 2015

Clause 4.2 to 4.7, 5.3 to 5.4, 7.3, section 8, 9.1 to 9.5 and 10.3 of the IM

238. Each of Linchpin and Investport Company obtained a fee, commission, monetary commission or other remuneration which inured to its benefit in exchange for the services referred to in paragraph 237 above.

**Particulars**

Section 11 of the IM

239. Each of Endeavour and Investport Company performed services, or were required to provide services, for the Applicant as a customer pursuant to the PDS Documents between the applicant and Endeavour and Investport Company in respect of the Registered Scheme.

**Particulars**

Document titled "Additional Application Form" made pursuant to the terms of the PDS and signed on behalf of the Applicant

Letter from Endeavour dated 31 May 2016

Clauses 4.1, 4.4, 5.3, 7.3 to 7.4, 10.2 to 10.3 and section 9 of the PDS Documents

240. Each of Endeavour and Investport Company obtained a fee, commission, monetary consideration or other remuneration which incurred to its benefit in exchange for the services referred to in paragraph 239 above.

**Particulars**

## Section 11 of the PDS Documents

**Insuring Clause and response by Acapella Group**

241. Under the terms of the PI Policy, Acapella Group has agreed to indemnify each of Linchpin, Endeavour, Investport Company, Nielsen, Raftery, Williams and Daly for all Loss which each of them become legally obligated to pay as a result of any Claim first made against Linchpin, Endeavour, Investport Company, Nielsen, Raftery, Williams and Daly respectively during the Policy Period arising out of any Wrongful Act committed by Linchpin, Endeavour, Investport Company, Nielsen, Raftery, Williams and/or Daly respectively during or prior to the Policy Period while performing Professional Services, including the alleged failure to perform Professional Services.

**Particulars**

The paragraph under heading “Insuring Clause” in the PI Policy; definitions (a), (f), (g), (l), (m) and (n) of the PI Policy

242. Linchpin, Endeavour, Investport Company and/or one or more of Nielsen, Raftery, Williams and Daly (including in their capacity as Representatives of either Linchpin, Endeavour and / or Investport Company), have committed a “Wrongful Act” within the meaning of the PI Policy.

**Particulars**

The Applicant refers to and repeats paragraphs 167A to 167F, 168 to 170B, 176A, 176B and 202 to 203A above.

243. During the term of the PI Policy, Acapella Group was notified of circumstances that could give rise to a “Claim” under the PI Policy in respect of Linchpin, Endeavour, Investport and others.

**Particulars**

- i. Letter from MinterEllison to MegaCapital dated 28 September 2018.
- ii. Letter from Willis Towers Watson to MegaCapital dated 3 October 2018.

244. In the premises, Acapella Group was required under the PI Policy to indemnify each of Linchpin, Endeavour, Investport Company, Nielsen, Raftery, Williams and/or Daly for any liability to the Applicant under the Applicant’s Claims against them.

245. The Acapella Group has determined that coverage is not available under the PI Policy to Linchpin, Endeavour, Nielsen, Raftery, Williams and Daly in respect of the relief sought in this proceeding.



### Particulars

Letters from Hamilton on behalf of Acapella Group to Linchpin, Endeavour, Nielsen, Raftery and Daly dated on or about 4 March 2021.

246. In determining that coverage is not available to Linchpin, Endeavour, Nielsen, Raftery, Williams and Daly under the PI Policy in respect of the relief sought in this proceeding, the Acapella Group has:
- a. breached the terms of the PI Policy; or
  - b. otherwise failed to perform its obligations under the PI Policy.

247. In the premises, the Applicant is entitled to recover its loss directly from the Acapella Group as the Acapella Group is obliged to pay under the PI Policy in respect of the Wrongful Acts committed by Linchpin, Endeavour, Investport Company, Nielsen, Raftery, Daly and Williams.

### Particulars

Section 4 of *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW)

### Investment Management Insurance Policy 2017/2018

248. On or about 26 September 2017, the Acapella Group provided a policy of insurance in respect of certain investment management liability (**17/18 IMI Policy**).

### Particulars

The 17/18 IMI Policy is a written policy of insurance dated 26 September 2017 and signed on behalf of Acapella Group bearing policy number IL1708070.

249. The “Insurer” under the 17/18 IMI Policy is the Acapella Group.

### Particulars

Final page (not numbered) of the 17/18 IMI Policy.

250. The “Policy Period” under the 17/18 IMI Policy was from 16:00 AEST on 30 June 2017 until 16:00 AEST on 30 June 2018.

### Particulars

Schedule attached to the 17/18 IMI Policy.

### Key definitions in 17/18 IMI Policy

251. For the purposes of Part A of the 17/18 IMI Policy, the term “Claim” is defined to mean “any written demand or civil proceeding first made or brought against the Insured during the Policy Period and reported to the Insurers during the Policy Period which may result in the payment of any amounts insured under Part A” of the 17/18 IMI Policy.

**Particulars**

Clause 14.3(a) of the 17/18 IMI Policy.

252. For the purposes of Part B of the 17/18 IMI Policy the term “Claim” is defined to mean, relevantly, “any written demand or civil proceeding first made or brought against an Insured Person during the Policy Period and reported to the Insurer alleging a Wrongful Act which may result in the payment of any amounts insured under Part B of the” 17/18 IMI Policy.

**Particulars**

Clause 14.3(b) of the 17/18 IMI Policy.

253. Endeavour is an Insured for the purpose of Part A of the 17/18 IMI Policy.

**Particulars**

Clause 14.15, 14.16, 14.17 of, and Schedule to, the 17/18 IMI Policy.

254. Each of Nielsen, Williams, Daly and Raftery is an Insured Person for the purpose of Part B of the 17/18 IMI Policy.

**Particulars**

Clause 14.7, 14.15, 14.18 of the 17/18 IMI Policy.

255. The term “Professional Services” is defined in the 17/18 IMI Policy to mean, relevantly, “services provided in the capacity of a trustee or responsible entity relating to investments in connection with any Insured Fund but only in respect of such services performed for or on behalf of the Insured Organisation”.

**Particulars**

Clause 14.33 of the 17/18 IMI Policy.

256. The term “Insured Organisation” is defined in the 17/18 IMI Policy to mean “the Insured Fund and the Name Insured and its Subsidiaries”.

**Particulars**

Clause 14.17 of the 17/18 IMI Policy.

257. The term “Insured Fund” is defined in the 17/18 IMI Policy to mean “any fund, sub-fund, trust, sub-trust, managed investment scheme, investment vehicle or investment mandate disclosed in the Proposal to which the Insured provides Professional Services”.

**Particulars**

Clause 14.16 of the 17/18 IMI Policy.

258. The term “Wrongful Act” is defined in the 17/18 IMI Policy to mean any “act or omission of an Insured Person in his or her capacity as a Director or Officer” or “any matter claimed against an Insured Person solely because of his or her status as a Director or Officer”.

**Particulars**

Clause 14.44 of the 17/18 IMI Policy.

**Insuring Clauses and response by Acapella Group**

259. Under the terms of the 17/18 IMI Policy, Acapella Group agreed to indemnify Endeavour against civil liability incurred by Endeavour in respect of a Claim arising from the performance of Professional Services.

**Particulars**

Clause 1.1 of the 17/18 IMI Policy, falling within Part A of the 17/18 IMI Policy

260. The applicant’s claims arise from the performance of Endeavour’s role as responsible entity of the Registered Fund and accordingly arises from Endeavour’s performance of Professional Services for the purpose of the 17/18 IMI Policy.

**Particulars**

The applicant refers to and repeats paragraphs 170, 176, 203 and 255 to 257 above.

261. Under the terms of the 17/18 IMI Policy, Acapella Group agreed to indemnify each of Nielsen, Williams, Daly and Raftery against liability that each of Nielsen, Williams, Daly and Raftery incurred in respect of a Claim alleging a Wrongful Act.

**Particulars**

Clause 5.1 of the 17/18 IMI Policy, falling within Part B of the 17/18 IMI Policy

262. The applicant's claims include allegations that each of Nielsen, Williams, Daly and Raftery have committed a Wrongful Act or Wrongful Acts within the meaning of the 17/18 IMI Policy.

**Particulars**

The Applicant refers to and repeats paragraphs 167B, 167F, 169, 170 to 170B, 203 and 203A above.

263. During the term of the 17/18 IMI Policy, Acapella Group was notified of circumstances that could give rise to a claim under the 17/18 IMI Policy in respect of Endeavour and each of Nielsen, Williams, Daly and Raftery.

**Particulars**

- i. Emails from Megacapital to Integro Group on behalf of Acapella Group dated 2 March 2018, together with attachments.
  - ii. Email from Megacapital to Integro Group on behalf of Acapella Group dated 28 June 2018.
264. In the premises, Acapella Group is required under the 17/18 IMI Policy to indemnify Endeavour and each of Nielsen, Williams, Daly and Raftery for liability to the Applicant under the Applicant's claims against them.
265. Acapella Group has declined to make a coverage determination with respect to whether it will extend coverage to Endeavour and each of Nielsen, Williams, Daly and Raftery under the 17/18 IMI Policy.

**Particulars**

Letters from Hamilton on behalf of Acapella to Linchpin, Endeavour, Nielsen, Raftery and Daly dated on or about 4 March 2021.

266. In failing to determine that coverage is available to Endeavour and each of Nielsen, Williams, Daly and Raftery under the 17/18 IMI Policy in respect of the relief sought in this proceeding, the Acapella Group has:
- a. breached the terms of the 17/18 IMI Policy; or
  - b. otherwise failed to perform its obligations under the 17/18 IMI Policy.
267. In the premises, the Applicant is entitled to recover its loss directly from the Acapella Group as the Acapella Group is obliged to pay under the 17/18 IMI Policy in respect of the claims made by it.

**Particulars**

Section 4 of *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW)

Date: ~~26 July 2021~~ 31 August 2022



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Signed by Michael Russell Catchpoole

Lawyer for the Applicant

This amended pleading was prepared by Corrs Chambers Westgarth and settled by David Lloyd SC and Robert Pietriche of counsel.

**Certificate of lawyer**

I, Michael Russell Catchpoole certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~26 July 2024~~ 31 August 2022



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Signed by Michael Russell Catchpoole

Lawyer for the Applicant

**Schedule**

No. NSD 939 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: Commercial

**Respondents**

Second Respondent: Paul Nielsen

Third Respondent: Ian Comrie Williams

Fourth Respondent: Paul Anthony Raftery

Fifth Respondent: Peter Eugene Daly

Sixth Respondent: Endeavour Securities (Australia) Ltd (in Liquidation) ACN 079  
988 819

Seventh Respondent: AIG Australia Limited ACN 004 727 753

Eighth Respondent: ~~Hamilton RiverStone~~ Managing Agency Limited (~~formerly known as Pembroke Managing Agency Limited~~) acting in its capacity as ~~managing agent for and~~ on behalf of all the underwriting members of Lloyd's Syndicate 2014Date: ~~18 May 2021~~ 31 August 2022

## Annexure A

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
1.	Beacon Financial Group Pty Ltd ( <b>Beacon</b> )	Loan Deed dated 10 February 2014 ( <b>Beacon Loan</b> )	Loan Amount: \$3 million  Duration: 1 year from the date of the initial loan advance  Interest rate: 10.5% p.a.  Repayment date:  Repayable in full on expiry of the term unless the term was extended by mutual agreement	Nielsen and Williams on behalf of both Beacon and Linchpin	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 10 February 2014	Beacon to grant a registerable security interest over the shares of its subsidiaries	Nielsen and Williams on behalf of both Beacon and Linchpin	Security was provided and registered on the PPS Register on 11/09/2018
		Loan Deed Variation dated 20 April 2016 ( <b>Beacon Deed Variation</b> )	Variation:  Linchpin agreed to lend itself an additional \$1 million  Principal sum:  Varied from \$3 million to \$4 million  Term:  12 month period from the date of the loan advance	Nielsen and Williams on behalf of both Beacon and Linchpin	
2.	Linchpin Capital Group Ltd ( <b>Linchpin</b> )	Loan Deed dated 1 August 2014 ( <b>Linchpin Loan</b> )	Loan Amount: \$3 million  Duration: 1 year from the date of the initial loan advance	Nielsen and Williams on behalf of Linchpin in its personal capacity and in its capacity as trustee of the Unregistered	Detailed in separate agreement entitled 'Specific Security Agreement'



Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
			<p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment date:</p> <p>Repayable in full on expiry of the term unless the term was extended by mutual agreement</p>	Fund	
		Specific Security Agreement dated 1 August 2014	Linchpin to grant a registerable security interest over the shares of its subsidiaries	Nielsen and Williams on behalf of Linchpin in its personal capacity and in its capacity as trustee of the Unregistered Fund	Security was provided and registered on the PPS Register on 11/09/2018
		Loan Deed Variation dated 1 July 2015 ( <b>Linchpin Deed Variation</b> )	<p>Variation:</p> <p>Linchpin agreed to lend itself an additional \$3 million</p> <p>Principal sum:</p> <p>Varied from \$3 million to \$6 million</p> <p>Term:</p> <p>12 month period from the date of the loan advance</p>	Nielsen and Williams on behalf of Linchpin in its personal capacity and in its capacity as trustee of the Unregistered Fund	
3.	Risk and Investment Advisors Australia Pty Ltd ( <b>RIAA</b> )	Loan Deed undated ( <b>RIAA Loan</b> )	<p>Loan Amount:</p> <p>\$2.5 million</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment date:</p> <p>The date being the end of</p>	Nielsen and Williams on behalf of Linchpin and Nielsen and Williams on behalf of RIAA	Detailed in separate agreement entitled 'Specific Security Agreement'

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
			the term.		
		Specific Security Deed (shares) Undated	RIAA to grant a registerable security interest over all of its shares	Nielsen and Williams on behalf of Linchpin and RIAA (as both a secured party and an AFSL licensee)	Security was provided and registered on the PPS Register on 30/08/2018
		Loan Deed Variation dated 1 July 2016 (RIAA Variation)	Variation:  Linchpin agreed to lend RIAA an additional \$250,000  Principal sum:  Varied from \$250,000 to \$2.75 million  Term:  12 month period from the date of the loan advance	Nielsen and Williams on behalf of Linchpin and  Nielsen and Williams on behalf of RIAA	
4.	CPG Research & Advisory Pty Ltd (CPG)	Loan Deed dated 21 November 2016 (CPG Loan)	Loan Amount:  \$500,000  Duration:  1 year from the date of the initial loan advance  Security:  All CPG shares held by Linchpin  Interest rate:  10.5% p.a  Repayment date:  The date being the end of the term	Nielsen and Williams on behalf of Linchpin and Nielsen and Williams on behalf of CPG	No security interest was registered on the PPS Register
5.	ISARF Pty Ltd	Loan Deed dated 30 June	Loan Amount:	Nielsen and Williams on	No security interest was

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
	(ISARF)	2017 (ISARF Loan)	<p>\$250,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Security:</p> <p>All ISARF shares held by Linchpin.</p> <p>Repayment date:</p> <p>The date being the end of the term</p>	<p>behalf of Linchpin and Nielsen and Williams on behalf of ISARF</p>	<p>registered on the PPS Register</p>
<b>Transactions with Financial Advisors and FLG (as an AFS Licensee)</b>					
6.	ALPS Network Pty Ltd (ALPS), Peter Larkin & Lance Meikle (together, ALPS Parties)	<p>Loan Deed Undated (ALPS Loan)</p> <p>Specific Security Agreement (shares) Undated</p> <p>Loan Deed Variation (Further</p>	<p>Loan Amount:</p> <p>\$220,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment date:</p> <p>The date being the end of the term</p> <p>The ALPS Parties are to grant Linchpin a registerable security interest over all of its shares held in ALPS.</p> <p>Variation:</p> <p>Linchpin agreed to lend the</p>	<p>Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund</p> <p>Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund</p> <p>Nielsen and Williams on behalf of</p>	<p>Detailed in separate agreement entitled 'Specific Security Agreement'</p> <p>Security was provided and registered on the PPS Register on 29/08/2018</p>

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
		Drawdown) Undated ( <b>First ALPS Variation</b> )	<p>ALPS Parties an additional \$330,000</p> <p>Principal sum:</p> <p>Varied from \$220,000 to \$550,000</p> <p>Term:</p> <p>12 month period from the date of the loan advance under the deed applied to the total principal sum</p>	Linchpin as trustee of the unregistered fund	
		Loan Deed Variation (Further Drawdown – May 2016) Dated May 2016 ( <b>Second ALPS Variation</b> )	<p>Variation:</p> <p>Linchpin agreed to lend the ALPS Parties an additional \$210,000</p> <p>Principal sum:</p> <p>Varied from \$550,000 to \$760,000</p> <p>Term:</p> <p>12 month period from the date of the loan advance under the deed applied to the total principal sum</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	
7.	Derek Pyrah	Loan Deed dated 26 April 2015 ( <b>Pyrah Loan</b> )	<p>Loan Amount:</p> <p>\$225,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'

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		Specific Security Agreement (shares) dated 26 April 2015	Derek Pyrah is to grant Linchpin a registerable security interest over all of his shares "held in the Company". (No company is listed)	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 29/08/2018
8.	Venture Finance & Advisory Pty Ltd ( <b>Venture</b> ) & David Ruthenberg	Venture Loan Deed undated ( <b>Venture Loan</b> )	<p>Loan Amount:</p> <p>\$150,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement (shares) undated	Venture and David Ruthenberg is to grant Linchpin a registerable security interest over all of their shares in Venture.	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	<p>Security was provided and in respect of Venture, was registered on the PPS Register on 29/08/2018.</p> <p>The security provided by David Ruthenberg was not registered.</p>
		Loan Deed Variation (Further Drawn Down – March 2017) dated 6 March 2017 ( <b>Venture Variation</b> )	<p>Variation:</p> <p>Linchpin agreed to lend to Venture and Mr Ruthenberg an additional \$70,000</p> <p>Principal sum:</p> <p>Varied from \$150,000 to</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	

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			<p>\$220,000</p> <p>Term:</p> <p>12 month period from the date of the loan advance under the deed applied to the total principal sum</p>		
9.	Brian French	Loan Deed dated July 2015 ( <b>French Loan</b> )	<p>Loan Amount:</p> <p>\$150,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Daly on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement (shares) dated July 2015	Brian French is to grant Linchpin a registerable security interest over all of his shares "held in the Company". (Company is listed as "N/a")	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 04/09/2018
		Loan Deed – Variation dated 1 December 2015 ( <b>First French Variation</b> )	<p>Variation:</p> <p>Linchpin agreed to lend Brian French an additional \$150,000</p> <p>Principal sum:</p> <p>\$150,000 –First Drawdown;</p> <p>\$150,000 –Second Drawdown</p> <p>Term:</p> <p>Each drawdown is 12</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	No securities provided other than a personal guarantee

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
			months from the date of the initial loan advance on the second drawdown		
		Loan Deed Variation (Further Drawn Down) dated 2 April 2017 ( <b>Second French Variation</b> )	Variation: Linchpin agreed to lend Brian French an additional \$232,000  Principal sum: Varied from \$300,000 to \$532,000  Term: 12 months period from the date of the loan advance	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	
10.	Peter Goudie Financial Services Pty Ltd  and  Peter Goudie ( <b>Goudie Parties</b> )	Loan Deed dated 29 October 2015 ( <b>Goudie Loan</b> )	Loan Amount: \$150,000  Duration: 1 year from the date of the initial loan advance  Interest rate: 10.5% p.a  Repayment: The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 29 October 2015	The Goudie Parties are to grant Linchpin a registerable security interest over all of their shares held in Peter Goudie Financial Services Pty Ltd.	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 30/08/2018
		Loan Deed Variation (Further Draw Down) dated 18 September	Variation: Linchpin agreed to lend the Goudie Parties an additional	Nielsen and Williams on behalf of Linchpin as trustee of the	

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
		2017 ( <b>Goudie Variation</b> )	\$162,000  Principal sum  Varied from \$150,000 to \$312,000  Term:  12 months period from the date of the loan advance	unregistered fund	
11.	Fortuna Financial Group Pty Ltd ( <b>Fortuna</b> ), Paul Ellenberg & Southwide Holdings Pty Ltd ( <b>Southwide</b> ) (together, the <b>Fortuna Parties</b> ).	Loan Deed dated 8 January 2016 ( <b>Fortuna Loan</b> )	Loan Amount: \$419,000  Duration: 1 year from the date of the initial loan advance  Interest rate: 10.5% p.a  Repayment:  The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 8 January 2016	The Fortuna Parties are to grant Linchpin a registerable security interest over all of their shares in Fortuna and Southwide.	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	No security interest was registered on the PPS Register
		Loan Deed Variation (Further Drawdown) dated 12 December 2016 ( <b>Fortuna Variation</b> )	Variation:  Linchpin agreed to lend the Fortuna Parties an additional \$162,000  Principal sum:  Varied from \$419,000 to \$659,000  Term:	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	



Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
			12 months period from the date of the loan advance		
12.	Ramshead Investors Pty Ltd in its own capacity and as trustee for the Ramshead Unit Trust ( <b>Ramshead Investors</b> ), The Wealth Partnership Pty Ltd ( <b>Wealth Partnership</b> ) Ramshead Capital Pty Ltd ( <b>Ramshead Capital</b> ), Anthony John Rumble and Paul Joseph Manka (together, the <b>Ramshead Parties</b> )	Loan Deed dated 22 December 2015 ( <b>Ramshead Loan</b> )	<p>Loan Amount:</p> <p>\$431,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 22 December 2015	Ramshead Investors, Wealth Partnership and Ramshead Capital are to grant Linchpin a registerable security interest over all of their shares held in Ramshead Investors, Wealth Partnership and Ramshead Capital.	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 30/08/2018
13.	TWP Client Services Pty Ltd ( <b>TWP</b> ); Ramshead Investors Pty Ltd in its own capacity and as trustee for the Ramshead Unit Trust and The Wealth Partnership Pty Ltd (together, the <b>TWP Parties</b> ).	Loan Deed dated 19 May 2017 ( <b>TWP Loan</b> )	<p>Loan Amount:</p> <p>\$700,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
		Specific Security Agreement dated 19 May 2017	The TWP Parties to grant Linchpin a registerable security interest over all of their shares held in TWP	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 30/08/2018
14.	Anderson Lutgens & Co Pty Ltd trading as Beyond iWealth ( <b>Anderson</b> ) Pamela Margaret Anderson and Pierre Lutgens (together, the <b>Anderson Parties</b> )	Loan Deed dated 10 October 2016 ( <b>Anderson Loan</b> )	Loan Amount: \$60,000  Duration: 1 year from the date of the initial loan advance  Interest rate: 10.5% p.a  Repayment:  The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 10 October 2016	The Anderson Parties to grant Linchpin a registerable security interest over all of their shares held in Anderson	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 27/09/2018
		Loan Deed Variation (Further Draw Down) dated 31 January 2017 ( <b>Anderson Variation</b> )	Variation:  Linchpin agreed to lend the Anderson Parties an additional \$20,000  Principal sum:  Varied from \$60,000 to \$80,000  Term:  12 months period from the date of the loan advance	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
15.	Kings Lance Enterprises Pty Ltd & Graham Kinder (together, the <b>Kings Parties</b> ).	Loan Deed undated ( <b>Kings Loan</b> )	<p>Loan Amount:</p> <p>\$1,300,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 21 December 2016	The Kings Parties to grant Linchpin a registerable security interest over all of their shares held in Kings and Pecuniary Planners Pty Ltd.	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 29/08/2018
16.	Market St Holdings Pty Ltd ( <b>Market St</b> ) and Stefanie Seco (together, the <b>Market St Parties</b> ).	Loan Deed dated 9 February 2017 ( <b>Market St Loan</b> )	<p>Loan Amount:</p> <p>\$210,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 9	The Market St Parties to grant Linchpin a registerable security interest over all of their shares held		No security interest was registered on the PPS

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
		February 2017	in Market St.		Register.
17.	Macquarie Partners Financial Advisory Pty Ltd <b>(Macquarie) &amp; Sunhee Hres (together, the Macquarie Parties).</b>	Loan Deed dated 3 March 2017 <b>(Macquarie Loan)</b>	<p>Loan Amount: \$100,000</p> <p>Duration: 1 year from the date of the initial loan advance.</p> <p>Interest rate: 10.5% p.a</p> <p>Repayment: The loan and any accrued interest is repayable monthly and in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 3 March 2017	The Macquarie Parties to grant Linchpin a registerable security interest over all of their shares held in Macquarie.	Nielsen on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 27/09/2018
18.	Secured Business Equity Pty Ltd <b>(SBE)</b> and Brian David Perrin <b>(together, the SBE Parties).</b>	Loan Deed dated 24 March 2017 <b>(SBE Loan)</b>	<p>Loan Amount: \$400,000</p> <p>Duration: 1 year from the date of the initial loan advance.</p> <p>Interest rate: 10.5% p.a</p> <p>Repayment: The loan and any accrued interest is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
		Specific Security Agreement dated 24 March 2017	The SBE Parties to grant Linchpin a registerable security interest over all of their shares held in SBE.	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 29/08/2018
		Loan Deed – Variation (Further Drawdown – May 2017) dated 16 May 2017 ( <b>SBE Variation</b> )	Variation:  Linchpin agreed to lend the SBE Parties an additional \$40,000  Principal sum:  Varied from \$400,000 to \$440,000  Term:  12 months period from the date of the loan advance	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	
19.	B and S Wilshire Pty Ltd ( <b>Wilshire</b> ) and Ben Wilshire (together, the <b>Wilshire Parties</b> )	Loan Deed dated 25 May 2017 ( <b>Wilshire Loan</b> )	Loan Amount:  \$38,000  Duration:  1 year from the date of the initial loan advance.  Interest rate:  10.5% p.a  Repayment:  The loan and any accrued interest is repayable in full on expiry of the term unless the term is extended by mutual agreement	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 25 May 2017	The Wilshire Parties to grant Linchpin a registerable security interest over all of their shares held in Wilshire	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	No security interest was registered on the PPS Register.

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
20.	Strategic Wealth Group Pty Ltd ( <b>SWG</b> ) and Neville Ortega (together, the <b>SWG Parties</b> )	Loan Deed dated 29 September 2017 ( <b>SWG Loan</b> )	Loan Amount: \$459,075  Duration:  1 year from the date of the initial loan advance.  Interest rate:  10.5% p.a  Repayment:  The loan and any accrued interest is repayable in full on expiry of the term unless the term is extended by mutual agreement	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement dated 29 September 2017	The SWG Parties to grant Linchpin a registerable security interest over all of their shares held in SWG	Nielsen and Williams on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 29/08/2018
21.	National Financial Advice Alliance Pty Ltd ( <b>NFA</b> ) and EP and K Financial Pty Ltd ( <b>EPK</b> ) (together, the <b>NFA Parties</b> )	Loan Deed dated 28 September 2017 ( <b>NFA Loan</b> )	Loan Amount: \$1,700,000  Duration:  1 year from the date of the initial loan advance.  Interest rate:  10.5% p.a  Repayment:  The loan and any accrued interest is repayable in full on expiry of the term unless the term is extended by mutual agreement		Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement	The NFA Parties to grant Linchpin a registerable security interest over all of	Nielsen and Williams on behalf of	No security interest was registered on

Item No.	Borrower(s)/ Grantor(s)	Document Type	Key Terms of agreement	Officer(s) authorising the loan	Details of Security
		dated 28 September 2017	their shares held in NFA and EPK	Linchpin as trustee of the unregistered fund	the PPS Register.
22.	Dale Financial Planning Pty Ltd ( <b>Dale</b> ) and Ian William Dale (together, the <b>Dale Parties</b> )	Loan Deed dated 2 November 2017 ( <b>Dale Loan</b> )	<p>Loan Amount:</p> <p>\$80,000</p> <p>Duration:</p> <p>1 year from the date of the initial loan advance.</p> <p>Interest rate:</p> <p>10.5% p.a</p> <p>Repayment:</p> <p>The loan and any accrued interest is repayable in full on expiry of the term unless the term is extended by mutual agreement</p>		Detailed in separate agreement entitled 'Specific Security Agreement'
		Specific Security Agreement Dated 2 November 2017	The Dale Parties to grant Linchpin a registerable security interest over all of their shares held in Dale	Nielsen on behalf of Linchpin as trustee of the unregistered fund	Security was provided and registered on the PPS Register on 30/08/2018