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# EXPLANATORY STATEMENT

## For the Schemes of Arrangement between each of

LIFT CAPITAL PARTNERS PTY LIMITED (in Liquidation)  
(ACN 111 015 500)

LIFT CAPITAL NOMINEES NO.1 PTY LIMITED (in Liquidation)  
(ACN 112 913 532)

## and their respective

SCHEME CREDITORS  
(as defined in the Schemes of Arrangement)

In order for the Schemes of Arrangement to proceed they must be approved by creditors. Such approval will be sought at Scheme Meetings that will be held on 22 December 2009 at Wesley Conference Centre, Lyceum Theatre, 220 Pitt St, Sydney NSW, starting at 10.00 am (Sydney time). Further details of those Scheme Meetings and on how to vote at those Scheme Meetings, as well as information about the proposed Schemes of Arrangement, are set out in this Explanatory Statement.

This Explanatory Statement, together with documents relating to voting at the Scheme Meetings (being Proxy Form(s) and a Voting Form) will be sent to known creditors.

## THE LIQUIDATORS RECOMMEND THAT YOU VOTE IN FAVOUR OF THE SCHEMES OF ARRANGEMENT

This is an important document and requires your immediate attention. You should read this document in its entirety prior to deciding whether or not to vote in favour of the Schemes of Arrangement. If you are in any doubt as to how to deal with this document, you should consult your financial, legal, tax or other professional adviser.

**M<sup>CN</sup>+**  
**M<sup>C</sup>GRATHNICOL**

Liquidators of Lift Capital Partners Pty Limited and Lift  
Capital Nominees No.1 Pty Limited

Allens Arthur Robinson 

Legal adviser to the Liquidators

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## IMPORTANT INFORMATION

### Purpose of this Explanatory Statement

This Explanatory Statement has been provided in connection with the Scheme Meetings for consideration of the proposed Schemes proposed between each Lift Company and its Scheme Creditors. All Scheme Meetings will commence at 10.00 am (Sydney time) on 22 December 2009. See section 3 for information about the Scheme Meetings.

The Court has made orders under section 411(1) of the Corporations Act directing that meetings of Scheme Creditors be convened to vote upon the Schemes. The orders are not an endorsement of, or any other expression of opinion on, the Schemes by the Court or ASIC. The Court is not responsible for the contents of this Explanatory Statement and, in ordering that the Scheme Meetings be held, the Court does not, in any way, indicate that it has approved or will approve the terms of the Schemes.

### Responsibility for information

The information in this Explanatory Statement has been prepared by the Liquidators and is solely for use by each Scheme Creditor in evaluating whether or not to vote in favour of the Schemes. No other person has been authorised to make any representation or warranty, express or implied, as to its accuracy or completeness. Nothing contained in this Explanatory Statement is, or should be relied upon as, a representation, assurance or guarantee as to the benefits of the Schemes over any alternative for Scheme Creditors.

### Professional advice

This Explanatory Statement does not constitute financial product advice and has been prepared without reference to the investment objectives, financial situation, taxation position or particular needs of any Scheme Creditor.

Scheme Creditors should not construe any statements made in this Explanatory Statement as investment, tax or legal advice. Each Scheme Creditor's decision whether to vote for or against a Scheme will depend on an assessment of the Scheme Creditor's individual circumstances. As the financial, legal and taxation consequences of that decision may be different for each Scheme Creditor, it is recommended that Scheme Creditors seek professional financial, legal and taxation advice before making their decision.

### Forward looking statements

Certain statements in this Explanatory Statement relate to the future. Such statements involve known and unknown risks, uncertainties and other important factors that could cause actual events to unfold differently from the forecast results, predictions or estimates expressed or implied by such statements. These statements reflect views only at the date of this Explanatory Statement. Given this, Scheme Creditors are cautioned not to place undue reliance on such forward looking statements.

### ASIC

A copy of this Explanatory Statement has been sent to ASIC for the purposes of section 412(7) of the Corporations Act. Neither ASIC nor any of its officers take any responsibility for its contents.

### Rounding

A number of figures, amounts, percentages, estimates, calculations of values and fractions in this Explanatory Statement are subject to the effect of rounding. Accordingly, the actual calculation of these figures may differ from the figures set out.

### Defined terms

Capitalised terms and certain abbreviations used in this Explanatory Statement have the defined meaning set out in the Glossary to this Explanatory Statement. The documents contained in the Annexures to this Explanatory Statement have their own defined terms that may be different from the definitions in the Glossary.

### Privacy

The Liquidators and the Lift Companies may collect, use and disclose personal information in the process of implementing the Schemes. This information may include the names, contact details, bank account details, details of any client accounts or securities deposited with the Lift Companies, and the name and contact details of persons appointed by Scheme Creditors to act as proxy, corporate representative or attorney at Scheme Meetings.

The primary purpose of collecting this information is to assist the Liquidators and the Lift Companies in the conduct of the Scheme Meetings and to enable the Schemes to be implemented by the Scheme Administrators in the manner described in this Explanatory Statement. Personal information may be disclosed to the Registry, other third party service providers, professional advisers to the Liquidators, the Liquidators and their Related Bodies Corporate, to ASIC and other regulatory authorities and, in any case, where disclosure is required by law or where you have consented. Scheme Creditors have the right to access personal information that has been collected. Scheme Creditors should contact the Registry in the first instance if they wish to exercise this right.

The main consequence of not collecting such information would be that the Liquidators and the Lift Companies may be hindered in, or prevented from, conducting the Scheme Meetings and implementing the Schemes.

Scheme Creditors appointing a proxy, corporate representative or attorney should ensure that these matters are communicated to that person.

### References to time

All references to time in this Explanatory Statement are to the time in Sydney, Australia.

### Date of this Explanatory Statement

This Explanatory Statement is dated [\*] November 2009.

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## OVERVIEW OF THIS EXPLANATORY STATEMENT AND THE SCHEMES

### 1. What is this Explanatory Statement for?

This Explanatory Statement contains information about the proposed schemes of arrangement between:

- Lift Capital Partners Pty Limited (in Liquidation) and its Scheme Creditors; and
- Lift Capital Nominees No.1 Pty Limited (in Liquidation) and its Scheme Creditors, (collectively the "**Schemes**").

In order for the Schemes to proceed both of them must be approved by the requisite majorities of Scheme Creditors at the Scheme Meetings, and following that they must also be approved by the Court. It is not possible for one Scheme to proceed without the other proceeding – either both of the Schemes proceed or neither of them do.

### 2. Purpose of the Schemes

The purpose of the Schemes is to implement a proposed settlement in respect of all current and potential future claims by Scheme Creditors against the Lift Companies and/or Merrill Lynch in respect of debts owing by the Lift Companies to Scheme Creditors.

Generally speaking, a person will be considered a "**Scheme Creditor**" of a Lift Company if the person has a claim or cause of action against the Lift Company in respect of an unsecured debt of, or unsecured claims against, the Lift Company and the circumstances giving rise to that claim or cause of action arose on or before 10 April 2008. It is expected that the majority of Scheme Creditors will be former clients of Lift Capital who took out margin loans from Lift Capital, such loans being secured by mortgages in favour of Lift Capital over the securities which were purchased with the assistance of the margin loans.

Specifically, the Schemes provide for or otherwise facilitate a settlement:

- as between Scheme Creditors and the Lift Companies; and
- as between:
  - Scheme Creditors and/or the Lift Companies; and
  - Merrill Lynch (which previously held certain securities that had been transferred to it by the Lift Companies as security for the provision of funding by Merrill Lynch to the Lift Companies).

The Schemes, if they are agreed to by creditors and approved by the Court and become Effective, will be implemented in addition to, not in replacement of, the liquidations of the Lift Companies. The liquidations will continue. Any Liquidator Recoveries will become part of the Scheme Assets available for distribution under the Schemes. Scheme Creditors will not be entitled to any additional or separate distributions out of the liquidations. All entitlements to distributions will be determined by the Schemes.

The Schemes and associated agreements also provide for the release of Merrill Lynch's claims in respect of the Surplus Securities such that if the Schemes are approved and remain Effective as at the Release Date, the Surplus Securities will be transferred to the

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Liquidators and the Liquidators will be in a position to return the Surplus Securities on a pro rata basis to Lift Clients and any other persons who the Liquidators determine have proprietary claims to the Surplus Securities.

### **3. Scheme Meetings**

The Scheme Meetings will commence at 10.00 am (Sydney time) on 22 December 2009 at Wesley Conference Centre, Lyceum Theatre, 220 Pitt St, Sydney NSW.

This Explanatory Statement, together with documents relating to voting at the Scheme Meetings (being Proxy Form(s) and a Voting Form) will be sent to known creditors.

As explained in the section titled "WHAT TO DO NEXT", there will be 3 Scheme Meetings and separate Proxy Forms and a single Voting Form have been issued in respect of each Scheme Meeting.

### **4. Effect of the Schemes**

If the Schemes are agreed to by the Scheme Creditors by the requisite majorities and subsequently approved by the Court, the following will occur:

- the Liquidators will be appointed as Scheme Administrators;
- the Scheme Deed of Release and Indemnity will be signed by the Lift Companies, the Liquidators, Merrill Lynch and the Liquidators will sign on behalf of Lift Clients.
- on the Release Date, if the Schemes are still Effective, a mutual deed of release as between the Lift Companies and the Swaby and Crabb Claimants will come into effect, such that the Swaby and Crabb Claimants' claims against the Lift Companies (of approximately \$32m using the valuation methodology contained in the Schemes, but potentially of up to \$38m plus consequential losses in liquidations) will be released;
- Merrill Lynch will pay the Cash Contribution of \$10.3 million to the Scheme Administrators, which will be held in trust until the Release Date;
- pursuant to the Scheme Deed of Release and Indemnity, with effect from the Release Date, if the Schemes are still Effective, all claims as between the Lift Companies and Merrill Lynch will be released. Lift Clients' claims against Merrill Lynch will be released and Merrill Lynch will agree not to prove as a creditor of the Lift Companies. Lift Clients will also provide a capped indemnity in favour of Merrill Lynch;
- on the Release Date, if the Schemes are still Effective, Merrill Lynch's claims against the Lift Companies including in respect of the Surplus Securities will be released and the Surplus Securities will be transferred by the Escrow Agent to the Liquidators. Those Lift Clients with a proprietary interest in any of the Surplus Securities that were retained by Merrill Lynch, will have returned to them by the Liquidators those Surplus Securities (or, by agreement with the Lift Client, their proceeds of sale), subject to repayment of any outstanding loan from the Lift Companies in respect of those Surplus Securities only;

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- two Scheme Funds will be established. All Scheme Creditors will be entitled to a distribution from the First Scheme Fund on a pro rata basis. The Second Scheme Fund will contain the Cash Contribution of \$10.3 million paid by Merrill Lynch plus any assets of Lift Nominees and only Lift Clients will be entitled to a distribution from the Second Scheme Fund;
  - Lift Clients' Scheme Claims will be assessed by the Scheme Administrators in accordance with formulae contained in the Schemes. Trade and Other Creditors will be required to prove in respect of their claims; and
  - the winding up of the Lift Companies will continue and the Liquidators will make any recoveries available to the Scheme Administrators for distribution in accordance with the terms of the Schemes.

The Liquidators estimate that, arising from the payment of the Cash Contribution by Merrill Lynch, the release of the Swaby and Crabb Claimants' claims against the Lift Companies and the release of Merrill Lynch's claims against the Lift Companies, the likely distribution to creditors from the Lift Companies if the Schemes are approved would be in the order of **65 cents in the dollar** for Lift Clients in respect of Established Scheme Claims and **54 cents in the dollar** for Trade and Other Creditors. That compares with an estimated distribution in the order of **39 cents in the dollar** in the liquidations alone (in the case of Lift Clients this would be in respect of Established Scheme Claims). If the Schemes were not approved and the liquidators continued without the Schemes, Lift Clients may however be able to recover additional amounts over and above the estimated distribution of 39 cents in the liquidations (and potentially in excess of their return under the Schemes) by bringing claims against Merrill Lynch.

For further details of the effect of the Schemes, refer to section 5 – DISCUSSION OF THE SCHEMES AND THEIR EFFECTS

#### **5. Do the Liquidators recommend the Schemes?**

The Liquidators recommend that Scheme Creditors vote in favour of the Schemes as the Schemes involve Merrill Lynch making a substantial contribution to the assets available for distribution to Scheme Creditors, facilitate a distribution being made to Scheme Creditors considerably more quickly than if litigation were commenced against Merrill Lynch, promote certainty as to the assets available for distribution to Scheme Creditors and establish an efficient procedure for determining Scheme Creditors' entitlements to a distribution of those assets.

However, if the Schemes proceed, Lift Clients will be required to relinquish any claims against Merrill Lynch and its Related Entities. Lift Clients should seek their own legal advice regarding the prospects of success of any individual Lift Client's claims against Merrill Lynch as those claims would be released if the Schemes become Effective.

An individual Lift Client may form the view that, despite the potential uncertainty and cost of litigation, he or she would achieve a greater return by pursuing his or her claims against Merrill Lynch, the Lift Companies or other parties without the Schemes. Scheme Creditors should obtain independent legal, financial, taxation and other professional advice in relation to these issues and should read this Explanatory Statement for further information.

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Scheme Creditors are not obliged to follow the recommendation of the Liquidators and may decide to vote against the Schemes.

For further details regarding the advantages and disadvantages of the Schemes, refer to:

- section 1 – "WHY YOU SHOULD VOTE IN FAVOUR OF THE SCHEMES"; and
- section 2 – "WHY YOU MAY CONSIDER VOTING AGAINST THE SCHEMES".

#### **4. Who do I contact if I have questions?**

If you have any questions in relation to the Schemes, you may:

- visit the Liquidators' website at [www.mcgrathnicol.com](http://www.mcgrathnicol.com) where you will find a copy of this Explanatory Statement and other relevant documents;
- direct your questions to the Liquidators by email to [liftcapital@mcgrathnicol.com](mailto:liftcapital@mcgrathnicol.com);
- if you do not have access to email facilities, direct your questions in writing to the Liquidators at:

The Liquidators – Lift Capital

C/- McGrath Nicol

GPO Box 9986 Sydney NSW 2001

- telephone Nicholas Fox of the Liquidators' staff on (02) 9248 9974 between 9.00 am and 5.00 pm (Sydney time), Monday to Friday.

If you have any questions in relation to the lodgement of Proxy Forms or Voting Forms you should contact the Registry at:

**Computershare Investor Services Pty Limited**

Ph: 1300 850 505

Fax: +61 2 8235 8133

Mail: Lift Capital

C/- Computershare Investor Services Pty Limited

GPO Box 4195

Sydney NSW 2001

As the financial, legal and taxation consequences of the Schemes may be different for each Scheme Creditor, it is recommended that Scheme Creditors seek professional financial, legal and taxation advice in relation to the Schemes.

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## WHAT TO DO NEXT

### 1. Read this Explanatory Statement

Scheme Creditors should read and carefully consider the information in this Explanatory Statement to help them make an informed decision on how to vote at the Scheme Meetings.

This Explanatory Statement, together with documents relating to voting at the Scheme Meetings (being Proxy Form(s) and a Voting Form) will be sent to known creditors.

Scheme Creditors who have not received these documents should contact the Registry.

### 2. Consider voting at the Scheme Meetings

#### (a) Eligibility to vote

Each person who:

- is a Scheme Creditor of a Lift Company; and
- lodges a duly completed Voting Form in respect of the relevant Scheme Meetings in accordance with the instructions on the form so that it is received by the Registry by 10.00 am (Sydney time) on 19 December 2009 and has their Voting Form admitted by the Chairman,

will be eligible to vote at the relevant Scheme Meeting(s).

The Chairman of the Scheme Meetings has power to admit or reject a Voting Form for the purposes of voting. However, in accordance with Regulation 5.6.26 of the Corporations Regulations, a decision to admit or reject a Voting Form for voting purposes may be appealed to the Court within 10 Business Days after the decision.

#### (b) How to vote

Scheme Creditors who are eligible to vote on the Schemes may do so:

- by attending the Scheme Meetings and voting in person;
- by appointing a proxy (who must be a natural person over the age of 18 years) to attend and vote on their behalf, such appointment to be made by lodging a duly completed Proxy Form in respect of each relevant Scheme Meeting in accordance with the instructions on that form so that it is received by the Registry by 10.00 am (Sydney time) on 19 December 2009;
- by appointing an attorney to attend and vote on their behalf; or
- in the case of bodies corporate, by appointing an authorised corporate representative pursuant to section 250D of the Corporations Act to attend and vote on their behalf.

#### (c) Separate votes of each class of Scheme Creditors

In respect of Lift Capital there are 2 classes of Scheme Creditors:

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- Lift Clients – being, in summary, each person who (i) transferred shares to Lift Capital or (ii) instructed Lift Capital to purchase shares on their behalf or (iii) who borrowed money from Lift Capital to purchase securities and who, arising out of the transfer by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a debt or claim admissible to proof against one or both of the Lift Companies; and
  - Trade and Other Creditors – being all other Scheme Creditors of that Lift Company. This includes all "trade" creditors (such as suppliers of goods and services) and other non-client unsecured creditors, who do not fall within the Lift Client class.

In respect of Lift Nominees, there is a single class of Scheme Creditors (being all creditors of Lift Nominees, who are the Lift Clients).

There will be separate votes by each class of Scheme Creditors in each Lift Company. Accordingly, there will be 3 separate votes by Scheme Creditors and therefore 3 Scheme Meetings. In order for the Schemes to proceed, the requisite majority of Scheme Creditors in each Scheme Meeting must approve the relevant Scheme.

**(d) Requisite majorities**

In respect of each Scheme Meeting, the "requisite majority" is a majority in number (meaning more than 50%) of the Scheme Creditors who are present and voting at that Scheme Meeting (whether in person, by proxy or attorney or, in the case of corporations, by corporate representative) and whose debts or claims against the relevant Lift Company amount in aggregate to at least 75% of the total amount of the debts and claims of the Scheme Creditors present and voting at that Scheme Meeting.

For the purposes of determining the value of each Scheme Creditor's votes, the amount of each Scheme Creditor's "debts and claims" will be determined by the Chairman of the Scheme Meetings. The Chairman will make a "just estimate" of each Scheme Creditor's debts and claims as required by s 5.6.23(2) of the Corporations Regulations. Please note that this is for voting purposes only – such determinations will not be taken into account in the determination of claims under the Schemes, should the Schemes proceed. See section 3.6 for further details of how it is expected that the Chairman will approach the issue of making a just estimate of Lift Clients' claims for voting purposes.

**(e) Binding nature of Schemes**

Scheme Creditors who do not vote at the Scheme Meetings or who vote against the Schemes will still be bound by the Schemes and will still have their claims determined under the Schemes, provided that the Schemes are approved by the requisite majorities of each class of Scheme Creditors and the Court.

## KEY DATES

Event	Time and date
<ul style="list-style-type: none"> <li>Time and date by which Proxy Forms and Voting Forms should be lodged with the Registry by Scheme Creditors</li> </ul>	10.00 am (Sydney time) on 19 December 2009
<ul style="list-style-type: none"> <li>Meetings of Scheme Creditors to approve the Schemes</li> </ul>	10.00 am (Sydney time) on 22 December 2009
<b><i>If the Schemes are approved by Scheme Creditors:</i></b>	
<ul style="list-style-type: none"> <li>Court hearing for approval of the Schemes (Scheme Creditors are entitled to appear at that Court hearing and object to the proposed Schemes if they wish to do so)</li> </ul>	28 January 2010
<b><i>If the Schemes are approved by the Court:</i></b>	
<ul style="list-style-type: none"> <li>Court orders are lodged with ASIC, immediately following which the Schemes become Effective</li> <li>Liquidators sign the Scheme Administrator Deed Poll and are appointed as the Scheme Administrators</li> <li>All assets and liabilities of Lift Nominees are transferred to Lift Capital</li> <li>Scheme Deed of Release and Indemnity is signed</li> </ul>	29 January 2010 (the " <b>Effective Date</b> ")
<ul style="list-style-type: none"> <li>Scheme Administrators establish the two cash funds, being:               <ul style="list-style-type: none"> <li>a fund comprising all assets of the Lift Companies, other than any cash held in the second fund</li> <li>a fund comprising the Cash Contribution of \$10.3 million to be paid by Merrill Lynch to the Liquidators, once it is released from trust and any assets of Lift Nominees; and</li> </ul> </li> </ul>	By 2 February 2010 (being 2 Business Days after the Effective Date)
<ul style="list-style-type: none"> <li>Merrill Lynch pays the Cash Contribution of \$10.3 million to the Liquidators, to be held in trust</li> </ul>	By 5 February 2010 (being 5 Business Days after the Effective Date)
<ul style="list-style-type: none"> <li>Deadline for lodgement with Scheme Administrators of Final Scheme Proof Forms by Trade and Other Creditors</li> </ul>	23 February (being 21 Business Days after the Effective Date)
<ul style="list-style-type: none"> <li>Final date on which Scheme Creditors could bring an appeal of any decision by the Court approving the proposed Schemes</li> </ul>	25 February 2010
<ul style="list-style-type: none"> <li>The various releases and indemnities in the Scheme Deed of Release and Indemnity take effect</li> <li>The Swaby and Crabb Claimants' claims against the Lift Companies - of approximately \$32m using the valuation methodology contained in the Schemes, but potentially of up to \$38m plus consequential losses in liquidations - will be released (see 4.5 and 6.3(a)(iii) for a discussion of the value of those claims)</li> <li>Cash Contribution of \$10.3 million is released from trust and held by the Scheme Administrators in the relevant cash fund</li> </ul>	27 February 2010 (being 28 days after the Effective Date and representing the earliest possible date for the " <b>Release Date</b> ")

<ul style="list-style-type: none"> <li>The Surplus Securities are released to the Liquidators</li> </ul>	
<ul style="list-style-type: none"> <li>Scheme Administrators notify Lift Clients of their respective Established Scheme Claims (i.e. their cash entitlement under the Schemes)</li> </ul>	March 2010 (such notifications are expected to be after the Release Date and the return of Surplus Securities by the Liquidators)
<ul style="list-style-type: none"> <li>Last date by which Lift Clients who disagree with amount of Established Scheme Claim can reach agreement with Scheme Administrators, failing which Scheme Administrators will decide on the amount</li> </ul>	10 Business Days after notification of Established Scheme Claims)
<ul style="list-style-type: none"> <li>Last date by which Lift Clients can bring a court proceeding challenging the Scheme Administrators determination of the amount of their Established Scheme Claim under s 1321 of the Act</li> </ul>	21 days after the Scheme Administrators' decision as to the amount of the Established Scheme Claim (commencing once the time for seeking to agree that claim has expired)
<ul style="list-style-type: none"> <li>Last date by which Foreign Scheme Creditors must execute the Ratification Deed Poll</li> </ul>	60 days after notification of Established Scheme Claims)
<ul style="list-style-type: none"> <li>Final date for Scheme Creditors to debit any payment received against the bank account of Lift Capital and/or the Scheme Administrators (after which time such payment may be forfeited).</li> </ul>	12 months after payment is made by Scheme Administrators to Scheme Creditors

**Note:** This timetable is indicative only. It may, for example, be extended because the Release Date is deferred as the result of an appeal from the Court approval of the Schemes. The Liquidators reserve the right to vary the times and dates set out above, subject to the Corporations Act and approval of any variations by the Court and/or ASIC where required. Scheme Creditors will be notified of any variation to this timetable. In addition, any variation of this timetable will be published online at [www.mcgrathnicol.com](http://www.mcgrathnicol.com).

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## FREQUENTLY ASKED QUESTIONS

QUESTION	ANSWER	Reference
1 What is a scheme of arrangement?	A creditors' scheme of arrangement is an agreement between a company and its creditors, which requires certain approvals (see section 5 below). A scheme of arrangement overcomes the difficulty of obtaining the consent of every creditor and, when approved, will bind all creditors.	Section 5
2 What is being proposed?	On 11 November 2009, a Scheme Implementation Agreement was executed by the Lift Companies, the Liquidators and relevant Merrill Lynch Australian entities. Relevant Merrill Lynch UK entities executed the Scheme Implementation Agreement on 16 November 2009. Pursuant to that agreement, the Liquidators have agreed to propose Schemes of Arrangement between the Lift Companies and their respective creditors which, if they become Effective, will result in a settlement of all claims as between Lift Clients, the Lift Companies and Merrill Lynch.	Section 5

QUESTION	ANSWER	Reference
<p>3 What will Merrill Lynch contribute to the assets available for distribution to Scheme Creditors if the Schemes are approved?</p>	<p>If the Schemes are approved by the requisite majorities of each class of Scheme Creditors and the Court:</p> <ul style="list-style-type: none"> <li>• Merrill Lynch must procure that the Swaby and Crabb Claimants (who the Liquidators estimate have a claim against the Lift Companies of approximately \$32m using the valuation methodology contained in the Schemes, but potentially of up to \$38m plus consequential losses in liquidations – see 4.5 and 6.3(a)(iii) for a discussion of the value of those claims) will enter into a mutual deed of release with the Lift Companies and will not prove in respect of their claims against the Lift Companies;</li> <li>• Merrill Lynch will pay the sum of \$10.3 million to the Scheme Administrators;</li> <li>• neither Merrill Lynch nor any its Related Bodies Corporate will prove in respect of any claims which they may have against the Lift Companies. Those claims are likely to be: <ul style="list-style-type: none"> <li>- an amount equivalent to any liability which Merrill Lynch has or may have to Lift Clients (which the Liquidators are not in a position to estimate);</li> <li>- any payment which Merrill Lynch has made to the Swaby and Crabb Claimants (a matter which is not known to the Liquidators); and</li> <li>- a claim by Berndale (a subsidiary of Merrill Lynch) for \$286,931.96); and</li> </ul> </li> <li>• Merrill Lynch will release its claims in respect of the Surplus Securities and the Surplus Securities will be transferred to the Liquidators.</li> </ul> <p>The releases will take effect on the Release Date.</p>	<p>Section 1</p>

QUESTION	ANSWER	Reference
<p>4 What will I receive if the Schemes are approved?</p>	<p>If the Schemes are approved by the requisite majorities of each class of Scheme Creditors and the Court:</p> <ul style="list-style-type: none"> <li>• Lift Clients will be entitled to a distribution from each of the Scheme Funds. The Liquidators estimate that they will receive 65 cents for each dollar of their Established Scheme Claim;</li> <li>• Trade and Other Creditors will be entitled to a distribution from the First Scheme Fund. The Liquidators estimate that they will receive 54 cents for each dollar of their Established Scheme Claim; and</li> <li>• Lift Clients with a proprietary interest in any of the Surplus Securities that were retained by Merrill Lynch, will have returned to them by the Liquidators those Surplus Securities (or, by agreement with the Lift Client, their proceeds of sale), subject to repayment of any outstanding loan from the Lift Companies in respect of those Surplus Securities only.</li> </ul> <p>Those estimates are based on certain estimates and assumptions by the Liquidators which are discussed at section 6.2 below.</p>	<p>Sections 6.2 and 7.1</p>
<p>5 What do the Liquidators recommend?</p>	<p>The Liquidators recommend that you vote in favour of the Schemes.</p>	<p>Section 1</p>
<p>6 What are the conditions to the Schemes?</p>	<p>The Schemes are subject to the following conditions:</p> <ul style="list-style-type: none"> <li>• approval by the requisite majorities of each class of Scheme Creditors;</li> <li>• Court approval;</li> <li>• the Swaby and Crabb Claimants entering into a mutual deed of release with the Lift Companies;</li> <li>• the Scheme Implementation Agreement not having been terminated; and</li> <li>• the satisfaction of any other conditions which may be required by the Court.</li> </ul>	<p>Section 5.2</p>

QUESTION	ANSWER	Reference
7 If the Schemes are approved, when and how will I receive my money?	<p>The Liquidators estimate that, if the Schemes are approved and there is no appeal, the Scheme Administrators will be in a position to make a distribution to Scheme Creditors by March 2010. That estimate is subject to a number of assumptions which are set out at section 6.4.</p> <p>Payments will be made by the Scheme Administrators by cheque, by transfer to a bank account notified to them by a Scheme Creditor or in such other manner as may be agreed between the Scheme Administrators and a Scheme Creditor.</p>	Section 6.4
8 Can I vote? Who is excluded from voting?	<p>All Scheme Creditors will be entitled to vote at the Scheme Meetings. Merrill Lynch and the Swaby and Crabb Claimants are not Scheme Creditors and are not entitled to vote at any of the Scheme Meetings or receive any distributions under the Schemes.</p>	Page 4
9 Do I have to vote?	<p>No, voting is not compulsory. However, your vote is important. The Liquidators consider that the Schemes are a good opportunity for Scheme Creditors to realise the value of their claims against the Lift Companies (and Merrill Lynch if applicable) and recommend that you read this Explanatory Statement carefully and vote in favour of the Schemes.</p>	
10 What voting majorities are required to approve the Schemes?	<p>For the Schemes to be approved, the resolutions approving the Schemes must be passed by a majority in number (i.e. more than 50%) of persons who are present and voting at each of the Scheme Meetings (either in person or by proxy, attorney or in the case of a corporation, its duly appointed corporate representative) and passed by at least 75% of the total number of votes cast on the resolution at each Scheme Meeting.</p> <p>There will be three separate Scheme Meetings, being a meeting of the Lift Clients of Lift Capital, a meeting of the Trade and Other Creditors of Lift Capital and a meeting of the creditors of Lift Nominees.</p>	Page 5 paragraph (d)

QUESTION	ANSWER	Reference
11 How will my claims be valued for voting purposes?	<p>In order to be eligible to vote at the Scheme Meetings, Scheme Creditors should ensure that they lodge their Voting Form and, if they wish to vote by proxy, their Proxy Form, with the Registry by 10.00 am (Sydney time) on 19 December 2009. Copies of the Voting Form will be distributed to Scheme Creditors with this Explanatory Statement. Copies may also be downloaded at <a href="http://www.mcgrathnicol.com">www.mcgrathnicol.com</a>.</p> <p>For voting purposes only, a "just estimate" will be made by the chairperson of each Scheme Creditors' Scheme Claim, in accordance with s 5.6.32(2) of the Corporations Regulations. See section 3.6 for further details of how it is expected that the Chairman will approach the issue of making a just estimate of Lift Clients' claims for voting purposes.</p>	Section 3.7.
12 Why should I vote in favour of the Schemes?	<p>The Liquidators recommend that Scheme Creditors vote in favour of the Schemes because of the benefits that are available to Scheme Creditors under the Schemes, including the following:</p> <ul style="list-style-type: none"> <li>• a higher return to Scheme Creditors from the Lift Companies than would occur in liquidations (but noting that Lift Clients would lose the ability to bring claims to recover any amounts from Merrill Lynch outside the Schemes/liquidations);</li> <li>• an alternative commercial outcome as compared to litigation;</li> <li>• an efficient claims procedure;</li> <li>• an earlier distribution than in a liquidation only; and</li> <li>• a return of Surplus Securities.</li> </ul> <p>The benefits are discussed at section 1.</p>	Section 1

QUESTION	ANSWER	Reference
<p>13 Why might I consider voting against the Schemes?</p>	<p>You may believe that the Schemes are not in the interests of Scheme Creditors for reasons including the following:</p> <ul style="list-style-type: none"> <li>• Lift Clients will relinquish their claims against Merrill Lynch;</li> <li>• The Lift Companies and the Liquidators will relinquish their claims against Merrill Lynch;</li> <li>• The Lift Clients will provide a capped indemnity to Merrill Lynch (see Question 21 and section 5.6(g)(iv) below);</li> <li>• the Schemes limit the types of claims available to Lift Clients against the Lift Companies. That may also adversely affect particular Lift Clients.</li> </ul> <p>Reasons why Scheme Creditors may consider voting against the Schemes are discussed at section 2.</p>	<p>Section 2</p>
<p>14 What happens if I vote against the Schemes but they are approved?</p>	<p>If you vote against the Schemes, or if you do not vote at the Scheme Meetings, you will still be bound by the Schemes and you will still be entitled to have your Scheme Claims determined under the Schemes, provided that the Schemes are approved by the requisite majorities of each class of Scheme Creditors and the Court.</p> <p>The consequences of the Schemes being approved include that Lift Clients will release Merrill Lynch in respect of any claims which they may have against Merrill Lynch.</p>	<p>Page 5 paragraph (e)</p>

QUESTION	ANSWER	Reference
15 What happens if the Schemes are not approved?	<p>If the Schemes do not proceed, the liquidations of the Lift Companies will continue. Neither the Lift Companies' nor the Lift Clients' claims against Merrill Lynch will be compromised. All creditors of the Lift Companies with a provable claim against the Lift Companies will be entitled to prove in the liquidations of the Lift Companies in respect of all their claims. Certain funds will be available for distribution to creditors, although that distribution may be delayed pending the outcome of any litigation that may be commenced by the Lift Companies or Lift Clients against Merrill Lynch. The Liquidators do not expect that the cents in the dollar distribution to be as high in a liquidation as it would be under the Schemes. An individual Lift Client may form the view that he or she would achieve a greater return by pursuing his or her claims against Merrill Lynch and proving in the liquidations of the Lift Companies without the Schemes.</p>	Section 5.10
16 When will the Schemes become Effective?	<p>Subject to satisfaction of the conditions to the Schemes, including Court approval, the Schemes will become Effective on the Effective Date which is expected to be on 29 January 2010. This is the date on which the Court orders approving the Schemes are expected to be lodged with ASIC.</p> <p>Certain features of the Schemes (such as the releases and indemnities under the Scheme Deed of Release and Indemnity) will only occur on the Release Date (which is after the time for filing any appeals has passed, or after any appeals have been finally determined).</p>	Section 5.5

QUESTION	ANSWER	Reference
<p>17 If the Schemes are approved, how will my claims against the Lift Companies be calculated?</p>	<p>If the Schemes are approved, Lift Clients' claims against the Lift Companies will be limited to the value of their securities as at the date in April 2008 that they were sold by Merrill Lynch (calculated by reference to the price for which they were sold by Merrill Lynch) less the amount of their loan from the Lift Companies as at 10 April 2008 (or, if Lift Clients had a credit balance in their account instead of a loan, plus the amount of that credit balance).</p> <p>The Schemes contain provisions for that calculation to be adjusted if, at the time of calculating Lift Clients' claims, the Surplus Securities are not returned to persons with a proprietary entitlement to them, if they bought or sold options or if the relevant Lift Client entered into a Protected Share Loan with Lift Capital. Lift Clients will not be entitled to advance any other claims relating to the sale of their securities (for example claims in respect of a loss of opportunity).</p> <p>Claims by Trade and Other Creditors will be calculated in accordance with usual liquidation principles.</p>	<p>Section 7</p>
<p>18 What can I do if I do not agree with the way in which my claim against the Lift Companies has been calculated?</p>	<p>There is a 10 day period for Lift Clients to seek to agree the amount of their claim, after which time the Scheme Administrators will make a determination.</p> <p>A person (including a Lift Client or a Trade and Other Creditor) aggrieved by an act, omission or decision of the Scheme Administrators has a right to appeal to the Court under section 1321 of the Corporations Act. An issue in such an appeal would be whether the amount of the claim has been properly calculated in accordance with the terms of the Schemes.</p>	

QUESTION	ANSWER	Reference
19 What will I give up if the Schemes are approved?	<p>If the Schemes are approved, the Liquidators will be appointed as attorneys for each of the Lift Clients and will execute the Scheme Deed of Release and Indemnity on their behalf. That deed releases all claims which Lift Clients have against Merrill Lynch. The claims which Lift Clients might have against Merrill Lynch are discussed at 4.6(b) below (including a claim for return of the Surplus Securities and a claim for damages for sale of mortgaged securities). It also provides for Lift Clients to indemnify Merrill Lynch in respect of certain claims, which is discussed at 5.6(g)(iv) below.</p> <p>Lift Clients will also only be entitled to a distribution in respect of a limited range of claims which they have against the Lift Companies (see 7.1 below).</p> <p>Trade and Other Creditors will not be required to release any claims (save to the extent that they have claims by reason of being Lift Clients).</p>	Section 5.6

QUESTION	ANSWER	Reference
<p>20 I have a claim in respect of some Surplus Securities. Will I get them back and how will the Schemes affect that claim?</p>	<p>If the Schemes are approved and after the Release Date has passed, you will receive back Surplus Securities to which the Liquidators determine that you have a sole entitlement.</p> <p>If the Schemes are approved, on the Release Date, Merrill Lynch will, under the terms of the Scheme Deed of Release and Indemnity, release its claims in respect of the Surplus Securities and the Surplus Securities will be transferred to the Liquidators. That process is discussed at section 4.9 below.</p> <p>The Liquidators will deal with those Surplus Securities in accordance with the terms of the Lift Facility Agreements and any proprietary claims which Lift Clients have to those Surplus Securities. The Schemes do not contain any provisions regarding that process which would occur outside the terms of the Schemes. See section 4.9 below for further details of the process that the Liquidators will follow to return Surplus Securities or their proceeds of sale to Lift Clients who have a proprietary entitlement to those Surplus Securities. The Schemes will not affect Lift Clients' proprietary claims in respect of the Surplus Securities. See also Example 4 at 6.6(d) below.</p> <p>The basis upon which Merrill Lynch contends that it is presently entitled to retain the Surplus Securities is discussed at section 4.4 below.</p> <p>If the Schemes are approved, Lift Clients will not be entitled to advance any claims in respect of Surplus Securities which are returned to them against the Lift Companies (or any claim at all against Merrill Lynch), regardless of whether those Surplus Securities have increased or decreased in value since 10 April 2008, or whether a Lift Client has been deprived of an opportunity of selling them for a higher price between 10 April 2008 and the date on which they are returned to them.</p>	<p>Sections 4.4, 4.9, 5.6(f) and 6.6(d).</p>
<p>21 I am planning to sue Merrill Lynch. How will the Schemes affect my claim against Merrill Lynch?</p>	<p>If the Schemes are approved, the Liquidators will be appointed as attorneys for all Lift Clients and will execute the Scheme Deed of Release and Indemnity on behalf of all Lift Clients. That Scheme Deed of Release and Indemnity will release all claims which Lift Clients might have against Merrill Lynch.</p>	<p>Section 5.6</p>

QUESTION	ANSWER	Reference
<p>22 I am planning to sue my financial advisor. How will the Schemes affect my claim against my financial advisor?</p>	<p>The Schemes do not release any claims that Lift Clients might have against financial advisers. However, if the Schemes are approved, the Liquidators will be appointed as attorneys for all Lift Clients and will execute the Scheme Deed of Release and Indemnity on behalf of all Lift Clients. The Scheme Deed of Release and Indemnity contains a capped indemnity from Lift Clients in favour of Merrill Lynch. In the event that you sued your financial adviser, and the financial adviser joined Merrill Lynch to that proceeding (for example seeking an equitable contribution from Merrill Lynch), Merrill Lynch would have an indemnity from you in respect of any liabilities it has to the financial adviser and any costs it incurs. This means Merrill Lynch could recover from you the amount of your dividend in the Schemes plus any amounts which you recover in the proceeding which you bring against your financial advisor.</p>	<p>Section 5.6(g)(iv)</p>
<p>23 I had a Protected Share Loan with Lift Capital. Will I be able to claim the benefit of that arrangement when my claim is valued under the Schemes?</p>	<p>Yes, if a Lift Client entered into a Protected Share Loan (being a product pursuant to which Lift Capital's recourse in respect of a loan made to a borrower in respect of particular securities was limited to the value of those securities), the relevant provisions of the Lift Facility Agreement will be applied when calculating the amount of that person's loan from Lift Capital.</p>	
<p>24 I am a Foreign Scheme Creditor. What additional steps do I have to take to receive my distribution?</p>	<p>In order to receive a distribution, you will first need to execute a "Ratification Deed Poll" (the form of which is annexed to the Schemes) which confirms that you ratify and approve the Scheme Deed of Release and Indemnity and that you agree to be bound by the terms of the Schemes.</p> <p>Foreign Scheme Creditors should return the Ratification Deed Poll to the Scheme Administrators within 60 days of being notified of the amount of their Established Scheme Claim in order to receive a distribution from the Scheme Funds. If Foreign Scheme Creditors do not do so, the amounts which would otherwise be payable to them may be distributed to other Scheme Creditors.</p>	<p>Section 5.7</p>

QUESTION	ANSWER	Reference
<p>25 I am a Trade Creditor. Will I be treated the same as Lift Clients under the Schemes?</p>	<p>No. Two Scheme Funds will be established. All creditors of the Lift Companies will be entitled to a distribution from the First Scheme Fund. Only Lift Clients will be entitled to a distribution from the Second Scheme Fund, but Trade and Other Creditors will not. The assets in the Second Scheme Fund are the Cash Contribution and any assets of Lift Nominees, neither of which would be available to Trade and Other Creditors in liquidations of the Lift Companies.</p> <p>Trade and Other Creditors will benefit from the Schemes because the pool of total claims will be reduced by reason of Merrill Lynch agreeing that it will not prove in the Schemes and that it will cause the Swaby and Crabb Claimants (whose claims against the Lift Companies the Liquidators estimate are between approximately \$32m using the valuation methodology contained in the Schemes, but potentially of up to \$38m plus consequential losses in liquidations – see 4.5 and 6.3(a)(iii) for a discussion of the value of those claims) not to prove. The Liquidators recommend that Trade and Other Creditors vote in favour of the Schemes, because the Liquidators estimate that Trade and Other Creditors will receive 54 cents in the dollar under the Schemes compared with 39 cents in the dollar in a liquidation, plus the distribution is likely to be paid considerably more quickly if the Schemes are approved than in a liquidation.</p>	<p>Sections 7.4, 7.5 and 7.8</p>
<p>26 What is the amalgamation of the Lift Companies?</p>	<p>One of the effects of the Schemes is the amalgamation of the Scheme Companies by the transfer of all assets and liabilities of Lift Nominees to Lift Capital. Any inter-company debts and claims of the Lift Companies will be extinguished. The assets of the Lift Companies will be transferred to the Scheme Funds for distribution in accordance with the Schemes.</p>	<p>Section 5.6(a)</p>
<p>27 Who can help answer my questions about the Schemes?</p>	<p>For further information, please call the Lift Scheme Information Line on (02) 9248 9974 (if in Australia) or +61 2 9248 9974 (if overseas) between 9.00 am and 5.00 pm (Sydney time) Monday to Friday.</p>	

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## 1. WHY YOU SHOULD VOTE IN FAVOUR OF THE SCHEMES

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The Liquidators consider that the Schemes will produce a better commercial result for Scheme Creditors as a whole than would be achieved by liquidation alone.

In making this recommendation, the Liquidators consider that there are claims available to individual Lift Clients against Merrill Lynch (and its Related Entities), as well as against the Lift Companies, but there is uncertainty regarding the prospects and value of those claims. Lift Clients who believe that they may have such claims should obtain their own independent legal advice in relation to the prospects and value of such claims, noting that such claims would be released under the Schemes.

For the following reasons, the Liquidators recommend that Scheme Creditors vote in favour of the Schemes.

- **Higher estimated return to Scheme Creditors from the Lift Companies.** The Liquidators estimate that the likely dividend payments to creditors of the Lift Companies in a liquidation-only scenario would be in the order of **39 cents in the dollar** (in the case of Lift Clients this would be in respect of Established Scheme Claims), whereas under the Schemes this would be in the order of **65 cents in the dollar** for Lift Clients in respect of Established Scheme Claims and **54 cents in the dollar** for Trade and Other Creditors.<sup>1</sup> The higher returns from the Lift Companies available under the Schemes arise because, if the Schemes become Effective, Merrill Lynch has agreed that:
  - it will procure that the Swaby and Crabb Claimants, who the Liquidators estimate have, applying the calculation methodology used in the Schemes, a claim of approximately \$32m against the Lift Companies<sup>2</sup>, will enter into a mutual deed of release with the Lift Companies, thereby increasing the funds available to other Scheme Creditors. If the Swaby and Crabb Claimants were to prove under the Schemes, they would receive approximately 47 cents in the dollar in respect of their claims (approximately \$15.2m);
  - neither Merrill Lynch nor its Related Bodies Corporate will prove in the Schemes. That is of benefit to Scheme Creditors because:
    - if the liquidations continue alone, the Liquidators expect that Merrill Lynch would seek to prove in the liquidations in respect of any liability Merrill Lynch might have to Lift Clients (the amount of that liability is uncertain, as it would depend on whether Lift Clients' claims against Merrill Lynch succeeded). Thus, to the extent that

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<sup>1</sup> These estimates are based on the information available as at the date of this Explanatory Statement and on the assumptions described or referred to in section 6.

<sup>2</sup> The Liquidators estimate that the Swaby and Crabb Claimants' claim in the liquidations might be as high as \$38m plus consequential losses if the value of their mortgaged securities was measured as at 10 April 2008 rather than by reference to the price for which those securities were sold by Merrill Lynch

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Lift Clients' claims against Merrill Lynch succeeded, that might reduce their return from the Lift Companies;

- if the liquidations continue alone, the Liquidators also expect that Merrill Lynch would seek to prove in the liquidations in respect of any payment which Merrill Lynch has made to the Swaby and Crabb Claimants (a matter which is not known to the Liquidators); and
- Berndale Limited is a trade creditor of Lift Capital in the amount of \$286,931.96, and as a subsidiary of Merrill Lynch it will not be entitled to prove under the Schemes;
- Merrill Lynch will pay the Cash Contribution of \$10.3 million to the Scheme Administrators five Business Days after the Effective Date; and
- Merrill Lynch will return the Surplus Securities which, once returned to those of the Lift Clients who have a proprietary claim to the Surplus Securities, will reduce the total claims by Lift Clients against Lift Capital. Merrill Lynch will also release its claims in respect of those Surplus Securities on the Release Date.

It is however possible that if the Schemes are not approved Lift Clients may derive a better overall return (i.e. a return from the Lift Companies in the liquidations and claims against third parties outside the liquidations) by pursuing potential claims against Merrill Lynch if those claims succeeded. See section 2 for reasons why you may consider voting against the Schemes.

The assumptions which the Liquidators have made in making the above dividend estimates are discussed in detail at section 6 below. The assumptions made regarding the dividends which would be payable under the Schemes are discussed in detail at section 6.2(a) below and include assumptions that (i) the Surplus Securities will be returned to Lift Clients; (ii) Scheme Creditors Established Scheme Claims will total approximately \$84m; (iii) no substantial recoveries will be made in the liquidations and (iv) total fees and disbursements of approximately \$3m will be required to complete the liquidations and administer the Schemes.

- **Alternative commercial outcome to litigation.** The resolution effected by the Schemes represents a commercial alternative to lengthy, costly and uncertain litigation. For instance:
  - The Liquidators believe that the outcome under the Schemes offers greater certainty to Scheme Creditors than would be available under the liquidations alone. Under the Schemes, the Liquidators will have certainty regarding the amount of funds to be distributed to Scheme Creditors. Under the liquidations, the ultimate return to Lift Clients, whether by way of a dividend in the liquidation or as a result of claims against Merrill Lynch, would depend on the outcome of litigation. In addition, the Schemes create greater certainty regarding the quantum of Lift Clients' claims, by

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establishing a precise mechanism for establishing the value of those claims.

- The costs associated with the commencement of legal proceedings by the Liquidators and/or Lift Capital against Merrill Lynch (and the risk of adverse costs orders if those proceedings are unsuccessful) would be avoided. The Schemes provide a means for unfunded Lift Capital to reach a settlement with Merrill Lynch.
- There is a risk that claims by the Lift Clients and/or the Lift Companies against Merrill Lynch would not succeed or, if they did succeed, that any recovery from Merrill Lynch would be assessed by reference to the value of Mortgaged Securities some time after 10 April 2008, by which the time the value of the securities may have declined. Such risks would be avoided if the Schemes are implemented.
- It may be the case that certain Lift Clients would enter into litigation funding agreements with a third party litigation funder in order to pursue proceedings against Merrill Lynch. Even if those Lift Clients' claims against Merrill Lynch were to succeed, any amounts payable to the litigation funder under the terms of that funding agreement would reduce the amounts which those Lift Clients would actually receive.
- The Schemes provide greater certainty as to the quantum of claims against the Lift Companies. Lift Clients' claims will be determined by applying the formulae contained in the Schemes (see section 7). Merrill Lynch and the Swaby and Crabb Claimants will not be entitled to prove in respect of any claims they might have against the Lift Companies; and
- The Schemes provide greater certainty as to the total return to Lift Clients. Merrill Lynch will be making a contribution if the Schemes are approved which will increase the pool of assets available for distribution and reduce the total value of claims against the Lift Companies. If the Schemes were not approved and Lift Clients commenced proceedings against Merrill Lynch, there would be considerable uncertainty as to what return (if any) Lift Clients would receive as a result of that litigation.

An individual Lift Client may however form the view that he or she would achieve a greater return by pursuing his or her claims against Merrill Lynch and proving in the liquidations of the Lift Companies without the Schemes.

- **An efficient claims procedure.** Under the Schemes, Lift Clients will, in most cases, qualify to have their claims automatically recognised under the Schemes and will not be required to submit a proof of debt or provide any evidence to establish that they have damages claims against the Lift Companies. The quantum of claims by Lift Clients will be determined by the Scheme Administrators in accordance with the formulae contained in the Schemes (subject to Lift Clients' right of appeal to the Court). In a liquidation, Lift Clients would be required to submit proofs of debt and the assessment of creditors' proofs of debt in the

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liquidations would be significantly more time consuming and costly. Scheme Creditors would not have the benefit of the expedited adjudication process provided for in the Schemes.

- **Earlier distributions.** It is intended that the Scheme Administrators will make distributions to Scheme Creditors as soon as reasonably practicable after all Scheme Claims have been determined in accordance with the Schemes. The Liquidators' estimate of the timing of payment of a dividend under the Schemes, and the assumptions underlying the estimate, are set out in section 6.4. The Liquidators anticipate being able to pay a dividend by the end of March 2010. The timing of payment of a dividend under the Schemes may be delayed if, for example, Scheme Creditors commence legal proceedings in respect of the Schemes (including any appeal against a decision of the Scheme Administrators under section 1321 of the Corporations Act). For further details, refer to section 6.4. In the liquidations, creditors' claims would have to be assessed prior to the payment of an interim dividend, which the Liquidators estimate could take several months. Particular matters which might delay payment of a final dividend in a liquidation include:
  - adjudicating any proof of debt submitted by Merrill Lynch - the value of any claim it might have may not be apparent until any litigation or claims between it, the Lift Companies and Lift Clients have been finally resolved; and
  - for Lift Clients who have a claim in respect of Surplus Securities it may not be possible to finally adjudicate their claims until the competing claims of the Lift Clients and Merrill Lynch to those Surplus Securities have been resolved, which is likely to require further litigation.

Accordingly, a final dividend may not be paid until legal proceedings involving the Lift Companies, Lift Clients and Merrill Lynch had been finally resolved, which the Liquidators estimate could take up to three years.

- **Return of Surplus Securities.** If the Schemes become Effective, Merrill Lynch have agreed to release the Surplus Securities to the Liquidators and to release any claims they might have in respect of those Surplus Securities with effect from the Release Date. The Liquidators will then be in a position to return those Surplus Securities on a pro rata basis to Lift Clients and other persons with a proprietary claim to them. This will avoid the costs, uncertainty and delay associated with resolving the competing claims of Lift Clients and Merrill Lynch in respect of the Surplus Securities through litigation.
- **Better return for Trade and Other Creditors than in a liquidation.** While Trade and Other Creditors will not be entitled to a share of the cash contribution to be paid by Merrill Lynch, their return will be substantially better than in a liquidation. That is because they will benefit from Merrill Lynch having agreed that it will not prove under the Schemes and that it will procure that the Swaby and Crabb Claimants will not prove under the Schemes. As stated above, it is estimated that under the Schemes, Trade and Other Creditors would receive 54 cents in the dollar

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rather than the 39 cents in the dollar they could expect to receive in a liquidation. Further, the Schemes do not deprive Trade and Other Creditors of any claims against third parties.

- **Liquidator Recoveries will continue.** If the Schemes become Effective, the liquidations of each of the Lift Companies will continue and the proceeds of any Liquidator Recoveries will be paid to the Scheme Administrators to be distributed in accordance with the Schemes.

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## 2. WHY YOU MAY CONSIDER VOTING AGAINST THE SCHEMES

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On balance, the Liquidators believe that the advantages of the Schemes outweigh the disadvantages. Scheme Creditors are not obliged to follow the Liquidators' recommendations and may decide to vote against the Schemes based on their individual circumstances. Some factors that may lead individual Scheme Creditors to consider voting against the Schemes are set out below.

- **Lift Clients will relinquish any claims against Merrill Lynch.** If the Schemes proceed, Lift Clients will be required to relinquish any claims against Merrill Lynch. See section 4.6(b) for a discussion of potential claims. The strength of any claims which Lift Clients might have against Merrill Lynch are a matter in respect of which Lift Clients should seek their own independent legal advice. An individual Lift Client may form the view that, despite the potential uncertainty, delay and cost of litigation, he or she would achieve a greater return by pursuing his or her claims against Merrill Lynch and proving in the liquidations of the Lift Companies without the Schemes.
- **Liquidators cannot obtain further recoveries from Merrill Lynch.** Under the Schemes, the Lift Companies and the Liquidators will release Merrill Lynch and its Related Entities and relinquish the prospect of obtaining judgment against Merrill Lynch at trial for an amount that may be in excess of the value of the consideration which Merrill Lynch has agreed to provide if the Schemes become Effective. See section 4.6(a) for a discussion of those claims.
- **Indemnity provided by Lift Clients:** Under the Schemes, the Liquidators will be appointed as attorneys for the Lift Clients and will execute a Scheme Deed of Release and Indemnity on their behalf. That Scheme Deed of Release and Indemnity includes provisions whereby Lift Clients provide an indemnity in favour of Merrill Lynch. Under the terms of that indemnity:
  - if a Lift Client brought a proceeding against a third party (for example a financial adviser) and the third party in turn brought a claim against Merrill Lynch (for example a claim for equitable contribution), Merrill Lynch would be entitled to claim under its indemnity from the Lift Client for any liability or expense Merrill Lynch incurred as a result of those proceedings. The amount of this indemnity is capped to the Lift Client's dividend under the Schemes plus any amounts they recover pursuant to those further proceedings (less the Lift Client's costs and expenses). For Lift Clients who intend to bring proceedings against a third party (for example a financial adviser) the existence of this indemnity is a reason why that Lift Client might consider voting against the Schemes; and
  - if a Lift Client brought a claim directly against Merrill Lynch in breach of the Schemes, Merrill Lynch would be entitled to claim under its indemnity from the Lift Client for any liability it incurred as a result of those proceedings.

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- **The Schemes limit the types of claims that Lift Clients are able to prove for against the Lift Companies.** Under the Schemes, Lift Clients will have their claims assessed by reference to the value of the Mortgaged Securities (calculated in accordance with the price at which those Mortgaged Securities were sold by Merrill Lynch in the period after 10 April 2008) less the amount of their loans from Lift Capital (or if clients had a credit balance rather than a loan as at 10 April 2008, plus that amount). Lift Clients will not be entitled to advance any other claims relating to the sale of their securities (for example claims in respect of a loss of opportunity). Under the liquidations, Lift Clients would be entitled to seek to prove in respect of any causes of action which they might have against Lift Companies. The Liquidators consider that those causes of action might include (without limitation):

- claims for breach of contract by Lift Capital in causing Lift Clients' securities to be transferred to Merrill Lynch which may involve establishing that clauses in the relevant Facility Agreement relating to the release of mortgages granted by Lift Clients were void;
- claims for misleading or deceptive conduct by Lift Capital in relation to representations made to Lift Clients regarding beneficial ownership of their securities;
- claims for unjust enrichment by Lift Capital in benefiting from the proceeds of sale of Lift Clients' mortgaged securities (which proceeds were applied to reduce the amounts owed by Lift Capital to Merrill Lynch);
- breach of trust by Lift Nominees in transferring mortgaged securities which it held on behalf of Lift Clients to Merrill Lynch.

Under the liquidations Lift Clients would be entitled to seek to prove in respect of all heads of loss they might have against the Lift Companies (for example, loss of opportunity and consequential loss claims) as opposed to the limited range of claims automatically recognised under the Schemes.

- **Limited claims available to Lift Clients against the Lift Companies under the Schemes may adversely affect particular Lift Clients.** As described above, the Schemes provide that all Lift Clients will only be entitled to prove in respect of particular claims that they have against the Lift Companies and will have the amount of their claim assessed in a particular way. This may adversely affect particular Lift Clients who, in a liquidation, might be able to demonstrate that their provable claim is proportionately greater than other Lift Clients' claims. For example, if a Lift Client purchased shares which were sold by Merrill Lynch and those shares subsequently increased in value, while the shares which other Lift Clients purchased and which were also sold by Merrill Lynch subsequently decreased in value, in a liquidation that Lift Client's provable claim might be proportionately greater than other Lift Clients' provable claims as compared with the position under the Schemes.

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### **3. DETAILED INFORMATION ABOUT THE SCHEME MEETINGS AND ON HOW TO VOTE**

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#### **3.1 Introduction**

A separate Scheme is proposed between each Lift Company and its Scheme Creditors and there will be a separate Scheme Meeting for each class of Scheme Creditors to approve the relevant Scheme. Both Schemes are on the same terms.

All of the Scheme Meetings will commence at 10.00 am (Sydney time) on 22 December 2009 at Wesley Conference Centre, Lyceum Theatre, 220 Pitt St, Sydney NSW and will end together at the conclusion of all voting by Scheme Creditors.

#### **3.2 Classes of Scheme Creditors for each Scheme**

In making its orders under section 411(1) of the Corporations Act to convene the Scheme Meetings, the Court convened meetings of two separate classes of creditors of Lift Capital, whose interests in respect of, or arising from, the proposed Schemes are sufficiently different that they ought to vote on the Schemes separately.

The two classes are Lift Clients and Trade and Other Creditors.

- Lift Clients – being, in summary, each person who (i) transferred shares to Lift Capital or (ii) instructed Lift Capital to purchase shares on their behalf or (iii) who borrowed money from Lift Capital to purchase securities and who, arising out of the transfer by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a provable claim against one or both of the Lift Companies; and
- Trade and Other Creditors – being all other Scheme Creditors of that Lift Company. This includes all "trade" creditors (such as suppliers of goods and services) and other non-client unsecured creditors, who do not fall within the Lift Client class.

The Court also convened a single meeting of creditors of Lift Nominees, being all creditors of that company, who are made up solely of Lift Clients.

There will be separate votes by each class of Scheme Creditors in each Lift Company. Accordingly, there will be 3 separate votes by Scheme Creditors and therefore 3 Scheme Meetings. In order for the Schemes to proceed, the requisite majority of Scheme Creditors in each of Scheme Meeting must approve the relevant Scheme.

There is a single Voting Form for all Scheme Creditors in respect of the Scheme Meetings. There is a Proxy Form for Lift Clients in respect of both the first Lift Capital Scheme Meeting and the Lift Nominees Scheme Meeting and there is a separate Proxy Form for Trade and Other Creditors in respect of the second Lift Capital Scheme Meeting.

#### **3.3 Who is entitled to vote at the Scheme Meetings?**

Each person who:

- is a Scheme Creditor of a Lift Company; and

- 
- lodges a duly completed Voting Form in respect of the relevant Scheme Meetings in accordance with the instructions on the form so that it is received by the Registry by 10.00 am (Sydney time) on 19 December 2009 and has their Voting Form admitted by the Chairman (see section 3.6),

will be eligible to vote at the relevant Scheme Meeting(s).

The Chairman of the Scheme Meetings has power to admit or reject a Voting Form for the purposes of voting. However, in accordance with Regulation 5.6.26 of the Corporations Regulations, a decision to admit or reject a Voting Form for voting purposes may be appealed to the Court within 10 Business Days after the decision.

Each Scheme Creditor who is a Lift Client will be eligible to vote at the Lift Capital Scheme Meeting for the Lift Client class. Each Scheme Creditor who is a Trade or Other Creditor of Lift Capital will be eligible to vote at the Lift Capital Scheme Meeting for the Trade or Other Creditor class. All Scheme Creditors of Lift Nominees will be eligible to vote at the Lift Nominees Scheme Meeting.

If you are a Scheme Creditor of more than one Lift Company and you lodge a duly completed Voting Form in accordance with the instructions on the form, you will be eligible to vote at the Scheme Meeting for your class of each such Lift Company. If you wish to cast a vote either for or against the Schemes, you need to vote at each of the Scheme Meeting(s) at which you are entitled to vote.

Scheme Creditors who do not vote at the Scheme Meetings will still be bound by the Schemes and will still be entitled to have their claims determined under the Schemes, provided that the Schemes are approved by the requisite majorities of each class of Scheme Creditors and then approved by the Court.

### **3.4 What will happen at the Scheme Meetings?**

At each Scheme Meeting, each class of Scheme Creditors of the relevant Lift Company will be asked to consider and, if thought fit, approve the following resolution:

*"That, pursuant to and in accordance with section 411 of the Corporations Act 2001 (Cth), the scheme of arrangement between the Lift Company and its creditors, as contained and more particularly described in the Explanatory Statement, is approved and the Liquidators of the Lift Company are authorised to agree to such alterations or conditions to the scheme of arrangement as are thought fit by the Federal Court of Australia."*

It is intended that the Scheme Meetings will proceed as follows:

- the first item of business at each Scheme Meeting will be for the Scheme Creditors entitled to vote to decide who (if anyone) else may attend the Scheme Meeting;
- all Scheme Meetings will be opened concurrently at 10.00 am (Sydney time) on 22 December 2009;
- all present Scheme Creditors will attend an address by the Chairman of the Scheme Meetings and a joint question and answer session during which Scheme

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Creditors will have a reasonable opportunity to ask questions regarding the Schemes;

- the Scheme Meeting for the Lift Client class of Lift Capital will be held in turn immediately after the question and answer session;
- the Scheme Meeting for all Scheme Creditors of Lift Nominees will be held in turn immediately after the Scheme Meeting for the Lift Client class of Lift Capital; and
- the Scheme Meetings for the Trade and Other Creditor class of Lift Capital will be held in turn immediately after the Scheme Meeting for the all Scheme Creditors of Lift Nominees.

### **3.5 Requisite majority for approval**

The Schemes will not proceed unless the resolution to approve each Scheme is passed by a majority in number (meaning more than 50%) of each class of each Lift Company's Scheme Creditors who are present and voting at the Scheme Meeting for that class (either in person, by proxy or attorney or, in the case of corporations, by corporate representative) and whose debts or claims against that Lift Company amount in aggregate to at least 75% of the total amount of the debts and claims of the relevant class of that Lift Company's Scheme Creditors present and voting at the Scheme Meeting for that class.

Voting at the Scheme Meetings will be conducted by poll only.

The Schemes are conditional on the resolution to approve the Scheme being approved by the requisite majorities of Scheme Creditors of each Lift Company.

In accordance with section 411(4)(b) of the Corporations Act, the Schemes are also conditional on approval by order of the Court. Details of the Court hearing will be advertised and notified on the Liquidators' website ([www.mcgrathnicol.com](http://www.mcgrathnicol.com)). If the resolutions to approve the Schemes are approved by the requisite majorities set out above and the other conditions precedent to the Schemes are satisfied or, where applicable, waived, the Liquidators will apply to the Court for the necessary orders to give effect to the Schemes.

### **3.6 Voting Forms**

An individualised Voting Form will be sent to each known Scheme Creditor, in respect of all Scheme Meetings which that Scheme Creditor is entitled to vote at. Scheme Creditors who have not received a Voting Form should contact the Registry.

If you wish to vote at a Scheme Meeting you must lodge your Voting Form with the Registry in order to establish the amount of your debts and claims against the relevant Lift Company for voting purposes. You should ensure that you lodge your Voting Form, in accordance with the instructions on the form, so that it is received by the Registry by 10.00 am (Sydney time) on 19 December 2009.

For the purposes of determining the value of each Scheme Creditor's votes, the amount of each Scheme Creditor's "debts and claims" will be determined by the Chairman of the Scheme Meetings. The Chairman will make a "just estimate" of each Scheme Creditor's debts and claims. It is expected that the Chairman would admit each Lift Client's claims for voting purposes for at least the total of "base claims" (being the price, calculated on a

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volume weighted average price basis, at which listed shares in which the Lift Client claims it had a proprietary interest were sold by Merrill Lynch between 11 April and 5 May 2008, less the amount of that Lift Client's outstanding loan (if any) as at 10 April 2008) and claims in respect of listed shares that are Surplus Securities (based on the market value of those listed shares at close of business on 10 April 2008). Please note that this is for voting purposes only – such determinations will not be taken into account in the determination of claims under the Schemes, should the Schemes proceed.

Where claims of Scheme Creditors are in more than one name, only one of the Scheme Creditors is entitled to vote. If more than one such Scheme Creditor votes, only the vote of the Scheme Creditor whose name appears first on the Voting Form will be counted.

### **3.7 Valuation of claims for voting purposes**

When assessing the amounts of Lift Clients' claims against the Lift Companies for voting purposes, the Liquidators intend to admit the following claims by Lift Clients for voting purposes:

- the value of their Mortgaged Securities (calculated in accordance with the price at which those Mortgaged Securities were sold by Merrill Lynch in the period after 10 April 2008) less the amount of their loans from Lift Capital as at 10 April 2008 (or, if Lift Clients had a credit balance in their accounts rather than a loan as at 10 April 2008, plus that amount); and
- the value of any Surplus Securities in respect of which the Liquidators consider that the Lift Clients have a proprietary claim calculated by reference to the closing price of those Surplus Securities as at 10 April 2008.

To the extent that Lift Clients already have submitted, or do submit, a proof of debt pursuant to which they assert that they have other provable claims against Lift Capital, those additional claims will be assessed by the Liquidators for voting purposes.

The Liquidators intend to admit for voting purposes the claims of Trade and Other Creditors in accordance with ordinary liquidation principles.

### **3.8 How to vote**

Scheme Creditors may cast their votes at the Scheme Meetings in the following ways:

- by attending the Scheme Meetings and voting in person (see paragraph (a));
- by appointing a proxy to attend and vote on their behalf, using the Proxy Form(s) (see paragraph (b));
- by appointing an attorney to attend and vote on their behalf (see paragraph (c)); or
- in the case of bodies corporate, by appointing an authorised corporate representative pursuant to section 250D of the Corporations Act to attend and vote on their behalf (see paragraph (d)).

#### **(a) Voting in person**

To vote in person at the Scheme Meetings, Scheme Creditors must attend the Scheme Meetings at 10.00 a.m. (Sydney time) on 22 December 2009. Scheme

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Creditors who wish to vote in person will be admitted to the Scheme Meetings and given a voting card for the Scheme Meeting(s) at which they are eligible to vote provided they provide their name and address at the point of entry.

(b) **Voting by proxy**

A Scheme Creditor who is eligible to vote at a Scheme Meeting is also entitled to appoint a proxy to attend and vote on their behalf. The proxy need not be a Scheme Creditor but must be a natural person over the age of 18 years.

Scheme Creditors who wish to vote by proxy should properly complete and lodge the Proxy Form sent to known Scheme Creditors on or before 16 December 2009, in accordance with the instructions on the form, so that it is received by the Registry by 10.00 am (Sydney time) on 19 December 2009. Scheme Creditors who have not received a Proxy Form should contact the Registry.

There is a Proxy Form for Lift Clients in respect of both the first Lift Capital Scheme Meeting and the Lift Nominees Scheme Meeting. There is a separate Proxy Form for Trade and Other Creditors in respect of the second Lift Capital Scheme Meeting.

If a Scheme Creditor appoints a person as their proxy and they do not instruct their proxy on how to vote, their proxy may vote or abstain as the proxy sees fit. If the proxy fails to attend the relevant Scheme Meeting(s), the Scheme Creditor's vote(s) will not be counted at the relevant Scheme Meeting(s).

If a Scheme Creditor appoints the Chairman of the Scheme Meetings as their proxy and they do not instruct the Chairman on how to vote on the resolution to approve the Scheme(s), their proxy appointment may be ineffective.

A proxy will be admitted and given a voting card for the Scheme Meeting(s) at which that proxy is eligible to vote upon providing written evidence of their name and address at the point of entry.

(c) **Voting by attorney**

A Scheme Creditor who is eligible to vote at a Scheme Meeting is also entitled to appoint an attorney to attend and vote on their behalf. An attorney need not be a Scheme Creditor.

The power of attorney appointing the attorney must be duly executed and specify the name of the Scheme Creditor, the Lift Compan(y)/(ies) and the attorney, and must also specify the Scheme meeting(s) at which the appointment may be used. The appointment may be a standing one.

To be effective, Scheme Creditors should ensure that the power of attorney is received by the Registry before the Scheme Meetings.

An attorney will be admitted and given a voting card for the Scheme Meeting(s) at which that attorney is eligible to vote upon providing written evidence of their name and address at the point of entry.

(d) **Voting by corporate representative**

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To vote at the Scheme Meetings (other than by proxy or attorney), Scheme Creditors that are bodies corporate may appoint a person to act as their representative. The appointment must comply with section 250D of the Corporations Act, meaning that a Certificate of Appointment of Corporate Representative ("**Certificate**") executed in accordance with the Corporations Act is required. To be effective, the Certificate should be received by the Registry before the Scheme Meetings.

If a Certificate is completed by an individual or body corporate under power of attorney, the power of attorney under which the Certificate is signed, or a certified copy of that power of attorney, must accompany the Certificate.

Authorised corporate representatives will be admitted to the Scheme Meetings and given a voting card for the Scheme Meeting(s) at which that representative is eligible to vote upon providing written evidence of their name and address at the point of entry.

### **3.9 Results of Scheme Meetings**

The results of the Scheme Meetings will be available shortly after the conclusion of the Scheme Meetings and will be posted on the Liquidators' website: [www.mcgrathnicol.com](http://www.mcgrathnicol.com).

### **3.10 Modification of Schemes at Scheme Meetings**

Scheme Creditors may make modifications to the terms of the Schemes or the Scheme Release Deed at the Scheme Meetings prior to the passing of a resolution to approve the Schemes. However, Scheme Creditors should be aware that there are risks associated with modifying the terms of the Schemes or the Scheme Deed of Release and Indemnity (see section 5.4).

### **3.11 Contact details**

Completed Proxy Forms and Voting Forms should be delivered, posted, faxed or emailed to the Registry using the contact details provided on the forms.

All questions in relation to the lodgement of Proxy Forms or Voting Forms should be directed to the Registry at:

Computershare Investor Services Pty Limited (ACN 078 279 277)  
Ph: 1300 850 505  
Fax: +61 2 8235 8133  
Mail: Lift Capital  
C/- Computershare Investor Services Pty Limited  
GPO Box 4195  
Sydney NSW 2001

All questions and requests for assistance in relation to the operation of the Schemes should be directed to the Liquidators by email to [liftcapital@mcgrathnicol.com](mailto:liftcapital@mcgrathnicol.com) or, if you do not have access to email facilities, in writing to the address below. Scheme Creditors may also telephone Nicholas Fox of the Liquidators' staff on (02) 9248 9974 between 9.00 am and 5.00 pm Sydney time), Monday to Friday, for further assistance.

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The Liquidators – Lift Capital Partners Pty Ltd (in liquidation)  
C/- McGrathNicol  
GPO Box 9986  
Sydney NSW 2001

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## 4. BACKGROUND TO THE SCHEMES

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### 4.1 Profile of the Lift Companies

Prior to the appointment of administrators to Lift Capital and its wholly-owned subsidiary Lift Nominees (together the "**Lift Companies**") on 10 April 2008, Lift Capital had operated a margin lending business by which it lent money to clients, generally for the purchase of exchange-listed shares or units in managed funds. The Lift Companies were based in Sydney, Australia.<sup>3</sup>

The margin loans were secured by mortgages in favour of Lift Capital over the securities which clients purchased with the assistance of the margin loans (the "**Mortgaged Securities**"), and these securities were held by Lift Nominees on behalf of the clients. Lift Nominees did not carry on any business other than holding such Mortgaged Securities. The terms of these margin loan and mortgage arrangements were set out in facility agreements attached to product disclosure statements contained in brochures issued by Lift Capital from time to time.

Lift Capital's business generated net interest revenue from the difference between the interest Lift Capital charged to its clients and the interest it paid to Merrill Lynch and Related Bodies Corporate of Merrill Lynch to fund its margin loan book (see section 4.2 for information on the Merrill Lynch funding arrangements). Lift Capital also paid commissions to financial planners and advisers.

On 10 April 2008, the directors of the Lift Companies appointed Anthony McGrath and Joseph Hayes of McGrathNicol as voluntary administrators of the Lift Companies. They became the liquidators of the Lift Companies at a meeting of creditors held on 12 November 2008. The Lift Companies went into administration on 10 April 2008 owing approximately \$700 million to Merrill Lynch.

### 4.2 Funding from Merrill Lynch

Lift Capital had funded its margin loan book from cash advances from certain Merrill Lynch group companies, being Merrill Lynch Equities (Australia) Limited ("**MLEA**"), MLI and MLIA. The funding from Merrill Lynch was provided in return for Merrill Lynch obtaining possession of most of the Mortgaged Securities, those securities being transferred from time to time by Lift Nominees to MLEA and, later, to MLI and/or MLIA.

These transactions initially occurred, between June 2005 and February 2007, pursuant to the terms of an Australian Master Securities Lending Agreement dated 7 June 2005 between Lift Capital and MLEA ("**ML AMSLA**") and purported to involve the transfer of full legal and beneficial title in the Mortgaged Securities to MLEA.

In February to March 2007, Merrill Lynch sought to have Lift Capital transition from these securities lending arrangements to Merrill Lynch's "Prime Brokerage" platform. As part of

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<sup>3</sup> The other members of the Lift group of companies were two non-trading companies: Lift Capital Nominees Pty Limited (the parent company of Lift Capital) and Lift Capital MF Pty Limited (a wholly-owned subsidiary of Lift Capital).

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the transition, on 13 February 2007, Lift Capital entered into separate Global Master Securities Lending Agreements ("**GMSLAs**") with MLI and MLIA. In early March 2007, the securities lending arrangements between Lift Capital and MLEA were brought to an end, with the Mortgaged Securities held by MLEA being transferred, with Lift Capital's consent, to MLI or MLIA, and MLI or MLIA paying to MLEA, at Lift Capital's direction, an amount equivalent to the cash collateral MLEA had paid to Lift Capital.

On 12 March 2007, Lift Capital entered into an International Prime Broking Agreement ("**March IPBA**") with MLI and MLIA. Later, on 21 November 2007, Lift Capital entered into a further IPBA, on relevantly identical terms, with MLI and MLIA ("**November IPBA**"). The March IPBA and the November IPBA each contains an indemnity from Lift Capital in favour of Merrill Lynch, as well as warranties as to title to the securities transferred to Merrill Lynch. From around February or March 2007, MLI or MLIA provided further funding to Lift Capital in return for the transfer of Mortgaged Securities to them under the terms of the March IPBA and November IPBA.

On 10 April 2008, shortly after the Lift Companies entered administration, MLI and MLIA terminated the agreements they had entered into with Lift Capital. At the time of that termination, MLI and MLIA were the registered holders of various Mortgaged Securities. During the period commencing on 11 April 2008 and ending on 1 May 2008, MLI and MLIA disposed of a sufficient number of those Mortgaged Securities to repay in full the debts owing to them from Lift Capital.

Since 10 April 2008, the Liquidators have returned to Lift Clients who had proprietary claims over securities and cash which were held by the Lift Companies as at 10 April 2008 those securities and that cash. However, unsecured claims by Lift Clients and the other Scheme Creditors remain outstanding.

#### **4.3 NSW Supreme Court proceedings in 2008**

In 2008, the administrators of the Lift Companies (who are now the Liquidators) brought proceedings against Merrill Lynch and certain Lift Capital clients in the Supreme Court of New South Wales (the "**Relevant Lift Capital Clients**"). The purpose of the proceedings was to resolve two broad issues in relation to certain of the Mortgaged Securities which had been transferred to MLI and MLIA but not sold under the sale process described in section 4.2:

- firstly, whether some or all of the Relevant Lift Capital Clients had proprietary interests in a representative selection of the unsold Mortgaged Securities (being shares of 3 listed companies), either while those shares remained in the possession of MLI or MLIA or, if they were returned to the Lift Companies, once that had occurred; and
- secondly, whether MLI or MLIA was obliged to return to Lift Capital the shares in question or, instead, to pay a monetary sum to it.

On 3 February 2009, the Court held that the proprietary interest of the Relevant Lift Capital Clients in the shares of 3 listed companies they had mortgaged to Lift survived the transfer of those shares by Lift Nominees to Merrill Lynch. The shares which were the subject of the application were ordered to be returned to Lift Nominees to be held on behalf of the

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Relevant Lift Capital Clients, but subject to the security interest of Lift Capital as mortgagee. The Court did not determine the question of whether Merrill Lynch had a defence of bona fide purchaser for value without notice, and Merrill Lynch made no claim to the shares which were the subject of the application.

Shortly following the judgment of the Court, the Liquidators requested that Merrill Lynch deliver all of the unsold Mortgaged Securities to Lift Nominees upon the making of orders in those proceedings. Having undertaken to be bound by the declarations made by the Court in respect of the shares which were the subject of the Court proceedings, Merrill Lynch returned the shares in those 3 particular listed companies. Following that, the Liquidators returned these shares to the Relevant Lift Capital Clients.

Merrill Lynch did not return the balance of the unsold Mortgaged Securities, being securities which were not the subject of the Court proceedings and in respect of which it remains open to Merrill Lynch to argue that it was a bona fide purchaser for value without notice. The reasons why Merrill Lynch contends it is entitled to retain the balance of the unsold Mortgaged Securities are discussed further at 4.4 below.

#### **4.4 Surplus Securities**

Since the amounts owing by Lift Capital to Merrill Lynch were repaid on 5 May 2008, Merrill Lynch has, on the basis of rights it asserts it has under the March IPBA and/or the November IPBA:

- retained shares in listed entities which were transferred to it by Lift Nominees prior to 10 April 2008 but not sold after 10 April 2008 (those shares which it still holds are listed at annexure 4 to the Schemes, which are at annexure B to this Explanatory Statement);
- received the proceeds of the sale of some shares which were sold on 1 May 2008;
- received dividends in respect of those retained listed shares; and
- received interest on the cash amounts it held,

(together "**the Surplus Securities**").

As at 10 November 2009, the cash component of the Surplus Securities comprised the sum of \$4,660,468.57 (including dividends received by Merrill Lynch in respect of the Surplus Securities).

Merrill Lynch has contended that it is entitled to retain the Surplus Securities as security for an indemnity given by Lift Capital to Merrill Lynch under the March IPBA and/or the November IPBA. The potential claims which Merrill Lynch has contended might arise under that indemnity include claims in respect of (i) legal expenses sustained or incurred by Merrill Lynch as the result of the occurrence of an Event of Default and (ii) costs, losses or liabilities or damages incurred or sustained by Merrill Lynch in protecting Merrill Lynch's rights under the IPBA. See section 4.6(b) for further discussion regarding the competing claims of Merrill Lynch and Lift Clients to the Surplus Securities.

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#### **4.5 The WA Proceedings**

The Swaby and Crabb Claimants commenced proceedings in the Supreme Court of Western Australia in April 2008 against certain companies in the Merrill Lynch group and the Lift Companies. Those proceedings were dismissed by consent in September 2009. The terms of settlement as between the Swaby and Crabb Claimants and Merrill Lynch are confidential (including the amount of any payment) and have not been disclosed to the Liquidators and the Lift Companies. Merrill Lynch has agreed to procure that the Swaby and Crabb Claimants will enter into a mutual deed of release with the Lift Companies which will take effect from the Release Date.

In that proceeding, among other assertions, the Swaby and Crabb Claimants asserted that MLEA had made particular representations to them including representations to the effect that MLEA and its related bodies corporate had no interest in the securities mortgaged by the Swaby and Crabb Claimants and were holding them only as custodian. The Liquidators consider that a number of those alleged representations are likely to be particular to the Swaby and Crabb Claimants rather than being common to all Lift Clients.

The Liquidators estimate that the Swaby and Crabb Claimants would otherwise have a claim against the Lift Companies of approximately \$32m using the valuation methodology contained in the Schemes, but potentially of up to \$38m plus consequential losses in liquidations (the amount of the claim would vary depending on whether the value of the mortgaged securities should be measured by reference to their closing price on 10 April 2008 or the price for which they were subsequently sold by Merrill Lynch).

The Liquidators do not consider that the fact that a settlement has been reached as between the Swaby and Crabb Claimants and Merrill Lynch would reduce the amount of the proofs of debt which would be submitted in a liquidation because (i) the Liquidators consider that it is likely that the settlement will include an assignment of claims by the Swaby and Crabb Claimants to Merrill Lynch; (ii) the types of claims which the Swaby and Crabb Claimants have against the Lift Companies include claims which are assignable (including claims for breach of contract); and (iii) Merrill Lynch could in any event prove as a creditor in respect of any monies which it has paid to the Swaby and Crabb Claimants (its claim would likely be that Lift Capital breached warranties given to Merrill Lynch in the March IPBA and the November IPBA regarding title to the shares which it transferred to Merrill Lynch, and Merrill Lynch has suffered loss and damage by reason of those breaches, measured by reference to its payments to the Swaby and Crabb Claimants).

#### **4.6 Potential claims against Merrill Lynch**

##### **(a) Lift Companies' Claims**

Lift Nominees has a possible claim against Merrill Lynch on behalf of the Lift Clients. Under the arrangements entered into between Lift Clients and the Lift Companies, Lift Nominees held the legal title to the Mortgaged Securities on trust for the Lift Clients. On one view, Lift Nominees caused or permitted legal title to the relevant securities to be transferred from it directly to Merrill Lynch in return for funding provided by Merrill Lynch to Lift Capital, in breach of Lift Nominees' fiduciary obligations as a trustee and in breach of trust. Lift Nominees could bring

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a claim against Merrill Lynch arising from Merrill Lynch's involvement in those breaches, and seek orders that Merrill Lynch return the unsold Mortgaged Securities and make good the loss to the Lift Clients occasioned by its sale of the Mortgaged Securities. The claim would not succeed if Merrill Lynch was able to establish that it was a bona fide purchaser for value of the securities without notice of the beneficial interest of the Lift Clients in the Mortgaged Securities.

(b) **Lift Clients' Claims**

The prospects of success of any claims which Lift Clients might have against Merrill Lynch are a matter in respect of which Lift Clients should seek their own independent legal advice. The Liquidators consider that there are at least two possible types of claim which Lift Clients might bring:

- **Return of Surplus Securities:** Lift Clients with a proprietary interest to Surplus Securities could bring proceedings seeking orders requiring Merrill Lynch to return those Surplus Securities on the ground that Lift Clients have a prior equitable interest in those securities which will prevail over Merrill Lynch's later legal interest in those securities, unless Merrill Lynch can establish that it was a bona fide purchaser for value without notice of the Lift Clients' interest in the securities that Lift Nominees transferred to Merrill Lynch.
- **Claim for damages for sale of mortgaged securities:** Lift Clients could claim that Lift Nominees held the shares mortgaged by the Lift Clients to Lift Capital on trust and that Lift Nominees was not entitled to transfer those shares to Merrill Lynch, such that when it did so, it did so in breach of trust. In those circumstances, there are possible claims that Merrill Lynch received trust property in circumstances where it was on notice that Lift Nominees was acting in breach of trust and is liable as constructive trustee (under the principles of *Barnes v Addy*<sup>4</sup>). Lift Clients might seek equitable compensation from Merrill Lynch as a result. The Liquidators consider that if such claims were litigated there would be arguments about whether any compensation that might be awarded should be measured based on the sale prices achieved by Merrill Lynch or based on the prices of those securities at the time of any court judgment. Additional heads of damage might include loss of dividends, loss of opportunity claims and possibly capital gains tax liability claims. The Liquidators note that Merrill Lynch denies any liability to Lift Clients. Merrill Lynch is likely to contend in any proceedings that it was a bona fide purchasers for value without notice of the Lift Clients' interest in the securities that Lift Nominees transferred to Merrill Lynch. In any proceedings, the Liquidators also consider that Merrill Lynch might argue whether the clauses in the Lift Facility Agreements which purported to release mortgages granted by the Lift Clients (even though, in respect of a limited number of Lift Clients together with the

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<sup>4</sup> [1874] 9 Ch App 244

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history of communications between the Lift Companies and Merrill Lynch, declared void in the NSW Proceedings) had the result that Merrill Lynch was not on notice of the Lift Clients' interests. The Liquidators consider that Merrill Lynch might also dispute whether particular Lift Clients, in the individual circumstances, could prove unconscionable conduct by the Lift Companies in each case sufficient to render those clauses void as 'clogs on the equity of redemption'<sup>5</sup>.

Lift Clients may consider that they have other causes of action available to them against Merrill Lynch. Lift Clients should seek their own independent legal advice.

#### **4.7 Endeavours to reach a settlement**

The Liquidators, Merrill Lynch, the Swaby and Crabb Claimants and a Lift Client who is a member of the committee of inspection participated in a without prejudice mediation before the Honourable Alex Chernov AO QC on 28, 29 and 30 July 2009 for the purpose of seeking a proposed resolution of all claims as between Lift Capital, Lift Nominees, Merrill Lynch and Lift Clients, that might be acceptable to Lift Clients. A settlement was reached as between the Swaby and Crabb Claimants and Merrill Lynch following that mediation which, as discussed at 4.5 above are confidential and have not been disclosed to the Liquidators and the Lift Companies. The Liquidators and Merrill Lynch have also engaged in further discussions following that mediation.

#### **4.8 Scheme Implementation Agreement and proposal of Schemes**

On 11 November 2009, a Scheme Implementation Agreement was executed by the Lift Companies, the Liquidators and relevant Merrill Lynch Australian entities. Relevant Merrill Lynch UK entities executed the Scheme Implementation Agreement on 16 November 2009. The Scheme Implementation Agreement is at Annexure C. Pursuant to that Scheme Implementation Agreement, and subject to certain terms, the Liquidators agreed to propose the Schemes.

#### **4.9 Arrangements for return of Surplus Securities**

Under the terms of the Scheme Implementation Agreement, the obligation of the Liquidators to propose the Schemes, unless the Liquidators otherwise agree in writing, is subject to the Surplus Securities Escrow Agreements attached as Schedule 3 to the Scheme Implementation Agreement being entered into by each of the parties to those agreements. Under those documents:

- Merrill Lynch is required to agree to transfer the Surplus Securities to the Escrow Agent;
- if a Lift Client with a proprietary claim in respect of a Surplus Security instructs the Liquidators that the relevant Surplus Security should be sold, the Liquidators have

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<sup>5</sup> A term in a mortgage deed which purports to fetter or impede a mortgagee's ability to redeem or freely enjoy the mortgaged property may be void pursuant to the equitable doctrine of 'clogs on the equity of redemption'. Whether those terms in the mortgage were unfair or unconscionable in the particular circumstances of the case will be relevant to that analysis.

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power to give the Escrow Agent instructions to sell that Surplus Security. The proceeds of sale will be treated by the Escrow Agent in the same way as other Surplus Securities;

- Merrill Lynch is required to give the Liquidators an irrevocable authority directing the Escrow Agent to release the remaining Surplus Securities and net proceeds of sale to the Liquidators. The Liquidators will hold the irrevocable authority in escrow until the Release Date with the authority only being released to the liquidators from escrow if the Schemes remain Effective on the Release Date;
- if the Schemes are approved and have not ceased to be Effective by the Release Date, Merrill Lynch will release all of its claims in respect of the Surplus Securities with effect from the Release Date; and
- if the Schemes do not become Effective prior to 31 March 2010, the Surplus Securities will be returned to Merrill Lynch.

If the Surplus Securities are returned to the Liquidators, the Liquidators will cause the Surplus Securities or their proceeds of sale to be returned to those Lift Clients or other persons who have proprietary claims in accordance with the terms of the Lift Facility Agreements. The Schemes do not contain any provisions regarding that process, and it would occur outside the terms of the Schemes.

The process that the Liquidators will carry out to return Surplus Securities to Lift Clients who have proprietary claims will be that, upon confirming that any outstanding loan owing by that Lift Client to Lift Capital has been repaid, the Liquidators will discharge or cause to be discharged any outstanding mortgage granted by the Lift Client or by Lift Nominees in favour of Lift Capital over the relevant Surplus Securities and will cause the relevant Surplus Securities to be transferred to the Lift Client or its nominee.

In instances where there are competing claims by reason of more than one Lift Client having proprietary entitlements over particular Surplus Securities (typically by reason of some but not all of the shares in a particular listed company mortgaged to Lift Capital by or on behalf of Lift Clients being returned by Merrill Lynch), the Liquidators will return the relevant Surplus Securities or, with the consent of the relevant Lift Clients, their proceeds of sale, to the relevant Lift Clients on a pro rata basis.

If the Schemes are approved, Lift Clients will not be entitled to advance any claims in respect of Surplus Securities or their proceeds of sale which are returned to them against the Lift Companies (or any claim at all against Merrill Lynch), regardless of whether those Surplus Securities have increased or decreased in value since 10 April 2008, or whether a Lift Client has been deprived of an opportunity of selling them for a higher price between 10 April 2008 and the date on which they are returned to them.

If a Surplus Security in the form of a listed share, that is returned to a Lift Client by the Liquidators, has decreased in market value since 10 April 2008, the Lift Client will be receiving from the Liquidators an asset of a lower market value than it would have received if the Surplus Security had been returned to it and sold on 10 April 2008. Conversely, if the Surplus Security has increased in market value since 10 April 2008, the Lift Client will be

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receiving from the Liquidators an asset of a higher market value than it would have received if the Surplus Security had been returned to it and sold on 10 April 2008.

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## **5. DISCUSSION OF THE SCHEMES AND THEIR EFFECTS**

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### **5.1 Purpose and terms of Schemes**

The purpose of the Schemes was explained in the section of this Explanatory Statement titled "Overview of this Explanatory Statement".

The terms of the Schemes are set out in the Schemes of Arrangement in Annexure B.

### **5.2 Conditions precedent**

The Schemes can only be implemented if the conditions precedent to the Schemes are satisfied or, where permitted, waived. In summary, the conditions precedent will be satisfied if:

- the Scheme Creditors approve the Schemes at the Scheme Meetings by the requisite majorities under the Corporations Act (see section 3) – this condition cannot be waived;
- the Court makes orders under section 411(4)(b) of the Corporations Act approving each of the Schemes – this condition cannot be waived;
- the Swaby and Crabb Claimants execute and deliver a deed of release, releasing the Lift Companies from any claims they might have against the Lift Companies;
- the Scheme Implementation Agreement has not been terminated as at 8.00 am on the Second Court Date – this condition cannot be waived; and
- such other conditions, made or required by the Court under section 411(6) of the Corporations Act in relation to the Schemes, have been satisfied.

The condition precedent that the Court grants leave or ASIC directs in writing permitting the appointment of the Liquidators as administrators of the Schemes has been waived by the Liquidators.

### **5.3 Potential termination of Schemes**

If the Scheme Implementation Agreement is terminated prior to 8.00 am (Sydney time) on the Second Court Date, the Schemes will not proceed, even if the requisite approval of Scheme Creditors is obtained at the Scheme Meetings.

In summary, any party to the Scheme Implementation Agreement is entitled to terminate that agreement if:

- the Schemes have not become Effective on or before the agreed "end date" of 31 March 2010 (such end date can be extended by agreement between the parties to the Scheme Implementation Agreement); or
- any of the first three conditions described in section 5.2 is not satisfied before the "end date", or any of those conditions becomes incapable of satisfaction, the parties have within 5 Business Days failed to reach an agreement on extending the "end date".

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#### **5.4 Modification of the Schemes at the Scheme Meeting**

It is possible that a Scheme Creditor may propose a modification to the terms of the Schemes (including the Scheme Deed of Release and Indemnity) at the Scheme Meetings prior to the passing of resolutions to approve the Schemes.

Although it is permissible for a Scheme Creditor to propose a modification and for a Scheme Meeting to consider a resolution to approve the modification, Scheme Creditors should be aware that the consequences of modifying the terms of the Schemes or the Scheme Deed of Release and Indemnity are that:

- if the modification is material it may give rise to a basis, which may not otherwise exist, on which the Court may refuse to approve the modified Schemes. In such circumstances, the Schemes will not become Effective (in either the modified form or original form); and
- it is a requirement of the Scheme Implementation Agreement that the Schemes be governed by an instrument substantially in the form set out in Schedule 1 to the Scheme Implementation Agreement (which is reproduced as Annexure B in this Explanatory Statement), and any modifications to the Schemes must be approved by the parties to the Scheme Implementation Agreement (essentially being the Liquidators and Merrill Lynch). There is no guarantee that any modifications approved by the Scheme Creditors will also be approved by the parties to the Scheme Implementation Agreement.

#### **5.5 When the Schemes become Effective**

If the Schemes are approved by Scheme Creditors and the Court, and the other conditions precedent to the Schemes are satisfied or, where permitted, waived, the Liquidators will lodge the Court orders approving the Scheme with ASIC. Upon such lodgement, the Schemes will become Effective.

However, there is a possibility that a Scheme Creditor could appeal against the Court's orders. Any appeal must be lodged within 28 days of the making of the orders or such longer period allowed by the Court, unless the Court extends that time. Unless the Court stays the Court orders approving the Schemes, the Schemes will remain Effective unless and until an appeal Court sets aside the approval order.

#### **5.6 Consequences of Schemes becoming Effective**

This section summarises the consequences of the Schemes becoming Effective. The consequences arise under the Schemes themselves, the Scheme Deed of Release and Indemnity and the Scheme Implementation Agreement.

##### **(a) Amalgamation**

On the Effective Date, the assets and liabilities of the Lift Companies will be amalgamated under section 413 of the Corporations Act. This will be achieved by the transfer of the assets and liabilities of Lift Nominees to Lift Capital.

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Even if a Lift Client has a claim against both Lift Capital and Lift Nominees, their claim against the amalgamated entity will be calculated in accordance with clauses 8.1 and 8.2 of the Schemes.

(b) **Appointment of Scheme Administrators**

Subject to the Liquidators signing the Scheme Administrator Deed Poll (being a deed in the form of Annexure E pursuant to which the Liquidators agree to act as Scheme Administrators and to be bound by the Schemes), the Liquidators will on the Effective Date be appointed as Scheme Administrators to administer the Schemes in accordance with their terms.

The Scheme Administrators shall have the power to administer and supervise the carrying out of the Schemes, to manage the business, property and affairs of the Lift Companies, and to manage and realise the Scheme Assets. This will include the determination and payment of Scheme Claims in accordance with the Schemes.

The Scheme Administrators will be entitled to be remunerated for carrying out their functions. Their remuneration will be calculated on a time basis at the hourly rates from time to time used by the Scheme Administrators' firm, McGrath Nicol less a 15% discount. The payment of any invoice must be approved by the Creditors' Committee.

Any person aggrieved by an act, omission or decision of the Scheme Administrators, has a right to appeal to the Court under section 1321 of the Corporations Act. The Court also has a general supervisory role over the Scheme Administrators.

The Scheme Administrators will not have any powers in relation to recoveries under the antecedent transaction provisions of the Corporations Act. These functions and powers will remain with the Liquidators, and will not be affected by the Schemes, save that any Liquidator Recoveries in this regard will become part of the funds available for distribution under the Schemes.

(c) **Scheme Deed of Release and Indemnity**

On the Effective Date, the Scheme Deed of Release and Indemnity will be signed by the Lift Companies, the Liquidators and Merrill Lynch. A copy of the Scheme Deed of Release and Indemnity is contained as Annexure D.

The Liquidators will sign the Scheme Deed of Release and Indemnity for the Lift Companies and in their capacity as liquidators of the Lift Companies. In addition, the Liquidators will sign as agents and attorneys for each Lift Client. Under the Schemes, each Lift Client is taken to appoint the Liquidators as agents and attorneys with full power to sign the Scheme Deed of Release and Indemnity on the Lift Client's behalf.

The effect of the Scheme Deed of Release and Indemnity is explained in section 5.6(g).

(d) **Establishment of Scheme Funds**

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Within 2 Business Days after the Effective Date, the Scheme Administrators will establish the Scheme Funds described in section 7.8.

(e) **Payment of Cash Contribution by Merrill Lynch**

Within 5 Business Days after the Effective Date, Merrill Lynch will pay to the Liquidators the Cash Contribution of \$10.3 million. To address the possibility of an appeal of the Court's orders approving the Schemes (see section 5.5 above), the Liquidators will hold the Cash Contribution in trust until the Release Date, at which point the Cash Contribution will be released and held in the relevant Scheme Fund pending payment to relevant Scheme Creditors in accordance with the Schemes.

The "**Release Date**" is the latest of:

- the date which is one Business Day after the "Appeals End Date" (being the date that is 28 days after the Effective Date or the first date after any extension of the time for bringing an appeal is made);
- the date which is one Business Day after all appeals and applications for leave or for further time to appeal commenced before the Appeals End Date, and any further appeals or applications therefrom and any proceedings on remittal from any such appeal, have been finally disposed of; and
- the date which is one Business Day after expiration of any stay preventing or affecting the implementation of these Schemes ordered by a court in connection with any appeal or application for leave or for further time to appeal commenced before the Appeals End Date or any further appeal or application for further time to appeal therefrom.

(f) **Surplus Securities**

Under the escrow arrangements described in section 4.9, the Surplus Securities will be released from escrow to the Liquidators on the Release Date. Under the Scheme Deed of Release and Indemnity, Merrill Lynch will release its claims in respect of the Surplus Securities from the Release Date. Those events are subject to the Schemes remaining Effective on the Release Date. The Schemes do not provide for the return of the Surplus Securities to Lift Clients. The Liquidators will cause the Surplus Securities or their proceeds of sale to be returned to those Lift Clients or other persons who have proprietary claims. See section 4.9 below for further details of the process that the Liquidators will follow to return Surplus Securities or their proceeds of sale to Lift Clients who have a proprietary entitlement to those Surplus Securities.

If the Schemes are approved, Lift Clients will not be entitled to advance any claims in respect of Surplus Securities or their proceeds of sale which are returned to them against the Lift Companies (or any claim at all against Merrill Lynch), regardless of whether those Surplus Securities have increased or decreased in value since 10 April 2008, or whether a Lift Client has been deprived of an opportunity of selling them for a higher price between 10 April 2008 and the date on which they are returned to them.

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If a Surplus Security in the form of a listed share, that is returned to a Lift Client by the Liquidators, has decreased in market value since 10 April 2008, the Lift Client will be receiving from the Liquidators an asset of a lower market value than it would have received if the Surplus Security had been returned to it and sold on 10 April 2008. Conversely, if the Surplus Security has increased in market value since 10 April 2008, the Lift Client will be receiving from the Liquidators an asset of a higher market value than it would have received if the Surplus Security had been returned to it and sold on 10 April 2008.

(g) **Releases and indemnities**

(i) **Release of Merrill Lynch**

With effect from the Release Date, each Lift Client, the Lift Companies and the Liquidators releases Merrill Lynch and its Related Entities (the "**Merrill Lynch Entities**") from all Claims.

(ii) **Prohibition against claims**

With effect from the Release Date, Lift Clients will be prohibited from commencing, or procuring any third party to commence, any legal proceeding or other claim against any Merrill Lynch Entity, in any court or tribunal in respect of a matter which is the subject of the release described in sub-paragraph (i).

(iii) **Release of Lift Companies**

Scheme Creditors' claims against the Lift Companies will be replaced with their entitlements under the Schemes. However, where Lift Clients have a proprietary claim in respect of Surplus Securities which are returned to the Lift Companies or the Liquidators after the Schemes become Effective, those Surplus Securities will be dealt with by the Liquidators in accordance with Lift Clients' proprietary entitlements to those Surplus Securities. The Schemes do not contain provisions governing the return of those Surplus Securities by the Liquidators.

In addition, the Schemes prohibit the commencement or continuance of any proceedings by Scheme Creditors against the Lift Companies except with the consent of the Scheme Administrators.

(iv) **Indemnity in favour of Merrill Lynch from Lift Clients**

With effect from the Release Date, Lift Clients will provide a capped indemnity in favour of the Merrill Lynch Entities. The indemnity covers any liability a Merrill Lynch Entity might have as a result of proceedings brought against any Merrill Lynch Entity by a Lift Client or as a result of being joined to any proceeding brought by a Lift Client against a third party (for example a financial planner). The amounts recoverable by the Merrill Lynch Entities in respect of the indemnity in respect of third party claims are limited to the dividend the Lift Client receives under the Schemes plus any amounts that the Lift Client recovers in proceedings he or she brings against that third

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party (net of any costs any expenses incurred by the Lift Client in that third party claim).

(v) **Other releases**

Merrill Lynch has agreed:

- to procure that the Swaby and Crabb Claimants will enter into a mutual Deed of Release and Indemnity with the Liquidators and the Lift Companies, and the Schemes are conditional on this Deed being procured. As at 10 April 2008, the Swaby and Crabb Claimants had mortgaged securities with a value of \$69m in favour of Lift Capital, and had a combined loan of \$29m. They have a claim against the Lift Companies of between approximately \$32m and \$38m plus any consequential losses; and
- that neither it nor any of its Related Bodies Corporate will seek to prove in the Schemes. In a liquidation, the Liquidators consider that it is likely that Merrill Lynch would seek to prove in respect of any liability which it has to Lift Clients, and Berndale Limited would prove for the sum of \$286,931.96.

(h) **Distributions to Scheme Creditors**

Scheme Creditors will be entitled to have their Scheme Claims against the Scheme Companies established in accordance with the Schemes. Details of the procedure for establishing Scheme Claims are set out in section 7.

The Scheme Administrators will distribute the Scheme Assets to Scheme Creditors who have established claims in accordance with the Schemes. Scheme Creditors will not be entitled to receive any distributions of the Scheme Assets except under the Schemes. Under the Schemes, two Scheme funds will be established. All First Scheme Fund will contain all assets of the Lift Companies other than those held in the Second Scheme Fund, and all Scheme Creditors will be entitled to a payment from the First Scheme Fund on a pro rata basis. The Second Scheme Fund will contain the Cash Contribution of \$10.3m plus any assets of Lift Nominees. Trade and Other Creditors will not be entitled to any payment from the Second Scheme Fund. For details of the Liquidators' estimate of the timing of payment of a dividend under the Schemes, and the assumptions underlying the estimate, see section 6.4.

Where Lift Clients have a proprietary claim in respect of Surplus Securities which are returned to the Lift Companies or the Liquidators after the Schemes become Effective, those Surplus Securities will be dealt with by the Liquidators in accordance with Lift Clients' and other persons' proprietary entitlements to those Surplus Securities. The Schemes do not contain provisions governing the return of those Surplus Securities by the Liquidators.

Merrill Lynch and its Related Bodies Corporate will not receive any distributions under the Schemes. It has also agreed to procure that the Swaby and Crabb Claimants will not seek to prove under the Schemes.

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## **5.7 Foreign Scheme Creditors**

All distributions to which a Foreign Scheme Creditor would otherwise be entitled under the Schemes will be held on trust by the Scheme Administrators for the benefit of the Foreign Scheme Creditor. Once the Foreign Scheme Creditor has ratified and agreed to be bound by the Schemes and the Scheme Deed of Release and Indemnity, the withheld distributions and securities will be released from trust and distributed or re-delivered to the relevant Foreign Scheme Creditor under the Schemes. If any Foreign Scheme Creditor does not ratify and agree to be bound by the Schemes within 60 days of the date on which the Scheme Administrators notify the Foreign Scheme Creditor of its Established Scheme Claim have been determined, all distributions to which that Foreign Scheme Creditor would otherwise be entitled will be released from trust and distributed to other Scheme Creditors in accordance with the Schemes.

## **5.8 Consequences of breach of Scheme Release Deed**

Any Scheme Creditor who is, in the reasonable opinion of the Scheme Administrators, in breach of the Schemes or the Scheme Deed of Release and Indemnity will not be entitled to any distribution of Scheme Assets or any other rights under the Schemes unless the breach is rectified to the reasonable satisfaction of the Scheme Administrators. Once the breach is rectified, the Scheme Creditor's entitlement (if any) to a distribution of Scheme Assets will be limited to the remaining Scheme Assets not already distributed to Scheme Creditors. If, upon rectification of the breach, all of the Scheme Assets have been distributed in accordance with the Schemes, the Scheme Creditor will not be entitled to receive any distribution under the Schemes.

## **5.9 Continuation of liquidations**

If the Schemes proceed, the winding up of the Lift Companies will continue and the appointment of the Liquidators as liquidators of the Lift Companies will not be affected. The Schemes will not have any impact on the investigatory or recovery powers of the Liquidators in respect of any of the Lift Companies. Any Liquidator Recoveries after the Schemes become Effective will be paid by the Liquidators to the Scheme Administrators to be distributed in accordance with the Schemes.

The Liquidators are currently pursuing claims against certain debtors or alleged debtors of Lift Capital and if the Schemes proceed, the Liquidators expect that this will not affect the continuing pursuit of those claims. Any net recoveries from those claims would be distributed to Scheme Creditors in accordance with the Schemes. The Liquidators do not currently have an expectation that recoveries from any such claims would add very significantly to distributions to Scheme Creditors, but some recoveries are possible and expectations of recoveries can vary from time to time.

## **5.10 What happens if the Schemes do not proceed?**

If the Schemes do not proceed:

- the consequences of the Schemes becoming Effective outlined in section 5.6 above will not occur;

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- the liquidations of the Lift Companies will continue and Scheme Creditors' claims will be assessed in accordance with ordinary liquidation principles. Creditors will have to prove in respect of their claims against the Lift Companies and no claims will be automatically recognised. Creditors will be entitled to prove in respect of all claims that they might have against the Lift Companies;
  - both Merrill Lynch and the Swaby and Crabb Claimants will be entitled to prove in the liquidations in respect of any claims that they might have against the Lift Companies;
  - the estimated amount and timing of a dividend in a liquidation-only scenario are set out in section 6;
  - Merrill Lynch's claims in respect of the Surplus Securities will not be released, and the competing claims of Merrill Lynch and Lift Clients to those Surplus Securities may need to be resolved through Court proceedings;
  - Lift Clients will be entitled to pursue any claims that they might have against Merrill Lynch. Lift Clients should seek their own independent legal advice with respect to these claims and other claims they may have; and
  - the Liquidators will consider whether or not to pursue any claims they or the Lift Companies might have against Merrill Lynch.

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## **6. ESTIMATE OF DIVIDENDS UNDER THE SCHEMES VS. A LIQUIDATION-ONLY SCENARIO**

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### **6.1 Background financial information**

The Liquidators have formed the view that the total value of the known liabilities of the Lift Companies exceeds the total value of the known assets of the Lift Companies.

Annexure F contains reports as to the affairs of each Lift Company. These reports are in the format required by Form 507 of the Corporations Act, giving summary details of assets and liabilities of each Lift Company as at 12 November 2009. ASIC has confirmed that these reports do not need to include the following information required by paragraph 8203(a) of Part 2 of Schedule 8 of the Corporations Regulations:

- the information referred to in paragraphs 8201(c), (d) and (e) of Part 2 of Schedule 8 of the Corporations Regulations and the addresses of the creditors referred to in those paragraphs;
- the names and addresses of former clients who are debtors; and
- the names and addresses of employees who are also creditors.

As a condition to ASIC's relief from these disclosure requirements, each Lift Company will maintain a register of the names of former clients who are debtors and the names of employees who are creditors. A creditor of a Lift Company may obtain a copy of that Lift Company's register of creditors free of charge by making a written request to the Liquidators, provided that the creditor undertakes in writing to only use the information in the register in connection with the exercise of their rights under the Schemes or the proposal of the Schemes. Upon request, the Liquidators will provide the creditor with a form of undertaking to be completed for the purposes of obtaining a copy of the register. This information will be maintained in addition to the register of creditors referred to at clause 8.4 below.

Paragraph 8203(b) of Part 2 of Schedule 8 of the Corporations Regulations requires this Explanatory Statement to contain, in respect of each Lift Company, "a copy, certified by a director or secretary of the company to be a true copy, of all financial statements required to be lodged with ASIC by the company, together with a copy of every document required by law to be annexed to the financial statements." As neither of the Lift Companies has any obligation to lodge any financial statements with ASIC, this Explanatory Statement does not contain such financial statements.

### **6.2 Dividend estimates under the Schemes**

Paragraph 8201(b) of Part 2 of Schedule 8 of the Corporations Regulations requires that if, as in the Schemes, a composition of debt is proposed, this Explanatory Statement set out the expected dividend that would be paid to Scheme Creditors if the Schemes were put into effect as proposed.

Based on the information available as at the date of this Explanatory Statement and the assumptions set out below, the Liquidators estimate that:

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- Lift Clients will receive in order of 65 cents in the dollar on the amount of their Established Scheme Claim under the Schemes; and
  - Trade and Other Creditors will receive in order of 54 cents in the dollar on the amount of their Established Scheme Claim under the Schemes.

This estimate is based on the following estimates and assumptions by the Liquidators:

- (a) the Liquidators estimate that the aggregate of Scheme Creditors' Established Scheme Claims, as calculated in accordance with the Schemes (see section 7.1) will be approximately \$84m. This estimate has been calculated on the basis that the Surplus Securities will be returned to Lift Clients before their Established Scheme Claims are calculated. It has been calculated by:
  - (i) applying the methodology contained in sections 8.1 and 8.2 of the Schemes to the known claims of Lift Clients, producing an estimate of \$84 for Lift Clients' Established Scheme Claims; and
  - (ii) by estimating the claims of Trade and Other Creditors in accordance with usual liquidation principles, producing an estimate of less than \$1m for Trade and Other Creditors' Established Scheme Claims.
- (b) the Liquidators have assumed that Lift Clients have proprietary claims to all of the Surplus Securities and none of the Surplus Securities are assets of the Lift Companies which would be available for distribution to Scheme Creditors under the Schemes. This assumption does not prevent the Liquidators from forming the view in the future that some of the Surplus Securities are assets of the Lift Companies;
- (c) the Liquidators have assumed that Lift Clients with claims against both Lift Capital and Lift Nominees will have their claim against the amalgamated entity calculated on the basis of a single calculation using the formulae contained in sections 8.1 and 8.2;
- (d) the Liquidators have assumed that, after the date of this Explanatory Statement, no legal proceedings will be commenced by any person in respect of any claim against any Lift Company or any other matter arising under or in relation to the Schemes (including any appeals against a decision of the Scheme Administrators under section 1321 of the Corporations Act);
- (e) the Liquidators have assumed that each of the parties to the Scheme Implementation Agreement complies with the terms of the Scheme Implementation Agreement (including that Merrill Lynch successfully procures that the Swaby and Crabb Claimants enter into a mutual deed of release with the Liquidators and the Lift Companies) and each of the Scheme Creditors complies with the terms of the Schemes and the Scheme Release and Indemnity Deed;
- (f) the Liquidators have assumed that they will not make any substantial recoveries in the liquidations of the Scheme Companies;
- (g) based on the assumptions set out above in this section, the Liquidators estimate that the total fees and disbursements payable out of the Scheme Assets in order to

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complete the liquidations of the Lift Companies and to effect and implement the Schemes will be as follows:

- (i) \$0.7m by 31 December 2009; and
- (ii) \$2.3m from 1 January 2010 until such time as the Lift Companies are deregistered.

Scheme Creditors may receive less than the Liquidators' estimated amounts if certain circumstances outside the Liquidators' control arise in relation to the Schemes, including, for example:

- if one or more Scheme Creditors appeal the Court orders approving the Schemes or commences any other legal proceedings in respect of the Schemes or the Scheme Meetings (including any appeals against a decision of the Scheme Administrators under section 1321 of the Corporations Act);
- if any Lift Client commences proceedings against Merrill Lynch or any of its Related Entities) or against the Lift Companies in breach of the releases provided in the Scheme Deed of Release and Indemnity;
- substantial costs orders are made in favour of Scheme Creditors who appear at the court hearing to convene the Scheme Meetings or the court hearing to approve the Schemes;
- if the proof of debt process for Trade and Other Creditors reveals that there are a number of creditors or claims against the Lift Companies that were not revealed by the Liquidators' review of books and records of the Lift Companies prior to the date of this Explanatory Statement, or the claims of Trade and Other Creditors who are presently known to the Liquidators substantially exceed the Liquidators' current estimate of the value of their claims.

Scheme Creditors may receive more than the Liquidators' estimated amounts if certain circumstances occur, for example if the Liquidators make substantial recoveries in the liquidations of the Lift Companies.

### **6.3 Dividend estimates in a liquidation-only scenario**

Paragraph 8201(a) of Part 2 of Schedule 8 of the Corporations Regulations requires this Explanatory Statement to set out the expected dividend that would be available to Scheme Creditors of each Lift Company if, in the absence of the Schemes, the Lift Company was to be wound up within 6 months after the date of the hearing of the application to the Court to convene the Scheme Meetings.

ASIC has confirmed that the Liquidators may satisfy this requirement by providing an estimate of the amount that would be payable to Scheme Creditors on the assumption that a pooling determination is made or a pooling order is obtained in relation to the Lift Companies under sections 571 or 579E of the Corporations Act. The Liquidators believe it would not be useful, and possibly misleading, to provide dividend estimates for each Lift Company on an individual basis given that:

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- all of the assets and liabilities of Lift Nominees will be transferred to Lift Capital if the Schemes become Effective, so it is desirable to compare dividends on a like-for-like basis; and
  - if the liquidations of the Lift Companies proceed without the Schemes, the Liquidators are likely to make a pooling determination or seek a pooling order.

Based on the information available as at the date of this Explanatory Statement and the assumptions set out below, the Liquidators estimate that in a liquidation of Lift Capital, Scheme Creditors would receive a dividend in order of 39 cents in the dollar. As explained at 6.3(a)(ii) below, in making that estimate the Liquidators have made a number of assumptions including an assumption that the quantum of Scheme Creditors claims against the Lift Companies would be the same in a liquidation as under the Schemes (i.e. that Lift Clients would not be able to establish any claims for, for example, consequential losses).

The amount and timing of payment of any dividend in the liquidation of Lift Nominees would be dependent on the outcome of the Liquidators' contemplated litigation against Merrill Lynch which is described at section 4.6(a). As in any litigation, there is a significant degree of uncertainty regarding the outcome of such a claim. Having regard to the uncertainty of such a claim, along with the overlap in respect of direct claims which Lift Clients might have against Merrill Lynch, the Liquidators have not ascribed any value to that claim for the purposes of this estimate only.

In addition to these possible dividends from the Lift Companies, Lift Clients would be entitled to pursue their own claims against Merrill Lynch (see section 4.6(b)) and if those claims were successful, they may receive a return outside the liquidations.

This estimate is based on the following estimates and assumptions by the Liquidators:

- (a) the Liquidators estimate that the total amount of creditors' claims against Lift Capital will be approximately \$116m. This estimate has been calculated on the basis that:
  - (i) the Surplus Securities will be returned to Lift Clients prior to the payment of a dividend (although it is not certain that this will occur – see section 4.6(b) for a discussion of Merrill Lynch's claims in respect of the Surplus Securities);
  - (ii) the total of Lift Clients' claims against Lift Capital will be the same as the amounts of their claims as calculated in accordance with the Schemes (being approximately \$84m) and will not include any loss of opportunity claims, consequential loss, possible claims in respect of capital gains tax (the Liquidators have not yet called for final proofs of debt, so the Liquidators do not know if Lift Clients would seek to advance such claims);
  - (iii) the Swaby and Crabb Claimants (or any assignees of their claims) would prove in the liquidation and their claim would be in the order of \$32m (although as referred to at paragraph 4.5 above it might be in the order of \$38m and might also include consequential losses). The Liquidators note that depending on whether the value of their sold securities is assessed by

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reference to their closing price on 10 April 2008 rather than the price for which they were sold by Merrill Lynch, that claim might be in the order of \$38m and the Swaby and Crabb Claimants might also seek consequential losses of an uncertain amount;

- (iv) that Merrill Lynch's claim in the liquidation of Lift Capital (including any indemnity claim) will be limited to legal fees which it has incurred. For the purposes of this calculation, the value of that claim has been assumed as being restricted to legal fees because if Merrill Lynch does have a further claim against Lift Capital, that is likely to be because it in turn has a liability to Lift Clients and Lift Clients would therefore receive a return outside the liquidations.
- (b) that it will be possible to pay a dividend. There is a possibility, given the potential quantum of Merrill Lynch's proof of debt, that Merrill Lynch would be in a position to injunct the Liquidators from paying a substantial dividend until such time as Lift Clients' claims against Merrill Lynch had been resolved, such that the value of Merrill Lynch's proof of debt could be ascertained;
- (c) that Lift Capital will not enter into a funding arrangement relating to Lift Clients' claims against Merrill Lynch; and
- (d) the Liquidators have assumed that they will not make any substantial recoveries in the liquidations of the Scheme Companies.

Scheme Creditors may receive less than the amounts referred to above if certain circumstances arise, for example:

- Merrill Lynch's proof of debt in the liquidation of Lift Capital is admitted in respect of the amount of its liability to Lift Clients (although in those circumstances, those Lift Clients who had brought proceedings against Merrill Lynch would receive a return outside the liquidations from Merrill Lynch). This has the potential to adversely impact the net total return to Lift Clients who do not pursue Merrill Lynch and Trade and Other Creditors.
- the Liquidators enter into a funding agreement with Lift Clients in relation to their claims against Merrill Lynch and those claims do not succeed.

Scheme Creditors may receive more than the amounts referred to above if certain circumstances occur, for example if:

- Lift Nominees succeeds in a claim against Merrill Lynch, which would result in it being able to pay a dividend to its creditors (being Lift Clients whose Mortgaged Securities were transferred by Lift Nominees to Merrill Lynch);
- Lift Clients are not able to establish any claim against Lift Capital beyond the value of their sold Mortgaged Securities (calculated by reference to the price for which they were sold by Merrill Lynch) plus the value of any unreturned Surplus Securities (calculated by reference to their value as at 10 April 2008) less the amount of their loan from Lift Capital as at 10 April 2008;

- 
- the Surplus Securities are returned to Lift Clients prior to payment of any dividend, because that would reduce the quantum of their claims against Lift Capital; or
  - the Liquidators make substantial recoveries in the Liquidations.

#### **6.4 Likely timing of dividends under the Schemes**

The Liquidators estimate that, if the Schemes are approved, the Scheme Administrators will be in a position to pay a dividend by the end of March 2010.

This estimate assumes that:

- no legal proceedings will be commenced by any person in respect of any claim against any Lift Company, including any appeals against any decision of the Scheme Administrators under section 1321 of the Corporations Act;
- each of the parties to the Scheme Implementation Agreement complies with its terms and each of those parties and the Scheme Creditors comply with the terms of the Schemes and the Scheme Deed of Release and Indemnity;
- the Liquidators are able to establish the entitlements of Lift Clients to the Surplus Securities in a timely manner following their return by Merrill Lynch; and
- any court order approving the Schemes is not appealed.

#### **6.5 Likely timing of dividends in a liquidation-only scenario**

Prior to declaring an interim or final dividend in a liquidation, the Liquidators would need to call for and adjudicate proofs of debt from all Scheme Creditors including Lift Clients. The matters likely to delay that process are:

- *Surplus Securities*: to the extent that Surplus Securities are returned to Lift Clients with a proprietary claim to those Surplus Securities, that will reduce the amount of Lift Clients' claims against the Lift Companies. In a liquidation, those Surplus Securities are likely to be the subject of competing claims by Lift Clients and Merrill Lynch which the Liquidators expect would be resolved through litigation.
- *Merrill Lynch proof of debt*: Merrill Lynch may submit a proof of debt to the Liquidators of the Lift Companies in respect of any liability which it has to Lift Clients. It may not be possible to determine the validity or quantum of that proof of debt prior to the resolution of claims by Lift Clients against Merrill Lynch through litigation proceedings.
- *Adjudication of Lift Clients' claims*: there are a number of possible claims which Lift Clients might advance against the Lift Companies and a number of possible ways in which Lift Clients may seek to formulate and calculate damages claims. The Liquidators estimate that adjudicating each of those claims by Lift Clients is likely to take between 6 and 12 months and there is potential for any Scheme Creditor to challenge the Liquidator's adjudication of those claims in accordance with usual liquidation principles.

Having regard to each of these matters, in particular the uncertainty regarding the timing of the resolution of likely Court proceedings between Lift Clients and Merrill Lynch, the

Liquidators are not in a position to estimate with any accuracy the likely timing of the payment of an interim or final dividend. The Liquidators consider that payment of an interim dividend in 12 months with a final dividend being paid 24 months later would not be an unreasonable estimate.

**6.6 Examples of how the outcomes under the Schemes compare with outcomes in the liquidations**

The following examples provide a comparison of the Schemes and the alternative of the liquidations of the Scheme Companies (without the Schemes) for Scheme Creditors in the particular circumstances identified below. The examples do not cover every type of claim that might be made under the Schemes or in the liquidations. It is recommended that each Scheme Creditor seek professional financial, legal and taxation advice regarding their individual circumstances before making a decision whether or not to vote in favour of the Schemes.

**(a) Example 1: Lift Client who wishes to pursue claims against Merrill Lynch**

Alex purchased securities using a margin loan provided by Lift Capital. Those securities were transferred to Merrill Lynch by Lift Nominees, and subsequently sold. Alex wishes to pursue a claim against Merrill Lynch.

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
<b>Estimated distribution</b>	<p>Based on the Liquidators' current estimate (which is subject to certain assumptions and qualifications), Alex should receive a distribution of 65 cents in the dollar in respect of his Established Scheme Claim.</p> <p>Alex will also receive back any Surplus Securities and/or proceeds of sale of Surplus Securities by the Escrow Agent which the Liquidators are satisfied he has an entitlement to, subject to repayment of any outstanding loan from the Lift Companies in respect of those Surplus Securities only.</p>	<p>Based on the Liquidators' current estimate (which is subject to certain assumptions and qualifications, including that Merrill Lynch's claim in the liquidation of Lift Capital will be limited to legal fees which it has incurred), Alex should receive a distribution of 39 cents in the dollar in respect of his Established Scheme Claim.</p> <p>This is an estimate of the amount Alex will recover in the liquidation and does not include any recoveries he may make outside the liquidation (i.e. from third parties). Such recoveries might include obtaining a payment arising from a court judgment against or settlement with Merrill Lynch or a financial planner or some other person, that, together with distributions from the liquidation, might or might not exceed the distribution that Alex would have received under the Schemes.</p>

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
<b>Timing of payment of distribution</b>	The Liquidators estimate that (subject to certain assumptions and qualifications) the Scheme Administrators would be able to pay a distribution to Alex by the end of March 2010.	The Liquidators estimate that (subject to certain assumptions and qualifications) the Scheme Administrators would be able to pay a distribution to Alex in December 2010. A final dividend may not be payable until December 2011.
<b>Quantum of proof of debt in Schemes/liquidations</b>	Alex will have his damages claim against the Lift Companies automatically recognised under the Schemes, measured by reference to the value of the sold securities in April 2008 (measured by the price for which they were sold by Merrill Lynch) less the amount of his loan as at 10 April 2008. No other claim that Alex might have against the Lift Companies will be recognised.  The amount of Alex's Established Scheme Claim will be reduced by the return of any Surplus Securities to him.	Alex will be entitled to prove in the liquidations in respect of any claims which he has against the Lift Companies. None of his claims will be automatically recognised.
<b>Claims against Merrill Lynch</b>	Any claims that Alex might have against Merrill Lynch will be released.	Any claims that Alex might have against Merrill Lynch will not be released and he will be free to pursue those claims.

(b) **Example 2: Lift Client who wishes to pursue claims against a third party financial adviser**

Bill purchased securities using a margin loan provided by Lift Capital. Those securities were transferred to Merrill Lynch by Lift Nominees, and subsequently sold. Bill considers that he has a claim against his independent third party adviser who recommended that he enter into a Lift Facility Agreement with Lift Capital. The following is a comparison of the outcome for Bill under the Schemes and in the liquidations of the Scheme Companies (without the Schemes).

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
<b>Estimated distribution</b>	Based on the Liquidators' current estimate (which is subject to certain assumptions and qualifications), Bill should	Based on the Liquidators' current estimate (which is subject to certain assumptions and qualifications, including that Merrill Lynch's claim in

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
	<p>receive a distribution of 65 cents in the dollar in respect of his Established Scheme Claim.</p> <p>Bill will also receive back any Surplus Securities which the Liquidators are satisfied he has an entitlement to, subject to repayment of any outstanding loan from the Lift Companies in respect of those Surplus Securities only.</p>	<p>the liquidation of Lift Capital will be limited to legal fees which it has incurred), Bill should receive a distribution of 39 cents in the dollar in respect of his Established Scheme Claim.</p> <p>This is an estimate of the amount Bill will recover in the liquidation and does not include any recoveries he may make outside the liquidation (i.e. from third parties). Such recoveries might include obtaining a payment arising from a court judgment against or settlement with Merrill Lynch or a financial planner or some other person that, together with distributions from the liquidation, might or might not exceed the distribution that Bill would have received under the Schemes.</p>
<b>Timing of payment of distribution</b>	<p>The Liquidators estimate that (subject to certain assumptions and qualifications) the Scheme Administrators would be able to pay a distribution to Bill at the end of March 2010.</p>	<p>The Liquidators estimate that (subject to certain assumptions and qualifications) the Scheme Administrators would be able to pay a distribution to Bill in December 2010. A final dividend may not be payable until December 2011.</p>
<b>Quantum of proof of debt in Schemes/liq uidations</b>	<p>Bill will have his damages claim against the Lift Companies automatically recognised under the Schemes, measured by reference to the value of the sold securities in April 2008 (measured by the price for which they were sold by Merrill Lynch) less the amount of his loan as at 10 April 2008. No other claim that Bill might have against the Lift Companies will be recognised.</p> <p>The amount of Bill's Established Scheme Claim will be reduced by the return of any Surplus</p>	<p>Bill will be entitled to prove in the liquidations in respect of any claims which he has against the Lift Companies. None of his claims will be automatically recognised.</p>

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
	Securities to him.	
<b>Direct claim against Merrill Lynch</b>	Any claims that Bill might have against Merrill Lynch will be released.	Any claims that Bill might have against Merrill Lynch will not be released and he will be free to pursue those claims.
<b>Claim against third party adviser</b>	<p>Bill may still make a claim against his third party adviser. There is a possibility that the third party adviser will make a consequential claim against Merrill Lynch (e.g. for contribution). Bill is required to indemnify Merrill Lynch in respect of any such consequential claim (however, Bill's total liability under the indemnity will be limited to the aggregate of the amounts Bill actually receives under the Schemes and the net amount he actually recovers from the third party adviser). For example, suppose Bill claims damages of \$500,000 against the adviser, and the adviser joins Merrill Lynch to the proceeding seeking contribution. If the claim against the adviser is fully successful but the court orders, say, 50% contribution against Merrill Lynch, the likely consequence would be that the adviser must pay \$500,000 (plus costs) to Bill, Merrill Lynch must pay \$250,000 (plus costs) to the adviser and, pursuant to the indemnity, Bill must indemnify Merrill Lynch in respect of Bill's costs of the proceeding and the amount Merrill Lynch has been ordered to pay to the adviser up to the indemnity limit. It is recommended that any Scheme</p>	Bill may still make a claim against its third party adviser and would not be required to indemnify Merrill Lynch in respect of that claim.

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
	Creditor contemplating legal proceedings against a third party adviser obtain independent legal advice regarding the impact of the Schemes in this regard.	

(c) **Example 3: Lift Client who considers that they have a range of claims against the Lift Companies**

Clare bought shares using a margin loan provided by Lift Capital. Those shares were transferred by Lift Nominees to Merrill Lynch and were subsequently sold by Merrill Lynch. Some of the shares have increased in value since they were sold, others have gone down. Clare's account with Lift Capital was also in credit as at 10 April 2008. The following is a comparison of the outcome for Clare under the Schemes and in the liquidations of the Scheme Companies (without the Schemes).

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
<b>Claims available against the Lift Companies</b>	Clare's claim will be measured by reference to the value of the sold securities in April 2008 (measured by the price for which they were sold by Merrill Lynch). As Clare did not have a loan from Lift Capital and instead had a credit balance, the amount of that credit balance will be added to her claim instead of a loan being deducted from it. This claim will be automatically assessed by the Scheme Administrators.	Clare will be entitled to prove in the liquidations in respect of any claims which she has against the Lift Companies. None of her claims will be automatically recognised.

(d) **Example 4: Lift Client with a proprietary claim in respect of Surplus Securities**

Dave bought BHP shares using a margin loan provided by Lift Capital. Those BHP shares were transferred by Lift Nominees to Merrill Lynch. Merrill Lynch sold most of the BHP shares which had been transferred to it, but it did not sell and retained a number of BHP shares. Other Lift Clients also purchased BHP shares. Dave still has a loan from Lift Capital. The following is a comparison of the outcome for Dave under the Schemes and in the liquidations of the Scheme Companies (without the Schemes).

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
<b>Re-delivery of Surplus Securities</b>	<p>Under the Schemes, Merrill Lynch will release its claims in respect of the Surplus Securities. The Surplus Securities and/or proceeds of sale of the Surplus Securities by the Escrow Agent will be transferred to the Liquidators.</p> <p>The Schemes do not have any other effect on the Surplus Securities and/or proceeds of sale of the Surplus Securities by the Escrow Agent, and they will be treated in the same way as in a liquidation. The Liquidators will consider whether or not Dave has a proprietary claim in respect of the BHP shares. The Liquidators consider that:</p> <ul style="list-style-type: none"> <li>• a number of Lift Clients will have competing proprietary claims to the same securities, so they will be returned to Lift Clients with a proprietary claim on a pro rata basis</li> <li>• depending on the amount of his claim against the Lift Companies in respect of sold securities and the amount of his loan from Lift Capital, Dave may have to repay part of his loan in order to be entitled to redelivery of his Surplus Securities.</li> </ul>	<p>The Surplus Securities will continue to be held by Merrill Lynch which has asserted that it is a bona fide purchaser for value of the Surplus Securities and is entitled to retain them as security for amounts it may be owed by Lift Capital. The competing claims of Dave and Merrill Lynch in respect of the Surplus Securities may have to be resolved through litigation.</p> <p>If the Surplus Securities were returned to the Liquidators, the Liquidators will consider whether or not Dave has a proprietary claim in respect of the BHP shares. The Liquidators consider that:</p> <ul style="list-style-type: none"> <li>• a number of Lift Clients will have competing proprietary claims to the same securities, so they will be returned to Lift Clients with a proprietary claim on a pro rata basis</li> <li>• depending on the amount of his claim against the Lift Companies in respect of sold securities and the amount of his loan from Lift Capital, Dave may have to repay part of his loan in order to be entitled to redelivery of his Surplus Securities.</li> </ul>
<b>Timing of re-delivery</b>	<p>The Surplus Securities and/or proceeds of sale of the Surplus Securities by the Escrow Agent would be transferred to the Liquidators on or shortly after the Release Date, and the</p>	<p>Any redelivery of Surplus Securities will depend on if and when the competing claims of Dave and Merrill Lynch are resolved.</p>

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
	Liquidators could begin dealing with the Surplus Securities in accordance with Lift Clients' proprietary entitlements after that date.	
<b>Claims against Merrill Lynch</b>	Any claims that Dave might have against Merrill Lynch will be released.	Any claims that Dave might have against Merrill Lynch will not be released and he will be free to pursue those claims.

(e) **Example 5: Trade Creditor of Lift Capital**

XYZ Pty Ltd supplied photocopy paper to Lift Capital. It is owed \$1,000 by Lift Capital pursuant to an unpaid invoice. XYZ Pty Ltd does not consider that it has any claims against any other person. The following is a comparison of the outcome for XYZ Pty Ltd under the Schemes and in the liquidations of the Scheme Companies (without the Schemes).

	<b>Outcome under the Schemes</b>	<b>Outcome without the Schemes</b>
<b>Estimated distribution</b>	Based on the Liquidators' current estimate (which is subject to certain assumptions and qualifications), XYZ Pty Ltd should receive a distribution of \$540 under the Schemes (being 54 cents in the dollar).	Based on the Liquidators' current estimate (which is subject to certain assumptions and qualifications, including that Merrill Lynch's claim in the liquidation of Lift Capital will be limited to legal fees which it has incurred), XYZ Pty Ltd should receive a distribution of \$390 under the Schemes (being 39 cents in the dollar).
<b>Timing of payment of distribution</b>	The Liquidators estimate that (subject to certain assumptions and qualifications) the Scheme Administrators would be able to pay a distribution to XYZ Pty Ltd at the end of March 2010.	The Liquidators estimate that (subject to certain assumptions and qualifications) the Scheme Administrators would be able to pay a distribution to XYZ Pty Ltd in December 2010. A final dividend may not be payable until December 2011.
<b>Quantum of proof of debt in Schemes/liq uidations</b>	XYZ Pty Ltd will be entitled to prove for \$1,000 (being the amount of its unpaid invoice) under the Schemes.	XYZ Pty Ltd will be entitled to prove for \$1,000 (being the amount of its unpaid invoice) in the Liquidations.

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## 7. CALCULATION OF CLAIMS UNDER THE SCHEMES AND PAYMENT OF DIVIDENDS

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### 7.1 Calculation of Lift Clients' claims

Under the terms of the proposed Schemes, Lift Clients' claims against Lift Capital in respect of the loss of their Mortgaged Securities that were sold by Merrill Lynch would be calculated by reference to the sale prices achieved by Merrill Lynch from 10 April 2008 onwards (calculated on a volume weighted average price basis) less any outstanding loans made by Lift Capital to the relevant client calculated as at 10 April 2008.

No other claims by Lift Clients in respect of the loss of Mortgaged Securities sold by Merrill Lynch will be admitted to proof in the Schemes. Lift Clients would not be entitled to claim in respect of, for example, any loss of opportunity of the use of their Mortgaged Securities, any trades which Lift Clients entered into prior to the appointment of administrators but which were not subsequently settled by Lift Capital or any capital gains tax they incurred as a result of their Mortgaged Securities being sold.

On the Release Date, if the Schemes are still Effective, Merrill Lynch's claims in respect of the Surplus Securities will be released and the Surplus Securities will be transferred by the Escrow Agent to the Liquidators. The Liquidators will return those Surplus Securities to Lift Clients and any other persons who they are satisfied have a proprietary claim to those Surplus Securities, where appropriate on a pro rata basis. If those Surplus Securities are returned to particular Lift Clients, Lift Clients' claims in respect of those Surplus Securities (whether for the loss of opportunity of the use of those Surplus Securities or otherwise) will not form part of their Established Scheme Claim. However, if for any reason those Surplus Securities are not returned to the Lift Client, the Schemes contain a mechanism pursuant to which the amount of that Lift Client's Scheme Claim can be increased by reference to the value of those Surplus Securities (calculated as at 10 April 2008, plus any dividends subsequently received).

To the extent that Lift Clients have claims against Lift Capital in a capacity other than as a Lift Client (i.e. a claim which does not relate to the sale of the mortgaged securities), they may prove in respect of that claim in the same way as a Trade and Other Creditor.

### 7.2 Examples of how Lift Clients' claims would be calculated under the Schemes

Examples of the calculation of Lift Clients' claims under the Schemes are set out below. The following examples do not cover every example of a claim that may be made under the Schemes, and it is recommended that Lift Clients seek professional financial, legal and taxation advice in respect of their claims under the Schemes. (Please note that the references to particular companies, sale prices and dividend amounts are for illustration purposes, and that sale prices and dividend amounts may not correspond precisely with actual trading or dividend data).

**Ann** borrowed money from Lift Capital to purchase 100 shares in Argo Investments and 200 shares in ASX Limited. Lift Nominees transferred those shares to Merrill Lynch which sold them in the period from 11 April 2008 to 17 April 2008. The volume weighted

averaged price achieved by Merrill Lynch was \$7.2097 for Argo Investments and \$35.2490 for ASX Limited. Ann had a loan of \$5,000 from Lift Capital. She does not have any claim in respect of Surplus Securities.

**Bob** borrowed money from Lift Capital to purchase 100 Billabong shares and 200 shares in BHP Billiton Limited. Lift Nominees transferred those shares to Merrill Lynch which sold them in the period from 11 April 2008 to 17 April 2008. The volume weighted averaged price achieved by Merrill Lynch was \$12.8700 for Billabong and \$41.7211 for BHP Billiton Limited. Bob had a loan of \$11,000 from Lift Capital. Bob does not have any claim in respect of Surplus Securities.

**Clare** borrowed money from Lift Capital to purchase 100 shares in Computershare Limited and 200 shares in Caltex Australia Limited. Lift Nominees transferred those shares to Merrill Lynch which sold them in the period from 11 April 2008 to 17 April 2008. The volume weighted averaged price achieved by Merrill Lynch was \$8.7206 for Computershare Limited and \$13.5000 for Caltex Australia Limited. Clare had a loan of \$1,000 from Lift Capital.

Clare also borrowed money from Lift Capital to purchase 100 shares in Coca-Cola Amatil Limited. Other Lift Clients purchased an additional 900 shares in Coca-Cola Amatil Limited, and they were all transferred to Merrill Lynch. None of those shares were sold by Merrill Lynch and they are Surplus Securities. The closing price of Coca-Cola Amatil Limited shares on 10 April 2008 was \$8.91. Merrill Lynch has subsequently received dividends totalling \$1,000 in respect of those 1,000 Coca-Cola Amatil shares which were transferred to it.

The following table summarises the relevant inputs for each Lift Client's claim.

		<b>Ann</b>	<b>Bob</b>	<b>Clare</b>
<b><i>Securities mortgaged and subsequently sold</i></b>				
J <sub>1</sub>	the name of a Security mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital and subsequently sold by Merrill Lynch	Argo Investments (ARG)	Billabong (BBG)	Computershare Ltd (CPU)
J <sub>2</sub>	the name of another Security mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital and subsequently sold by Merrill Lynch	ASX Limited (ASX)	BHP Billiton Ltd (BHP)	Caltex Limited (CTX)
V <sub>1</sub>	the value of Security J <sub>1</sub> calculated as the volume weighted averaging of all sale prices received by Merrill Lynch for Security J <sub>1</sub> in the period from	\$7.2097	\$12.8700	\$8.7206

	11 April 2008 to 5 May 2008			
V <sub>2</sub>	the value of Security J <sub>2</sub> calculated as the volume weighted averaging of all sale prices received by Merrill Lynch for Security J <sub>2</sub> in the period from 11 April 2008 to 5 May 2008	\$35.2490	\$41.7211	\$13.5000
S <sub>1</sub>	the number (volume) of Security J <sub>1</sub> mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital and subsequently sold by Merrill Lynch	100	100	100
S <sub>2</sub>	the number (volume) of Security J <sub>2</sub> mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital and subsequently sold by Merrill Lynch	200	200	200
L	the total amount borrowed by the Lift Client from Lift Capital as at 10 April 2008 including interest calculated up to 10 April 2008	\$5,000	\$11,000	\$1,000
<b>Surplus Security</b>				
J <sub>1</sub>	the name of a share in a listed company which was transferred to but not subsequently sold by Merrill Lynch (a <b>Listed Share</b> )	-	-	Coca Cola Amatil (CCL)
B <sub>1</sub>	the number of the relevant Listed Share J <sub>1</sub> mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital as at 10 April 2008	-	-	100
C <sub>1</sub>	the total number of Listed Share J <sub>1</sub> mortgaged or purportedly mortgaged by or on behalf of all Lift Clients in favour of Lift Capital and transferred to Merrill Lynch as at 10 April 2008	-	-	1,000
S <sub>1</sub>	the number (volume) of Listed	-	-	1,000

	Share J <sub>1</sub> which are Surplus Securities			
V <sub>1</sub>	the closing price of J <sub>1</sub> as at 10 April 2008	-	-	\$8.9100
D	any pro rata proprietary entitlement which a Lift Client has to the cash referred to in paragraph (b) of the definition of Surplus Security	-	-	\$100
E	any pro rata proprietary entitlement which a Lift Client has to the dividends referred to in paragraph (c) of the definition of Surplus Security	-	-	-

**Ann**

$$\begin{aligned}
 C &= (V_1 \times S_1) + (V_2 \times S_2) - L \\
 &= [(\$7.2097 \times 100) + (\$35.2490 \times 200)] - \$5,000 \\
 &= [\$720.97 + \$7,049.80] - \$5,000 \\
 &= \$2,770.77
 \end{aligned}$$

Ann's Established Scheme Claim will be \$2,770.77.

**Bob**

$$\begin{aligned}
 C &= (V_1 \times S_1) + (V_2 \times S_2) - L \\
 &= [(\$12.8700 \times 100) + (\$41.7211 \times 200)] - \$11,000 \\
 &= [\$1,287.00 + \$8,344.22] - \$11,000 \\
 &= (\$1,368.78)
 \end{aligned}$$

Bob is not entitled to receive any amount under the Schemes.

**Clare**

$$\begin{aligned}
 C &= (V_1 \times S_1) + (V_2 \times S_2) - L \\
 &= [(\$8.7206 \times 100) + (\$13.5000 \times 200)] - \$1,000 \\
 &= [\$872.06 + \$2,700.00] - \$1,000 \\
 &= \$2,572.06
 \end{aligned}$$

$$\begin{aligned}
 A &= \left[ \left( \frac{B_1}{C_1} \right) \times (S_1 \times V_1) \right] + D + E \\
 &= [(100/1,000) \times (1,000 \times \$8.9100)] + \$100 + \$0 \\
 &= [10\% \times \$8,910] + \$100
 \end{aligned}$$

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= \$991.00

If Clare's Surplus Securities are returned, her Established Scheme Claim will be \$2,572.06. If they are not returned, her Established Scheme Claim will be \$3,563.06.

### **7.3 Mechanism for Lift Clients to prove the amount of their claims**

Lift Clients will not be required to submit a formal proof of debt to the Scheme Administrators. The Scheme Administrators will notify Lift Clients of the amount of their Established Scheme Claim against the Lift Companies after the Effective Date. The amount of that Established Scheme Claim may be subsequently adjusted by the Scheme Administrators if Surplus Securities are subsequently returned to the Lift Client.

Any Lift Clients who disagree with the calculation performed by the Scheme Administrators have a period of 10 Business Days to seek to reach an agreement with the Scheme Administrators as to the way in which that calculation should have been performed. Lift Clients will also be entitled to appeal decisions by the Scheme Administrators to the Court under section 1321 of the Corporations Act.

### **7.4 Calculation of Trade and Other Creditors' Scheme Claims**

Under the terms of the proposed Schemes, claims by Trade and Other Creditors will not be restricted. Such Scheme Creditors will be entitled to make claims under the Schemes in respect of all claims or causes of action against a Lift Company, the circumstances giving rise to which arose on or before 10 April 2008, in accordance with ordinary liquidation principles.

### **7.5 Mechanism for trade creditors to prove the amount of their Scheme Claims**

Trade and Other Creditors will not have their claims automatically assessed. They will be required to submit a proof of debt to the Scheme Administrators and that proof will be adjudicated on by the Scheme Administrators in accordance with ordinary liquidation principles. The terms of the proposed Schemes require any such Scheme Creditors to submit their proof of debt within 21 days of the Schemes becoming Effective. If Trade and Other Creditors do not submit their proof of debt within that timeframe, the Scheme Administrators have a discretion as to whether to adjudicate any proofs of debt previously submitted to the liquidators for dividend purposes, or to accept a proof of debt submitted after that time.

The Scheme Administrators' adjudication of those proofs of debt will be binding on the relevant Scheme Creditor to the maximum extent permitted by law. If Trade and Other Creditors do not agree with the Scheme Administrators' adjudication of their proof of debt, it is open to those Scheme Creditors to appeal the Scheme Administrators' decision to the Court under section 1321 of the Corporations Act.

### **7.6 Payment of dividends under the Schemes**

Once the claims of all Scheme Creditors have been determined by the Scheme Administrators, the Scheme Administrators will pay an interim or final dividend to each Scheme Creditor in respect of their Established Scheme Claim.

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## 7.7 Estimated Dividend

The Liquidators estimate that:

- Lift Clients with an Established Scheme Claim will receive a dividend in the order of 65 cents for each dollar of their Established Scheme Claim; and
- Trade and Other Creditors with an Established Scheme Claim will receive a dividend in the order of 54 cents for each dollar of their Established Scheme Claim.

## 7.8 Scheme Funds

Dividends to Lift Clients with an Established Scheme Claim will be paid out of the following funds:

- the First Scheme Fund (consisting of all of the assets of Lift Capital collected by the Liquidators to date and any other recoveries made by the liquidators); and
- the Second Scheme Fund (consisting of the Cash Contribution to be paid by Merrill Lynch if the Schemes become Effective and any assets of Lift Nominees).

Dividends to Trade or Other Creditors with an Established Scheme Claim will only be paid out of the First Scheme Fund. In other words, only Lift Clients with an Established Scheme Claim will be entitled to a pro rata share of the Cash Contribution to be paid by Merrill Lynch if the Schemes become Effective.

## 7.9 Scheme Administrators may withhold dividends of defaulting Scheme Creditors

Under the terms of the proposed Schemes, the Scheme Administrators retain the right to withhold the declaration of or payment of dividends to a Scheme Creditor under the Schemes:

- if the Scheme Creditor is, in the reasonable opinion of the Scheme Administrators, in breach of any provision of these Schemes or the Scheme Deed of Release and Indemnity until such breach has been rectified to the reasonable satisfaction of the Scheme Administrators; and
- until any amounts owing by the Scheme Creditor to any of the Lift Companies and not already taken into account in the calculation of the Scheme Creditor's Established Scheme Claim have been repaid.

## 7.10 Assigned claims

The definition of Lift Clients in the Schemes includes assignees of persons who entered into a facility agreement with Lift Capital and borrowed money from Lift Capital to purchase securities and who, arising out of the transfer by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a debt or claim admissible to proof against one or both of the Lift Companies within the meaning of section 553 of the Corporations Act. The respective rights to a distribution under the Schemes (if any) of an assignee or assignor of such debts or claims would depend on the terms and effect of the relevant assignment. The Liquidators are not presently aware of any assignments of such debts or claims.

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## **8. ADDITIONAL INFORMATION**

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### **8.1 Creditors' Committee**

The committee of inspection of the Lift Companies appointed under Part 5.6 of the Corporations Act in November 2008 will, from the Effective Date, act as the Creditors' Committee under the Schemes.

The Scheme Administrators are able to convene a meeting of the Creditors' Committee in their discretion or if requested in writing by the Creditors' Committee. Meetings of the Creditors' Committee will be governed by the sections of the Corporations Act relevant to committees of inspection, namely, sections 549, 550 and 551, and Corporations Regulations 5.6.11 to 5.6.36A. Unless someone can prove the contrary, a meeting of the Creditors' Committee will be deemed to have been properly convened and all the proceedings of that meeting will be deemed to have properly occurred.

The Scheme Administrators are able, in their discretion, to report to the Creditors' Committee any matters which the Scheme Administrators consider should be brought to the attention of the Creditors' Committee. The Scheme Administrators, however, are not obliged to disclose to a member of the Creditors' Committee any information relating to a matter with respect to which that member's interests conflict with those of the Lift Companies. There will be no conflict of interest purely as a result of the member being a Scheme Creditor.

Members of the Creditors' Committee are not able to disclose or authorise the disclosure of any information they receive as members of the Creditors' Committee and are only able to use that information for the purposes of exercising their proper functions.

The functions of the Creditors' Committee are as follows:

1. to receive and consider reports by the Scheme Administrators;
2. to consult with the Scheme Administrators about matters relating to the Lift Companies and the Schemes;
3. to receive and consider a Scheme Administrator's notice of resignation;
4. to consider and, if thought fit, approve the Scheme Administrators' remuneration; and
5. to do all other things specifically referred to the Creditors' Committee in the Schemes.

It is important to note that the Creditors' Committee has no power to make decisions binding on the Lift Companies or the Scheme Administrators. However, the Creditors' Committee may exercise all of the powers and functions of the committee of inspection.

In the performance of the Creditors' Committees' functions, a member of the Creditors' Committee will not be liable for debts, liabilities, obligations or claims incurred on behalf of the Lift Companies, for any loss or damage caused by any act, default or omission, or for any actions, suits proceedings accounts, claims or demands arising out of the Schemes or in relation to a Scheme Claim or the costs thereof, before during or after the Effective Date, unless attributable to negligence, breach of duty, breach of trust, fraud or dishonesty.

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No member of the Creditors' Committee is entitled to claim or receive from the Lift Companies, the Scheme Funds, the Scheme Administrators or a Scheme Creditor any remuneration for acting as a member of the Creditors' Committee or any costs or expenses incurred by him or her in attending any meetings of the Creditors' Committee.

## 8.2 Interests of Liquidators<sup>6</sup>

### (a) Administrators' and liquidators' fees

Since their initial appointment as administrators of the Lift Companies on 10 April 2008, the Liquidators have incurred professional fees and disbursements of \$5,227,488, of which:

- \$3,313,870 relates to the Liquidators' role as administrators of the Lift Companies from 10 April 2008 to 11 November 2008, of which the entire amount has been paid to the Liquidators following approval by creditors under section 449E of the Corporations Act; and
- \$1,913,618 relates to the Liquidators' role as liquidators of the Lift Companies from 12 November 2008 to 11 November 2009, of which:
  - \$1,799,430 has, in accordance with section 473 of the Corporations Act, been approved by the committee of inspection of the Lift Companies appointed under Part 5.6 of the Corporations Act in November 2008 (the "**Committee of Inspection**"); and
  - \$114,188 which has not yet been submitted to the Committee of Inspection for approval.

To date, the Liquidators' professional fees have been calculated on a time basis at the hourly rates from time to time used by the Liquidators' firm, McGrathNicol, less a 15% discount.

If the Schemes become Effective, and for so long as they remain Effective, the Liquidators will continue to seek to recover the Liquidator Recoveries, which amounts would be paid to the Scheme Administrators for distribution in accordance with the Schemes. Any further professional fees which the Liquidators incur in their capacity as liquidators will be approved by the Committee of Inspection in the usual way and will be payable out of the Scheme Funds in accordance with clause 9 of the Schemes.

### (b) Scheme Administrators' fees

As noted in section 5.6(b), the Liquidators will on the Effective Date be appointed as Scheme Administrators.

As with the Liquidators' professional fees, the remuneration of the Scheme Administrators, their partners and staff will be calculated on a time basis at the hourly rates from time to time used by the Scheme Administrators' firm,

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<sup>6</sup> All dollar amounts in this section are quoted on a GST-exclusive basis.

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McGrathNicol, less a 15% discount. The current schedule of rates (including that discount) is attached as Annexure G. Those rates are subject to change, for example if the hourly rates used by the Scheme Administrators' firm are increased.

In accordance with the Schemes, all payments to the Scheme Administrators relating to professional fees and disbursements must be approved by the Creditors' Committee. Such fees and disbursements are difficult to estimate. However, in the interests of providing Scheme Creditors some guidance, the Liquidators have provided an estimate in the Remuneration Summary in Annexure G.

(c) **Whether Liquidators obtain any net benefit under the Schemes**

The Liquidators do not believe that they will receive any net benefit under the Schemes relative to a liquidation-only scenario, because:

- there will be no change to the fee structure (being based on hourly rates)
- there will be no change to the requirement to obtain creditor committee approval to the fees and disbursements;
- whilst the approved fees and disbursements incurred by the Liquidators as Scheme Administrators will be paid as a priority payment out of the Scheme Assets, this would be no different in a liquidation-only scenario in respect of the Liquidators' fees and disbursements as liquidators; and
- in a liquidation-only scenario, where there would be expensive litigation and a more protracted and complex proof of debt process, the fees and disbursements that would be incurred by the Liquidators would substantially exceed that which would be incurred by the Liquidators as Scheme Administrators - on that basis, any personal pecuniary interests of the Liquidators would be better served by the continuation of the liquidations without the Schemes.

Given the foregoing, the Liquidators believe that their recommendation of the Schemes is unaffected by their own personal interests.

### **8.3 Material interests of directors**

The directors of each Lift Company are Robert Bucci, Joseph Nakat and Bassem Jammal. Except as disclosed in this section 8.1, no director of a Lift Company has any interest, whether as a director, member or creditor of the Lift Company, that is material in relation to the Schemes, and the Schemes have no effect on the interests of any director of a Lift Company that is different to the effect on the like interests of other persons.

Lift Nominees is a wholly-owned subsidiary of Lift Capital. In turn, Lift Capital is a wholly-owned subsidiary of Lift Capital Nominees Pty Limited, which is a wholly-owned subsidiary of Globex Finance Pty Ltd. Robert Bucci and Joseph Nakat have ownership interests in the shares of Globex Finance Pty Ltd.

On the basis that each of the Lift Companies is insolvent and that the Liquidators do not believe that there will be any return of capital or otherwise to members either in the liquidations or under the Schemes, the Schemes will not have any impact on the interests

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of Robert Bucci and Joseph Nakat in respect of their ownership interests in the shares of Globex Finance Pty Ltd, the ultimate parent company of the Lift Companies.

The directors of the Lift Companies and a number of associates or associated entities of the directors hold accounts with a Lift Company, and may be entitled under the Schemes to lodge a Final Scheme Proof Form in respect of those accounts. However, none of those persons will automatically have their claims recognised under the Schemes. While the amounts they will be entitled to claim under the Schemes will be calculated in the same way as other Scheme Creditors, they will be required to prove their claims by providing particulars and supporting evidence.

The Schemes do not release the directors of the Lift Companies from any claims by or liability to the Lift Companies, the Scheme Creditors or the Liquidators. Nor do the Schemes provide for releases by ASIC of any claims it may have against the directors of the Lift Companies.

#### **8.4 Details of creditors and the debts owed to them**

Pursuant to Regulation 5.1.01(1) of the Corporations Regulations, ASIC has confirmed that this Explanatory Statement does not need to contain the information required by paragraphs 8201(c), (d) and (e) of Part 2 of Schedule 8 of the Corporations Regulations, being, namely:

- a list of the names of all known Scheme Creditors and debts owed to them;
- if a Scheme Creditor is known to be a guaranteed creditor – the name of the creditor and the amount of the debt owed; and
- if a Scheme Creditor is known to be an internal creditor (i.e. a creditor who is a member of a List Company, or a relative of spouse of a member, or a relative of the spouse of the member) – the name of the creditor and the amount of the debt owed.

As a condition to ASIC's relief from these disclosure requirements, each Lift Company will maintain a register of the names of creditors and the amount of debt (where known).

A creditor of a Lift Company may obtain a copy of that Lift Company's register of creditors free of charge by making a written request to the Liquidators, provided that the creditor undertakes in writing to only use the information in the register in connection with the exercise of their rights under the Schemes or the proposal of the Schemes. Upon request, the Liquidators will provide the creditor with a form of undertaking to be completed for the purposes of obtaining a copy of the register.

Written requests for a copy of a Lift Company's register of creditors should be sent to the Liquidators at:

**The Liquidators**  
C/- McGrathNicol  
GPO Box 9986  
Sydney NSW 2001

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Within 7 days of receiving a written request and undertaking from a creditor, a copy of the register of creditors will be given to the creditor free of charge.

#### **8.5 Lift Nominees as trustee**

As stated at paragraph 4.6(a) above, Lift Nominees held the legal title to the Mortgaged Securities on trust for the Lift Clients. On one view, Lift Nominees administered a separate trust for each Lift Client and accordingly there were approximately 1000 separate trusts. Lift Nominees did not carry on any business separate from that of the holding mortgaged securities on behalf of Lift Clients, transferring those mortgaged securities to Merrill Lynch and receiving them back from Merrill Lynch.

ASIC has granted a waiver from paragraph 8203(c) of Schedule 8 of the Corporations Regulations which requires a statement to be made as to how creditors may obtain a copy of the relevant trust deed. This waiver was granted because from the Liquidators' investigations to date, they are not aware of the existence of any such trust deed.

## 9. GLOSSARY

In this Explanatory Statement, unless the context requires otherwise, a singular word includes the plural (and vice versa) and the following terms have the meanings set out in this section.

Term	Meaning
<b>ASIC</b>	the Australian Securities and Investments Commission
<b>Business Day</b>	a day other than a Saturday, Sunday or a public or bank holiday in New South Wales, Australia
<b>Cash Contribution</b>	a cash amount of \$10.3 million
<b>Claim</b>	<p>any debt, claim, cause of action, proceeding, suit, liability or demand which arose prior to 10 April 2008 (whether prospective or contingent, including one the amount of which is not ascertained, and including causes of action, provable claims in a liquidation or under the terms of a deed of company arrangement and costs (whether or not the subject of a costs order)) and which arose out of or in connection with any facts matters or circumstances relating in any way to the Lift Companies including:</p> <ul style="list-style-type: none"> <li>• the business of the Lift Companies;</li> <li>• the administration or liquidation of the Lift Companies;</li> <li>• the transfer of securities by the Lift Companies to Merrill Lynch in the period from 7 June 2005 to 10 April 2008;</li> <li>• the sell-down of securities transferred by the Lift Companies to Merrill Lynch conducted by Merrill Lynch in the period from 10 April 2008 to 17 April 2008;</li> <li>• the retention by Merrill Lynch of securities transferred by the Lift Companies to Merrill Lynch in the period after 10 April 2008;</li> <li>• the "Transaction Documents" (as defined in the Schemes); or</li> <li>• the circumstances or matters referred to in: <ul style="list-style-type: none"> <li>▪ the Supreme Court of NSW Proceeding No 2661 of 2008 between the Lift Companies, the Liquidators, Merrill Lynch and others; or</li> <li>▪ Proceeding WAD 66 of 2008 in the Federal Court of Australia between the Swaby and Crabb Claimants, Lift Capital, MLI, MLIA and various Related Bodies Corporate of MLI and MLIA</li> </ul> </li> </ul>

<b>Term</b>	<b>Meaning</b>
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth)
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth)
<b>Court</b>	the Federal Court of Australia or, where the context requires, any court in Australia exercising the relevant jurisdiction to which the matter(s) relate(s)
<b>Effective</b>	when used in relation to the Schemes, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act in relation to the Schemes
<b>Effective Date</b>	the date upon which the Schemes become Effective
<b>Escrow Agent</b>	the escrow agent or custodian as agreed between the Liquidators and Merrill Lynch
<b>Established Scheme Claim</b>	a claim which is admitted by the Scheme Administrators for distribution purposes under the Schemes, or is finally adjudicated by the Court
<b>Final Scheme Proof Form</b>	a proof of Scheme Claim in the form to be sent by the Scheme Administrators to each known Trade and Other Creditor within 5 Business Days after the Effective Date in accordance with the Schemes
<b>Financial Product</b>	has the meaning given to it in the Corporations Act
<b>First Scheme Fund</b>	a fund containing all of the assets of the Lift Companies except the assets contained in the Second Scheme Fund
<b>Foreign Scheme Creditor</b>	a Scheme Creditor who is incorporated, resident or domiciled in a place outside of Australia as at any of the Effective Date, the Release Date or the date of declaration of payment of a dividend or distribution under the Schemes and includes (without limitation) a Scheme Creditor whose address last notified to the Liquidators or any Lift Company is an address outside Australia
<b>Lift Capital</b>	Lift Capital Partners Pty Limited (in Liquidation) (ACN 111 015 500)
<b>Lift Client</b>	(a) any Scheme Creditor who transferred, or asserts it transferred, any Financial Product to a Lift Company;  (b) any Scheme Creditor who instructed, or asserts it instructed, a Lift Company to purchase any Financial Product on its behalf or to be held to its account; or

<b>Term</b>	<b>Meaning</b>
	<p>(c) any person who entered into a facility agreement with Lift Capital and borrowed money from Lift Capital to purchase securities and who, arising out of the transfer by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a debt or claim admissible to proof against one or both of the Lift Companies within the meaning of section 553 of the Corporations Act or their assignees,</p> <p>and includes the persons named in the Lift Companies' records as the account holders of the accounts listed by number under the heading "Client ID" in Schedule 1 to the Scheme Deed of Release and Indemnity.</p>
<b>Lift Companies</b>	Lift Capital and Lift Nominees, and a reference to a " <b>Lift Company</b> " is to either one of them
<b>Lift Nominees</b>	Lift Capital Nominees No. 1 Pty Limited (in Liquidation) (ACN 112 913 532)
<b>Liquidator Recoveries</b>	any and all money or property recovered by the Liquidators for the benefit of creditors of any Lift Company whether under the provisions of Part 5.7B of the Corporations Act or otherwise
<b>Liquidators</b>	Tony McGrath and Joseph Hayes in their capacity as liquidators of the Lift Companies and any other person appointed as a liquidator of the Lift Companies
<b>Merrill Lynch</b>	MLI and MLIA, or either one of them, as applicable
<b>MLEA</b>	Merrill Lynch Equities (Australia) Limited (ACN 006 276 795)
<b>MLI</b>	Merrill Lynch International (ARBN 125 336 567)
<b>MLIA</b>	Merrill Lynch International (Australia) Limited (ACN 002 892 846)
<b>Mortgaged Securities</b>	the meaning given in section 4.1
<b>Property</b>	any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action and all Liquidator Recoveries
<b>Protected Share Loan</b>	the product consisting of the clauses contained in section 2 of certain of the Lift Facility Agreements
<b>Proxy Form</b>	the form used by a Scheme Creditor to appoint a proxy to vote on their behalf at a Scheme Meeting

<b>Term</b>	<b>Meaning</b>
<b>Registry</b>	Computershare Investor Services Pty Limited (ACN 078 279 277) Ph: 1300 850 505 Fax: +61 2 8235 8133 Mail: Lift Capital C/- Computershare Investor Services Pty Limited GPO Box 4195 Sydney NSW 2001  and any other provider of registry services appointed by the Liquidators for the purposes of the Scheme Meetings
<b>Related Body Corporate</b>	the meaning given in the Corporations Act
<b>Related Entity</b>	in relation to a person, a Related Body Corporate, officer, employee or agent of the person or an officer, employee or agent of a Related Body Corporate of the person
<b>Release Date</b>	the meaning given in section 5.6(e)
<b>Scheme Administrators</b>	Tony McGrath and Joseph Hayes whilst they hold that office or such other persons as may be validly appointed as Scheme Administrators
<b>Scheme Assets</b>	all Property and other assets of any Lift Company whether actual, prospective or contingent and, for the avoidance of doubt, this expression will include: <ul style="list-style-type: none"> <li>• the Cash Contribution; and</li> <li>• any asset which is held or recovered for the benefit of a Lift Company or its creditors by the Liquidators and which is made available to the Scheme Administrators to be applied in accordance with the terms of the Schemes</li> </ul>
<b>Scheme Claim</b>	a Claim against a Lift Company the circumstances giving rise to which occurred on or before 10 April 2008
<b>Scheme Creditor</b>	a creditor of a Lift Company with a Scheme Claim, excluding the Swaby and Crabb Claimants, MLI and MLIA
<b>Scheme Deed of Release and Indemnity</b>	a deed in the form of Annexure D
<b>Scheme Implementation Agreement</b>	the scheme implementation agreement entered into between Lift Capital, Lift Nominees, the Liquidators, MLIA and Merrill Lynch Markets (Australia) Pty Limited on 11 November 2009, and by MLI, ML UK Capital Holdings and SNC Securities Limited on 16 November 2009,

<b>Term</b>	<b>Meaning</b>
	providing for the proposal of the Schemes, and a copy of that agreement is contained as Annexure C
<b>Scheme Funds</b>	the First Scheme Fund and the Second Scheme Fund
<b>Scheme Meeting</b>	a meeting of a class of Scheme Creditors of a Lift Company convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, agree to the relevant Scheme, and a reference to " <b>Scheme Meetings</b> " shall be to all such meetings
<b>Schemes</b>	the schemes of arrangement between the Lift Companies and each of their Scheme Creditors under Part 5.1 of the Corporations Act, the forms of which are attached as Annexure B, or such other Scheme as the parties to the Scheme Implementation Agreement may agree in writing and a reference to " <b>Scheme</b> " is a reference to either of the two Schemes
<b>Second Court Date</b>	the first day of the hearing of an application, or an adjourned application, made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving each Scheme
<b>Second Scheme Fund</b>	a fund containing the Cash Contribution and any assets of Lift Nominees
<b>Surplus Securities</b>	has the meaning contained in section 4.4
<b>Swaby and Crabb Claimants</b>	Ms Gillian Swaby, Mr Rick Crabb and Mr Rick Crabb and Ms Carol Crabb as trustee of the Intermax Trust
<b>Trade and Other Creditor</b>	a Scheme Creditor who is not a Lift Client.
<b>Voting Form</b>	a proof of debt form required to be lodged with the Registry by a Scheme Creditor for voting purposes at the Scheme Meetings

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## ANNEXURE A - NOTICE OF SCHEME MEETINGS

*Below is the form of the notice of meeting published in the Sydney Morning Herald and the Australian on 28 November 2009.*

### NOTICE OF COURT ORDERED MEETINGS TO APPROVE SCHEMES OF ARRANGEMENT

**TO** creditors of Lift Capital Partners Pty Limited (in Liquidation) (ACN 111 015 500) and Lift Capital Nominees No. 1 Pty Limited (in Liquidation) (ACN 112 913 532) (together the "**Lift Companies**") and each a "**Lift Company**").

**WHEREAS** pursuant to section 411(1) of the *Corporations Act 2001* (Cth), the Federal Court of Australia has ordered that meetings of each class of creditors of each Lift Company be convened to consider and, if thought fit, approve a scheme of arrangement between that Lift Company and its creditors (each being a "**Scheme**").

**NOTICE IS GIVEN** that a meeting of each class of creditors of each Lift Company (together the "**Scheme Meetings**") will be held at Wesley Conference Centre, Lyceum Theatre, 220 Pitt St, Sydney NSW on 22 December 2009 starting at 10.00 am (Sydney time).

There are two classes of creditors of Lift Capital and a single class of creditors of Lift Nominees for the Scheme Meetings. For further information, creditors should refer to the Explanatory Statement for the Schemes. The Explanatory Statement is available on the website: [www.mcgrathnicol.com](http://www.mcgrathnicol.com).

### AGENDA FOR EACH SCHEME MEETING

To consider and, if thought fit, approve the following resolution:

"That, pursuant to and in accordance with section 411 of the *Corporations Act 2001* (Cth), the scheme of arrangement between the Lift Company and its creditors, as contained and more particularly described in the Explanatory Statement, is approved and the Liquidators of the Lift Company are authorised to agree to such alterations or conditions to the scheme of arrangement as are thought fit by the Federal Court of Australia."

If you are a creditor of a Lift Company and wish to vote at either of the Scheme Meetings, you should lodge a completed Voting Form with Computershare Investor Services Pty Limited ("**Registry**") so that it is received by 10.00 am (Sydney time) on 19 December 2009. If you are entitled to vote, you may attend the Scheme Meetings in person or send a completed Proxy Form appointing a proxy to attend in your place. Proxy Forms should also be received by the Registry by 10.00 am (Sydney time) on 19 December 2009.

The Proxy Form and Voting Form, together with the Explanatory Statement, will be sent to known creditors. If you are a creditor of a Lift Company and you do not receive those documents, you may contact the Registry on 1300 850 505 to request that they be sent to you.

CREDITORS SHOULD READ AND CAREFULLY CONSIDER THE EXPLANATORY STATEMENT FOR THE SCHEMES BEFORE DECIDING WHETHER OR NOT TO VOTE IN FAVOUR OF THE SCHEMES.

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## **ANNEXURE B - SCHEMES OF ARRANGEMENT**

(excluding any annexures which are otherwise annexed to this Explanatory Statement)

## Schemes of Arrangement

between Lift Capital Partners Pty Limited (in liquidation) and its  
Scheme Creditors

and

between Lift Capital Nominees No 1 Pty Limited (in liquidation) and  
its Scheme Creditors

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)

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**Pursuant to section 411 of the *Corporations Act 2001* (Cth)****Between**

1. **Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500)** registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (**Lift Capital**) and its Scheme Creditors (as defined)
2. **Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)** registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (**Lift Nominees**) and its Scheme Creditors (as defined)

**Recitals**

- A Anthony McGrath and Joseph Hayes of McGrathNicol, Level 31, 60 Margaret Street, Sydney NSW 2000 (the **Liquidators**) were appointed as liquidators of the Lift Companies on 12 November 2008, having previously acted as the administrators of those companies from 10 April 2008 until 12 November 2008.
- B The Liquidators, in their capacity as liquidators of the Lift Companies, have foreshadowed claims against Merrill Lynch arising from the transfer by Lift Nominees of certain securities, that it previously held on behalf of Lift Clients, to Merrill Lynch and which were subsequently sold by Merrill Lynch.
- C The Lift Clients, or some of them, have foreshadowed claims against Merrill Lynch and the Lift Companies arising from the transfer by Lift Nominees of certain securities, that it previously held on behalf of Lift Clients, to Merrill Lynch and which were subsequently sold by Merrill Lynch.
- D Merrill Lynch denies any liability in respect of any of the foreshadowed claims. Merrill Lynch has foreshadowed cross-claims against the Lift Companies in the event that proceedings are brought against them by the Lift Companies or the Lift Clients.
- E The Lift Companies, the Liquidators, Merrill Lynch and others participated in a without prejudice mediation before the Honourable Alex Chernov AO QC in July 2009 with a view to exploring a possible settlement of all claims as between Lift Capital, Lift Nominees, Merrill Lynch and Lift Clients and engaged in further discussions following that mediation.
- F As a result of the further discussions, the Lift Companies, the Liquidators and Merrill Lynch entered into the Scheme Implementation Agreement, pursuant to which:
- the Liquidators agreed to propose and implement the Schemes and act as



Scheme Administrators;

- subject to the Schemes becoming Effective, Merrill Lynch has agreed to pay the Cash Contribution to the Liquidators within five Business Days of the Effective Date; and
- subject to these Schemes becoming Effective, the Lift Companies, the Liquidator, Merrill Lynch and the Liquidators (as attorneys for the Lift Clients) have agreed to execute the Scheme Deed of Release and Indemnity.

## 1. Definitions and Interpretation

### 1.1 Definitions

In these Schemes, unless the context requires otherwise:

**Administration** means the administration of the Lift Companies pursuant to Part 5.3A of the Corporations Act, which commenced on the appointment of administrators on 10 April 2008.

**Appeals End Date** means the date that is 28 days after the Effective Date or the first date after such longer period as the Court may, within the period from the Effective Date to the date that is 28 days after the Effective Date, allow an appeal to be made.

**ASIC** means the Australian Securities and Investments Commission.

**Business Day** means any day that is each of the following:

- a Business Day within the meaning given in the ASX Listing Rules; and
- a day that banks are open for business in New South Wales.

**Cash Contribution** means a cash amount of \$10.3 million.

**Claim** means any debt, claim, cause of action, proceeding, suit, liability or demand which arose prior to the date of this Deed (whether prospective or contingent, including one the amount of which is not ascertained, and including causes of action, provable claims in a liquidation or under the terms of a deed of company arrangement and costs (whether or not the subject of a court order)) and which arose out of or in connection with any facts matters or circumstances relating in any way to the Lift Companies including:

- the business of the Lift Companies;
- the Administration or Liquidation of the Lift Companies;
- the transfer of securities by the Lift Companies to Merrill Lynch and its Related Bodies Corporate in the period from 7 June 2005 to 10 April 2008;
- the sell-down of securities transferred by the Lift Companies to Merrill Lynch conducted by Merrill Lynch in the period from 10 April 2008 to 17 April 2008;
- the retention by Merrill Lynch of securities transferred by the Lift Companies to Merrill Lynch in the period after 10 April 2008;



- (f) the Transaction Documents; or
- (g) the circumstances or matters referred to in the NSW Proceeding or the WA Proceeding.

**Committee of Inspection** means the committee of inspection of the Lift Companies appointed under Part 5.6 of the Corporations Act on or around 12 November 2008.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court** means the Federal Court of Australia.

**Creditors' Meeting** means a meeting convened and held pursuant to clause 14.

**Creditors' Committee** means the committee of creditors established pursuant to clause 13.

**Effective** means, when used in relation to the Schemes, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) of the Corporations Act in relation to the Schemes.

**Effective Date** means the date on which the Schemes become Effective.

**Established Scheme Claim** means:

- (a) insofar as Lift Clients are concerned, a claim calculated in accordance with clauses 8.1 and 8.2 below; and
- (b) insofar as Scheme Creditors who are not Lift Clients are concerned, the amount for which their Final Scheme Proof is adjudicated by the Scheme Administrators pursuant to clause 8.7 below.

**Financial Product** has the meaning given to it in the Corporations Act.

**Final Scheme Proof** means a proof of Scheme Claim submitted to the Scheme Administrators by a Scheme Creditor pursuant to clause 8.7 below.

**First Scheme Fund** means the fund to be established in accordance with and described at clause 9.1 below.

**Foreign Scheme Creditor** means a Scheme Creditor, incorporated, resident or domiciled in a place outside of Australia as at any of the Effective Date, the Release Date or the date of declaration or payment of a dividend or distribution under these Schemes and includes (without limitation) a Scheme Creditor whose address last notified to the Liquidators or any Lift Company is an address outside of Australia.

**Lift Client** means:

- (a) any Scheme Creditor who transferred, or asserts it transferred, any Financial Product to a Lift Company;
- (b) any Scheme Creditor who instructed, or asserts it instructed, a Lift Company to purchase any Financial Product on its behalf or to be held to its account; or
- (c) any person who entered into a facility agreement with Lift Capital and borrowed money from Lift Capital to purchase securities and who, arising out of the transfer



by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a debt or claim admissible to proof against one or both of the Lift Companies within the meaning of section 553 of the Corporations Act or their assignees,

and includes the persons named in the Lift Companies' records as the account holders of the accounts listed by number under the heading "Client ID" in Schedule 1 to the Scheme Deed of Release and Indemnity.

**Lift Companies** means Lift Capital Partners Pty Limited (in liquidation) and Lift Capital Nominees No 1 Pty Limited (in liquidation) or either one of them, as applicable.

**Lift Facility Agreement** means the facility agreement entered into between Lift Capital and the relevant Lift Client (the terms and conditions of which are contained in Lift Capital's applicable brochure containing a product disclosure statement).

**Liquidation** means the liquidation of the Lift Companies which commenced on the appointment of Liquidators on 8 November 2008.

**Liquidator Recovery** means any money or property recovered by the Liquidators for the benefit of creditors of any Scheme Company whether under the provisions of Part 5.7B of the Corporations Act or otherwise.

**Merrill Lynch** means MLI and MLIA or either one of them, as applicable.

**MLI** means Merrill Lynch International (ARBN 125 336 567) incorporated in the United Kingdom of 2 King Edward Street London EC1A 1HQ United Kingdom.

**MLIA** means Merrill Lynch International (Australia) Ltd (ACN 002 892 846) of Level 38, Governor Philip Tower, 1 Farrer Place Sydney NSW 2000.

**NSW Proceeding** means Supreme Court of NSW Proceeding No 2661 of 2008 between the Lift Companies, the Liquidators, Merrill Lynch and others.

**Options** means an exchange traded option or over the counter option entered into by or on behalf of a Lift Client pursuant to section 3 of certain of the Lift Facility Agreements.

**Property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action and all Liquidator Recoveries.

**Protected Share Loan** means the product consisting of the clauses contained in section 2 of certain of the Lift Facility Agreements.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Related Entity** means, in relation to a person, a Related Body Corporate, officer, employee or agent of the person or an officer, employee or agent of a Related Body Corporate of the person.

**Release Date** means the latest of:

- (a) the date which is one Business Day after the Appeals End Date;
- (b) the date which is one Business Day after all appeals and applications for leave or for further time to appeal commenced before the Appeals End Date, and any



further appeals or applications therefrom and any proceedings on remittal from any such appeal, have been finally disposed of; and

- (c) the date which is one Business Day after expiration of any stay preventing or affecting the implementation of these Schemes ordered by a court in connection with any appeal or application for leave or for further time to appeal commenced before the Appeals End Date or any further appeal or application for further time to appeal therefrom.

**Schemes** means these two schemes of arrangement under Part 5.1 of the Corporations Act, being:

- (a) a scheme of arrangement between Lift Capital and its Scheme Creditors; and
- (b) a scheme of arrangement between Lift Nominees and its Scheme Creditors, subject to any alterations or conditions made or required by the Court and agreed to or consented to by the Liquidators and Merrill Lynch, and a reference to a **Scheme** shall be a reference to either of those two schemes of arrangement.

**Scheme Administrators** means Anthony Gregory McGrath and Joseph David Hayes (together with their permitted successors and assigns) in their capacity as Scheme Administrators of the Lift Companies.

**Scheme Assets** means all Property and other assets of any Scheme Company whether actual, prospective or contingent; for the avoidance of doubt, this expression will include: (a) the Cash Contribution; (b) any asset which is held or recovered for the benefit of a Scheme Company or its creditors by the Liquidators and which is made available to the Scheme Administrators to be applied in accordance with the terms of the Schemes

**Scheme Claim** means a Claim against a Lift Company the circumstances giving rise to which occurred on or before 10 April 2008.

**Scheme Creditor** means a creditor of a Lift Company with a Scheme Claim, excluding the Swaby and Crabb Claimants and Merrill Lynch.

**Scheme Deed of Release and Indemnity** means a deed in the form of **Annexure 1**, the proposed parties of which are the Lift Companies, the Liquidators, Merrill Lynch and the Lift Clients.

**Scheme Funds** means the First and Second Scheme Funds.

**Scheme Implementation Agreement** means the Scheme Implementation Agreement dated 10 November 2009 between the Lift Companies, the Liquidators, Merrill Lynch, Merrill Lynch UK Capital Holdings, SNC Securities Limited and Merrill Lynch Markets (Australia) Pty Limited.

**Scheme Meetings** means the meetings of the Scheme Creditors of each Lift Company convened by order of the Court under section 411(1) of the Corporations Act to consider and, if thought fit, agree to these Schemes, and a reference to a **Scheme Meeting** is a reference to any one of those meetings.



**Second Court Date** means the first day of hearing of an application made to the Court for orders pursuant to section 411(4)(b) of the Corporations Act approving the Schemes or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Second Scheme Fund** means the fund to be established in accordance with and described at clause 9.2 below.

**Security** means a share, unit in a managed investment fund or other financial instrument.

**Special Resolution** means a resolution passed by that majority of Scheme Creditors as would be required under section 411(4)(a)(i) of the Corporations Act for a compromise or arrangement under Part 5.1 of the Corporations Act to be binding on creditors.

**Surplus Securities** means:

- (a) the securities transferred by Lift Nominees to Merrill Lynch or its nominees and which are listed in Annexure 4;
- (b) cash in the amount of \$4,662,537; and
- (c) all other interest, dividends and other distributions received and continuing to be held by Merrill Lynch in respect of the Surplus Securities, whether received in the form of cash, securities or other assets.

**Swaby and Crabb Claimants** means Ms Gillian Swaby, Mr Rick Crabb and Mr Rick Crabb and Ms Carol Crabb as trustee of the Intermax Trust.

**Transaction Documents** means:

- (a) Australian Master Securities Lending Agreement between Lift Capital and Merrill Lynch Equities (Australia) Limited dated 7 June 2005;
- (b) the Global Master Securities Lending Agreements between Lift Capital and MLIA dated 13 February 2007;
- (c) the Global Master Securities Lending Agreements between Lift Capital and MLI dated 13 February 2007 (including a UK Tax Addendum);
- (d) the International Prime Broking Agreement between MLI and Lift Capital dated 12 March 2007;
- (e) the Australian Addendum to International Prime Broking Agreement between MLI, MLIA and Lift Capital dated 13 February 2007;
- (f) the International Prime Broking Agreement between MLI and Lift Capital dated 21 November 2007; and
- (g) the Australian Addendum to International Prime Broking Agreement between MLI, MLIA and Lift Capital dated 21 November 2007.

**WA Proceeding** means Proceeding WAD 66 of 2008 in the Federal Court of Australia between the Swaby and Crabb Claimants, Lift Capital, MLI, MLIA and various related bodies corporate of Merrill Lynch.



## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, these Schemes.
- (f) A reference to an agreement or document (including a reference to these Schemes) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
- (g) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (h) A reference to legislation or to a provision of legislation includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to \$ is to the lawful currency of Australia.
- (j) A reference to time is a reference to time in Sydney, Australia.
- (k) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (l) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (m) Words and phrases not specifically defined in this document have the same meanings (if any) given to them in the Corporations Act.



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## 2. Conditions precedent

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### 2.1 Conditions precedent to Schemes

Each Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) each of the conditions precedent set out in clause 4.1 of the Scheme Implementation Agreement has been satisfied or waived in accordance with the Scheme Implementation Agreement;
- (b) the Scheme Implementation Agreement not having been terminated as at 8 am on the Second Court Date; and
- (c) such other conditions, made or required by the Court under section 411(6) of the Corporations Act in relation to the Schemes, having been satisfied.

### 2.2 End Date

The Schemes will lapse and be of no further force or effect if the Effective Date does not occur on or before 31 March 2010 or any later date that the parties to the Scheme Implementation Agreement agree in writing.

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## 3. Lodgement of Court orders

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If the Court makes orders approving the Schemes under section 411(4)(b) of the Corporations Act, the Liquidators will as soon as practicable lodge with ASIC office copies of those Court orders.

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## 4. Schemes becoming Effective

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These Schemes will come into effect on the Effective Date.

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## 5. The Schemes

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### 5.1 Purposes

The purposes of the Schemes are:

- (a) to effect the amalgamation of the Lift Companies;
- (b) to satisfy the conditions under which Merrill Lynch, Merrill Lynch UK Capital Holdings, SNC Securities Limited and Merrill Lynch Markets (Australia) Pty Limited will perform their respective obligations under the Scheme Implementation Agreement;
- (c) to constitute and appoint each Liquidator as the true and lawful agent and attorney of each Scheme Creditor with authority to execute and deliver the Scheme Deed of Release and Indemnity on behalf of each Lift Client;



- (d) to provide a procedure for the identification and determination of Scheme Claims; and
- (e) to provide a procedure for the application of Scheme Assets.

## 5.2 Application

- (a) These Schemes apply to all Scheme Claims.
- (b) These Schemes bind all of the Scheme Creditors from time to time (including those who did not attend the relevant Scheme Meeting(s), did not vote at the relevant meeting(s) or voted against the relevant Scheme(s)).
- (c) Each Scheme Creditor's entitlements under these Schemes are in lieu of their entitlements to prove in, and receive a dividend from, the Liquidation of the Lift Companies. When these Schemes become Effective, each Scheme Creditor's Scheme Claims merge into that Scheme Creditor's entitlements under these Schemes.

## 6. The amalgamation

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- (a) On the Effective Date, Lift Capital will acquire from Lift Nominees the whole of the undertaking and all of the assets and property of Lift Nominees and shall assume all of the liabilities of Lift Nominees on that date.
- (b) For the purposes of paragraph (a), the terms "property" and "liabilities" have the same meanings as in section 413(4) of the Corporations Act.
- (c) Subject to any order of the Court, the Liquidation of Lift Nominees shall continue, and the Liquidators of Lift Nominees shall remain appointed as liquidators until such as time as Lift Nominees is de-registered.

## 7. Establishment of Scheme Funds

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- (a) If these Schemes become Effective, the Scheme Administrators will, within 2 Business Days after the Effective Date, establish the following funds:
  - (i) the **First Scheme Fund**, being a cash fund comprising all assets of the Lift Companies but excluding any cash that is to be held in the Second Scheme Fund; and
  - (ii) the **Second Scheme Fund**, being a cash fund comprising
    - (A) upon it ceasing to be held in trust under the Scheme Deed of Release and Indemnity, the Cash Contribution of \$10.3 million to be paid by Merrill Lynch to the Liquidators pursuant to clause 6 of the Scheme Implementation Agreement and released to the Scheme Administrators pursuant to clause 6 of the Scheme Deed of Release and Indemnity; and
    - (B) the Property of Lift Nominees,



and the First Scheme Fund and Second Scheme Fund will collectively be referred to as the **Scheme Funds**, and a reference to **Scheme Fund** is to either one of them.

- (b) Any recoveries which the Liquidators make after the Effective Date in the Liquidations of the Lift Companies shall be paid into the First Scheme Fund.
- (c) The cash in each Scheme Fund must be held:
  - (i) in a bank deposit account in respect of which the Scheme Administrators are the account holders; and
  - (ii) separately from any cash that does not belong to the relevant Scheme Fund.
- (d) A bank deposit account referred to in paragraph (c)(i) may, at the Scheme Administrators' discretion, be interest-bearing. If such an account is interest-bearing, any interest accruing to that account will be added to the relevant Scheme Fund.
- (e) The Scheme Administrators may only withdraw and/or distribute the cash in each Scheme Fund in accordance with these Schemes. None of the Liquidators, the Lift Companies or the Scheme Administrators will make any payment of the Cash Contribution prior to the Release Date.

## 8. Determination of Scheme Claims

### 8.1 Assessment of Lift Clients' Scheme Claims

The amount of Lift Clients' Established Scheme Claims shall be calculated by the Scheme Administrators in accordance with the following formula:

$$C = \left[ \sum_{j=1}^n (V_j \times S_j) \right] - L + B$$

where:

C = the amount of a Lift Client's Established Scheme Claim (subject to any adjustment in accordance with 8.2 below);

$\Sigma$  means the sum of

j represents the name of a Security (e.g a BHP share) mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital and subsequently sold by Merrill Lynch;

n means the number of the Securities of different names mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Capital Client in favour of Lift Capital and subsequently sold by Merrill Lynch (eg if the Lift Capital Client had mortgaged or purportedly mortgaged and Merrill Lynch had sold 10 BHP, 15 Rio Tinto and 20 Woodside shares, n would equal 3);

$V_j$  = the value of Security  $j$  calculated as the volume weighted averaging of all sale prices received by Merrill Lynch for Security  $j$  in the period from 11 April 2008 to 5 May 2008;

$S_j$  = the number (volume) of Security  $j$  (e.g. 10 BHP shares) mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital and subsequently sold by Merrill Lynch;

$L$  = the total amount borrowed by the Lift Client from Lift Capital as at 10 April 2008 including interest calculated up to 10 April 2008; and

$B$  = the total amount of any credit balance in a Lift Client's account with Lift Capital as at 10 April 2008.

## 8.2 Adjustments to Lift Clients' Established Scheme Claims

The amount of Lift Clients' Established Scheme Claims as calculated in accordance with 8.1 above shall be subject to the following adjustments:

- (a) **Surplus Securities:** to the extent that:
- (i) Lift Clients have a proprietary entitlement to any Surplus Securities; and
  - (ii) those Surplus Securities (or the proceeds of sale less any reasonable realisation costs) have not been made available to or returned to the relevant Lift Clients as at the date that the calculation referred to at clause 8.1 above is performed by the Scheme Administrators or as at the date of any subsequent determination,

then the amount of a Lift Client's Established Scheme Claim as calculated in accordance with clause 8.1 shall be increased by adding an amount calculated by the Scheme Administrators in accordance with the formula below:

$$A = \left[ \sum_{j=1}^n \frac{B_j}{C_j} \times (S_j \times V_j) \right] + D + E$$

where:

$A$  = the \$ amount by which a Lift Client's Established Scheme Claim as calculated in accordance with clause 8.1 shall be increased;

$\Sigma$  means the sum of

$j$  represents the name of a share in a listed company (eg a BHP share) referred to in Annexure 4 (**a Listed Share**);

$n$  means the number of the Listed Share of different names mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital (eg if the Lift Capital Client had mortgaged or purportedly mortgaged 10 BHP, 15 Rio Tinto and 20 Woodside shares,  $n$  would equal 3);

$B_j$  = the number of the relevant Listed Share  $j$  mortgaged or purportedly mortgaged by or on behalf of the relevant Lift Client in favour of Lift Capital as at 10 April 2008;



$C_j$  = the total number of Listed Share  $j$  mortgaged or purportedly mortgaged by or on behalf of all Lift Clients in favour of Lift Capital and transferred to Merrill Lynch as at 10 April 2008;

$S_j$  = the number (volume) of Listed Share  $j$  which are Surplus Securities (as listed at Annexure 4);

$V_j$  = the closing price of  $S_j$  as at 10 April 2008;

$D$  = any pro rata proprietary entitlement which a Lift Client has to the cash referred to in paragraph (b) of the definition of Surplus Security; and

$E$  = any pro rata proprietary entitlement which a Lift Client has to the dividends referred to in paragraph (c) of the definition of Surplus Security.

- (b) **Protected Share Loans:** to the extent that a Lift Client entered into a Protected Share Loan, the Established Scheme Claim of that Lift Client shall be calculated in accordance with clause 8.1 above, except that when calculating the value of "L", those Lift Clients shall be entitled to apply the terms of the Protected Share Loan.
- (c) **Options:** to the extent that a Lift Client bought or sold Options, the Established Scheme Claim of that Lift Client calculated in accordance with clause 8.1 above shall be adjusted in accordance with the rights of the Lift Companies and the Lift Client in respect of those Options under the Lift Facility Agreement.

### 8.3 Lift Clients not entitled to prove for any other amount

- (a) Lift Clients will not be entitled to prove for, or receive any distribution in these Schemes, in respect of any Scheme Claim which they may have against the Lift Companies except in accordance with the provisions of clauses 8.1 and 8.2 above.
- (b) For the avoidance of doubt, no amount which a Lift Client receives pursuant to an adjustment made pursuant to clause 8.2(a)(i) above will in any way affect any proprietary claim that Lift Client might have in respect of the Surplus Securities.

### 8.4 Automatic assessment of Lift Clients' Established Scheme Claims

- (a) Subject to clause 8.6 below, the amount of Lift Clients' Established Scheme Claims will be calculated and determined by the Scheme Administrators in accordance with clauses 8.1 and 8.2 above and Lift Clients will not be required to submit a proof of debt or otherwise prove in respect of their Scheme Claim.
- (b) The amount of each Lift Clients' Established Scheme Claim will be notified by the Scheme Administrators to each Lift Client following the Effective Date.
- (c) Subject to clause 8.4(d) and 8.5 below, the determination by the Scheme Administrators shall, subject to any mathematical or other manifest error and insofar as the law allows, be binding on the Lift Client as the amount of the relevant Lift Client's Established Scheme Claim.
- (d) In the event that the amount of a Lift Client's Established Scheme Claim is determined by the Scheme Administrators prior to the return of Surplus Securities



to Lift Clients with a proprietary entitlement to those Surplus Securities, the Scheme Administrators shall be entitled to:

- (i) make a further determination of the amount of the Lift Client's Established Scheme Claim in accordance with clauses 8.1 and 8.2 above following the return of the Surplus Securities;
  - (ii) pending such a further determination, withhold some or all of that part of a payment payable to a Lift Client under clause 8.10 which relates to any adjustment performed pursuant to clause 8.2(a).
- (e) The Scheme Administrators shall be entitled to:
- (i) call for such evidence as may be required from the Lift Client or a Lift Company, in relation to matters referred to him or her for determination; and
  - (ii) consult with such advisers, including legal advisers, as are considered appropriate by the Scheme Administrators.

## **8.5 Process for Lift Clients to challenge the adjudication of their Established Scheme Claim**

- (a) Any Lift Client who does not agree with the adjudication of their Established Scheme Claim pursuant to clause 8.1 above shall have a period of 10 Business Days from the date on which they are notified of the amount of their Established Scheme Claim under clause 8.4(b) above to reach an agreement with the Scheme Administrators as to the amount of their Established Scheme Claim.
- (b) If the amount of a Lift Client's Established Scheme Claim is not agreed as between the Scheme Administrators and the Lift Client at the end of that period, the Scheme Administrators shall make an adjudication as to the amount of the relevant Lift Client's Established Scheme Claim at the end of that period.
- (c) Lift Clients are entitled to appeal:
  - (i) the calculation by the Scheme Administrators of the amount of a Lift Client's Established Scheme Claim referred to in clause 8.4(a) above; and/or
  - (ii) any further adjudication of a Lift Client's Established Scheme Claim by the Scheme Administrators pursuant to clause 8.5(b),in accordance with section 1321 of the Corporations Act.
- (d) For the avoidance of doubt, notwithstanding any challenge or appeal, the amount of a Lift Client's Scheme Claim shall not exceed the amount which that Lift Client is entitled to claim pursuant to clauses 8.1 and 8.3 above.

## **8.6 Lift Clients whose claims will not be automatically assessed**

If a Lift Client is a director of a Lift Company, the claims of that Lift Client will not be assessed pursuant to clause 8.4 above. Any such Lift Clients shall be required to prove



their claims in accordance with clause 8.7 below, although the amounts which they are entitled to prove for shall be limited to the amounts referred to in clauses 8.1 and 8.3 above.

## **8.7 Assessment of claims by Scheme Creditors who are not Lift Clients**

If a Scheme Creditor is not a Lift Client, or has a Scheme Claim which does not arise from its having been a Lift Client, the amount of that Scheme Creditors' Scheme Claim shall be determined in the following manner:

- (a) those Scheme Creditors shall submit a Final Scheme Proof within [21] Business Days of the Effective Date;
- (b) the Scheme Administrators shall be entitled to:
  - (i) call for such evidence as may be required from the Scheme Creditor or a Lift Company in relation to matters referred to him or her for determination; and
  - (ii) consult with such advisers, including legal advisers, as are considered appropriate by the Scheme Administrators;
- (c) following receipt of all required evidence from the relevant Scheme Creditor or Lift Company, that Final Scheme Proof will be adjudicated on by the Scheme Administrators within [14] Business Days following receipt of the Final Scheme Proof or such other evidence as is requested by the Scheme Administrators;
- (d) the determination by the Scheme Administrators shall, subject to any mathematical or other manifest error and insofar as the law allows, be binding on the Scheme Creditor as the amount of the relevant Scheme Creditors' Established Scheme Claim; and
- (e) Scheme Creditors shall be entitled to appeal the Scheme Administrators' adjudication in accordance with section 1321 of the Corporations Act.

## **8.8 Proofs of debt submitted later than 21 Business Days after the Effective Date**

In the event that a Scheme Creditor who is not a Lift Client fails to submit a Final Scheme Proof within 21 Business Days of the Effective Date, the Scheme Administrators shall be entitled to (but are not obliged to):

- (a) treat any proof of debt submitted by the Scheme Creditor at an earlier date as being the Final Scheme Proof and adjudicate that proof of debt as if it were the Final Scheme Proof; or
- (b) treat any proof of debt submitted by the Scheme Creditor after that time as being the Final Scheme Proof and adjudicate that proof of debt as if it were the Final Scheme Proof.



## **8.9 Scheme Creditors who are not entitled to prove**

Neither Merrill Lynch or any of its related bodies corporate (as defined in the Corporations Act) nor the Swaby and Crabb Claimants shall be entitled to prove in the Scheme of Arrangement.

## **8.10 Scheme Creditors' interest in respect of income which has not been distributed**

- (a) To the extent that income of a Scheme Fund of a year ended 30 June has been distributed to Scheme Creditors, each Scheme Creditor is presently entitled to the amount distributed to them prior to midnight on 30 June of that year.
- (b) To the extent that any income of a Scheme Fund of a year ended 30 June has not been distributed to Scheme Creditors as at 30 June, then immediately prior to midnight on 30 June of that year, all Scheme Creditors with an Established Scheme Claim will have a vested and indefeasible interest in that income, calculated in accordance with (c) below.
- (c) The amount of each Scheme Creditor's vested and indefeasible interest pursuant to clause (a) above will be calculated on a pro rata basis according to the amount of each Scheme Creditor's Established Scheme Claim and taking into account any distributions which have already been made to that Scheme Creditor, such that Scheme Creditors with Established Scheme Claims will together have a vested and indefeasible interest in the whole of any income of a Scheme Fund which has not already been distributed.

## **8.11 Liquidator's interest in income which has not been distributed**

To the extent that any income of a Scheme Fund of a year ended 30 June has not been distributed to Scheme Creditors as at 30 June and a Scheme Creditor does not have a vested and indefeasible interest in that income pursuant to clause 8.10 above immediately prior to midnight on 30 June of that year, then the Liquidators will be deemed to have a vested and indefeasible interest in such income immediately prior to midnight on 30 June of that year (such income to be distributed by the Liquidators in accordance with usual liquidation principles).

## **8.12 Scheme Administrators' tax liability**

The Scheme Administrators must do all things reasonably necessary to ensure that the Scheme Administrators do not incur a liability to pay tax under section 99A(4) of the Income Tax Assessment Act 1936 (Cth). Without limiting the discretion of the Scheme Administrators, such actions may include making distributions to Scheme Creditors or to themselves in their capacity of Liquidators.



## 9. Application of Scheme Assets

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### 9.1 Application of First Scheme Fund

- (a) The First Scheme Fund will be applied by the Scheme Administrators in the following order:
- (i) payment of all debts and liabilities which have priority pursuant to Part 5.6 of the Corporations Act;
  - (ii) all remuneration, costs, charges, expenses and disbursements incurred by the Scheme Administrators in the course of implementing the Schemes;
  - (iii) all remuneration, costs, charges, expenses and disbursements incurred by the Liquidators after the Effective Date; and
  - (iv) payment of all Scheme Creditors' Established Scheme Claims on a pari passu basis.

### 9.2 Application of Second Scheme Fund

- (a) The Second Scheme Fund will be applied in the following order:
- (i) payment of any debts and liabilities which have priority pursuant to Part 5.6 of the Corporations Act and which have not been paid using the First Scheme Fund;
  - (ii) all remuneration, costs, charges, expenses and disbursements incurred by the Scheme Administrators in the course of implementing the Schemes which have not been paid using the First Scheme Fund;
  - (iii) all remuneration, costs, charges, expenses and disbursements incurred by the Liquidators after the Effective Date which have not been paid using the First Scheme Fund; and
  - (iv) payment of all Lift Clients' Established Scheme Claims on a pari passu basis.
- (b) In calculating the amount which Lift Clients are entitled to receive in respect of their Established Scheme Claim pursuant to clause 9.2(a)(iv) above, the Scheme Administrators shall take into account any amounts paid or payable to that Lift Client pursuant to clause 9.1(a)(iv) above.

### 9.3 Retention of funds

The Scheme Administrators may retain amounts from the Scheme Funds sufficient to:

- (a) meet any costs associated with any claims that the Scheme Administrators or Liquidators may wish to bring on behalf of the Lift Companies (whether in their own name or the name of the Lift Companies), the investigation of any such claims and any claims that might be brought against the Lift Companies, the Scheme Administrators or the Liquidators; and



- (b) pay the costs and expenses of administering the Schemes.

## **9.4 Payments by the Scheme Administrators**

- (a) The Scheme Administrators may pay the costs, charges, expenses and disbursements which they or the Liquidators incur as they are incurred and without prior approval of the Creditors' Committee.
- (b) The Scheme Administrators may only pay their remuneration or the remuneration of the Liquidators out of the Scheme Funds up to the amount approved from time to time by the Creditors' Committee in accordance with clause 12.8(c) or as approved by the Court.

## **9.5 Distributions**

- (a) On and from the Release Date, the Scheme Administrators may in their absolute discretion make interim distributions to Scheme Creditors in accordance with these Schemes prior to the determination of the amount of each Scheme Creditor's Established Scheme Claim.
- (b) Should any further monies become available to the Scheme Administrators after the payment of distributions, the Scheme Administrators will make further distributions to Scheme Creditors in accordance with these Schemes.

## **9.6 Payments to Scheme Creditors**

Payments to a Scheme Creditor may be made, in the absolute discretion of the Scheme Administrators:

- (a) by cheque in favour of the Scheme Creditor or the Scheme Creditor's nominee and sent through the post at the risk of the Scheme Creditor to the last known address of the Scheme Creditor or to such other address as such Scheme Creditor may from time to time notify to a Lift Company or the Scheme Administrators;
- (b) by electronic funds to such bank account as the relevant Scheme Creditor may from time to time notify to the Scheme Administrators;
- (c) in such other manner as the Scheme Administrators may from time to time determine. The cost of using any such other manner will be an expense of the Scheme Creditor concerned and deducted from the relevant payments.

## **9.7 Default by Scheme Creditor**

- (a) Notwithstanding any other provision of these Schemes, any Scheme Creditor that is, in the reasonable opinion of the Scheme Administrators, in breach of any provision of these Schemes or the Scheme Deed of Release and Indemnity will not be entitled to any distribution or other rights under these Schemes unless and until the breach has been rectified to the reasonable satisfaction of the Scheme Administrators. If, upon a Scheme Creditor remedying such a breach, Scheme Assets have already been distributed to other Scheme Creditors and insufficient Scheme Assets exist to make the distribution to which the Scheme Creditor would



have otherwise been entitled under these Schemes, the Scheme Creditor's entitlement to a distribution under these Schemes will be limited to the Scheme Assets then available for distribution to that Scheme Creditor.

- (b) Without limitation to clause 9.7(a), if:
- (i) a Scheme Creditor is liable to a Lift Company for any amount; or
  - (ii) the Liquidators or the Scheme Administrators have made a claim against a Scheme Creditor,

the Liquidators and the Scheme Administrators will be entitled to withhold any distribution of the Scheme Assets to which the Scheme Creditor would otherwise be entitled until such time as the Scheme Creditor has satisfied the liability or the Liquidators have made the relevant Liquidator Recovery.

- (c) If the Scheme Administrators determine to admit a Final Scheme Proof which was submitted after the time specified in clause 8.7 above in accordance with clause 8.8(b) above, and, as a consequence of the belated receipt of the Final Scheme Proof by the Scheme Administrators, the Scheme Creditor has failed to receive a distribution of Scheme Assets to which it is entitled under these Schemes, the Scheme Creditor will be entitled to receive that distribution out of the Scheme Assets for the time being in the hands of the Scheme Administrators and available for distribution, before those Scheme Assets are applied to the payment of a further distribution to Scheme Creditors generally.
- (d) Notwithstanding clause 9.7(c), a Scheme Creditor is not entitled to disturb the distribution of a dividend declared before the Scheme Administrators have agreed that the Scheme Creditor is entitled to a distribution under these Schemes.

## 9.8 Payments to Foreign Scheme Creditors

- (a) Notwithstanding any other provision of these Schemes, the obligations of the Scheme Administrators to distribute proceeds of the Scheme Assets to any Foreign Scheme Creditor under these Schemes will be discharged in accordance with this clause 9.8.
- (b) Any proceeds of the Scheme Assets to which a Foreign Scheme Creditor would otherwise be entitled under these Schemes (***Withheld Distributions***) will be held on trust by the Scheme Administrators for the benefit of that Foreign Scheme Creditor in accordance with this clause 9.8.
- (c) For the purposes of this clause 9.8, a ***Ratification Deed Poll*** from a Foreign Scheme Creditor will be valid if it is:
- (i) in the form of **Annexure 2**;
  - (ii) received by the Scheme Administrators within 60 days of the date that Foreign Scheme Creditor received notice from the Scheme Administrators under clause 8.4(b);



- (iii) complete and duly signed by the Foreign Scheme Creditor in accordance with its place of incorporation or residence; and
  - (iv) accompanied by evidence which, to the reasonable satisfaction of the Scheme Administrators, establishes that it is enforceable by its beneficiaries (including the Liquidators and Merrill Lynch) against the Foreign Scheme Creditor.
- (d) If the Scheme Administrators receive a valid Ratification Deed Poll from a Foreign Scheme Creditor, any Withheld Distributions to which that Foreign Scheme Creditor would otherwise be entitled under these Schemes will be released from trust and distributed or re-delivered (as the case may be) to that Foreign Scheme Creditor in accordance with the Schemes.
- (e) If the Scheme Administrators do not receive a valid Ratification Deed Poll from a Foreign Scheme Creditor:
- (i) that Foreign Scheme Creditor will not be entitled to any distribution of Scheme Assets or the re-delivery of any Scheme Securities under the Schemes; and
  - (ii) any Withheld Distributions to which that Foreign Scheme Creditor would otherwise be entitled under the Schemes will be released from trust and distributed to other Scheme Creditors in accordance with the Schemes.
- (f) The Scheme Administrators' obligations to a Foreign Scheme Creditor as trustee of a trust referred to in clause 9.8(b) will be limited to the obligations set out in this clause 9.8.

## **9.9 Unclaimed Payments**

If a payment made pursuant to clause 9.6 has not been debited against the bank account of Lift Capital and/or the Scheme Administrators within 12 months of that payment being made:

- (a) that payment shall be taken to be forfeited by the relevant Scheme Creditor; and
- (b) the amount of that payment shall be paid back into the relevant Scheme Fund for distribution in accordance with the Schemes.

## **10. Liquidators' appointment as agent and attorney**

On and from the Effective Date, each Lift Client, without the need for any further act by the Lift Client, irrevocably appoints the Liquidators as each Lift Client's agent and attorney for the purposes of executing and delivering on behalf of the Lift Client the Scheme Deed of Release and Indemnity. The authority given by this clause 10 is given as if it were given under seal.



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## 11. Releases

### 11.1 Execution of Scheme Deed of Release and Indemnity

The provisions of this clause 11 will not take effect until each party to the proposed Scheme Deed of Release and Indemnity, in accordance with the Scheme Implementation Agreement, duly executes and delivers a counterpart of the Scheme Deed of Release and Indemnity to each other party, the Liquidators doing so for the Lift Companies, for the Lift Clients as their duly appointed agent and attorney, as well as in their capacity as liquidators of the Lift Companies.

### 11.2 Release by the Lift Clients

Subject to clause 11.1, with effect from the Release Date, each of the Lift Clients, acting through the Liquidators as its duly appointed agent and attorney, releases Merrill Lynch and each of its Related Entities from all Claims.

### 11.3 Covenant by the Lift Clients

Subject to clause 11.1, the Lift Clients covenant in favour of Merrill Lynch and each other person in favour of whom a release is given under clause 11.2 not to bring or pursue, procure that a third party bring or pursue, provide financial support for or otherwise support any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 11.2.

### 11.4 Release by the Liquidators and the Lift Companies

Subject to clause 11.1, with effect from the Release Date, the Lift Companies and the Liquidators (in their capacity as liquidators of the Lift Companies) release Merrill Lynch and each of its Related Entities from all Claims.

### 11.5 Covenant by the Liquidators and the Lift Companies

Subject to clause 11.1, the Lift Companies and the Liquidators (in their capacity as liquidators of the Lift Companies) covenant in favour of Merrill Lynch and each other person in favour of whom a release is given under clause 11.4 not to bring or pursue, procure that a third party bring or pursue, provide financial support for or otherwise support any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 11.4.

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## 12. Scheme Administrators

### 12.1 Liquidators

Provided the Liquidators have, in accordance with clause 7 of the Scheme Implementation Deed, executed and delivered to the Lift Companies a deed poll in the form of Annexure 3 on or prior to the Effective Date, the Liquidators will, on and from the Effective Date, act in an additional capacity as Scheme Administrators under these Schemes.



## 12.2 Qualification, appointment and cessation

- (a) A person shall only be appointed as a Scheme Administrator if the person:
  - (i) is qualified pursuant section 411(7) of the Corporations Act;
  - (ii) consents to act as a Scheme Administrator; and
  - (iii) executes and delivers to the Lift Companies a deed poll in the form of Annexure 3.
- (b) The number of Scheme Administrators must be not less than two unless otherwise determined by a special resolution of the Scheme Creditors at a Creditors' Meeting or an order of the Court.
- (c) Notwithstanding clause 12.2(b), each Scheme Administrator will be appointed with, and shall have at all times, all of the powers, obligations, functions and duties of the Scheme Administrators under the Schemes, and those powers and functions may be exercised jointly or severally or jointly and severally.
- (d) If a Scheme Administrator ceases to be a Scheme Administrator, a person may be appointed in his or her place only if approved by a special resolution of the Scheme Creditors at a Creditors' Meeting or an order of the Court.
- (e) A Scheme Administrator ceases to be a Scheme Administrator if he or she:
  - (i) ceases to be qualified pursuant to section 411(7) of the Corporations Act;
  - (ii) resigns from office by not less than 1 month's (or such shorter period as the Creditors' Committee may agree) notice in writing to the Creditors' Committee and to the Lift Companies;
  - (iii) is, having received at least 1 month's notice in writing of the proposed resolution and an opportunity to speak to the proposed resolution, removed from office by a special resolution of the Scheme Creditors at a Creditors' Meeting or an order of the Court;
  - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (v) becomes bankrupt; or
  - (vi) dies.

## 12.3 General Powers

The Scheme Administrators shall have the following powers:

- (i) to administer and supervise the carrying out of the Schemes;
- (ii) to manage and control the business, Property and affairs of the Lift Companies; and
- (iii) to manage, control, realise and apply the Scheme Assets.



## 12.4 Specific Powers

In addition to, and without limiting, their powers under clause 12.3, the Scheme Administrators shall have the following powers:

- (a) to take possession of, or do all such things as are necessary to take possession of the moneys in, or the moneys obliged to be paid into, the Scheme Funds;
- (b) to determine Scheme Claims in accordance with the provisions of these Schemes;
- (c) to otherwise negotiate, compromise, settle, waive, or enter into an arrangement with respect to, a Scheme Claim;
- (d) to administer the moneys in the Scheme Funds for the payment of Established Scheme Claims in accordance with the provisions of these Schemes;
- (e) to make distributions of the moneys in the Scheme Funds for the payment of Established Scheme Claims as provided in these Schemes;
- (f) to consult with, and convene and hold meetings of, the Creditors' Committee in accordance with clause 13;
- (g) to convene and hold Creditors' Meetings in accordance with clause 14;
- (h) to institute or defend any proceedings in their own name or in the name of, and on behalf of, the Lift Companies;
- (i) to rank and claim in bankruptcy, insolvency or analogous proceedings in their own name or in the name of, and on behalf of, the Lift Companies;
- (j) to apply to the Court in for directions about any matter relating to the Schemes;
- (k) to appoint a solicitor, accountant, barrister or other professionally qualified person or persons to assist the Scheme Administrators;
- (l) to borrow and invest money, and to make any payment, necessary or convenient for the purposes of administering the Schemes;
- (m) to open and maintain a bank account or accounts for giving effect to the purposes of the Schemes and to permit any person authorised by the Scheme Administrators to operate on any such account or accounts;
- (n) to apply all and any income earned by way of interest on any bank account as income under the Schemes and to require the Lift Companies to account for such interest in the income tax returns of [the Lift Companies] and to have the Lift Companies pay any such income tax arising from the earning of such interest. The funds generated by the earnings of interest are to be included in the Scheme Funds;
- (o) to require the Lift Companies to do all acts and execute in the name and on behalf of the Lift Companies all deeds, receipts and other documents necessary to give effect to the terms of these Schemes;
- (p) to access the Lift Companies' books, papers and other documents;



- (q) to the extent that the Court has jurisdiction, to apply or to cause a Scheme Company to apply, to the Court in relation to any particular matter arising in the implementation of the Schemes;
- (r) to do anything that is incidental to exercising a power set out in this clause; and
- (s) to do anything else that is necessary or convenient for the purposes of administering the Schemes.

## 12.5 Exercise of Powers

- (a) The Scheme Administrators shall be entitled to:
  - (i) employ their partners and staff to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under these Schemes; and
  - (ii) appoint agents to attend to any matter that the Scheme Administrators might attend to under these Schemes and which the Scheme Administrators are unable to do or it is unreasonable to expect the Scheme Administrators to do in person.
- (b) In addition to, and without limiting, their powers under clauses 12.3 and 12.4, the Scheme Administrators may exercise all of the powers of the Liquidators. However, this clause 12.5(b) shall not in any way prevent the Liquidators:
  - (i) instituting or defending any proceedings; or
  - (ii) ranking and claiming in bankruptcy, insolvency or analogous proceedings, in their own name or in the name of, and on behalf of, the Lift Companies.
- (c) Except as expressly provided, in exercising or performing any of their duties, obligations, responsibilities or powers under the Schemes, the Scheme Administrators are taken:
  - (i) to act as agent for the Lift Companies; and
  - (ii) not to act as, nor to have any of the duties of, a trustee.
- (d) From the Effective Date, a person (other than the Scheme Administrators and Liquidators) cannot perform or exercise and must not purport to perform or exercise a function or power as an officer (as defined in the Corporations Act) of the Lift Companies except with the Scheme Administrators' prior written approval.

## 12.6 Liability

- (a) Subject to the Corporations Act, in the performance or exercise of the Scheme Administrators' powers, obligations, functions and duties under these Schemes, the Scheme Administrators shall not be personally liable for:
  - (i) any debts, liabilities, obligations or claims of any kind whatsoever incurred by or on behalf of the Lift Companies, including, without limitation, any moneys borrowed and interest thereon and any contracts adopted or

otherwise agreed and any stamp duty payable on the Schemes and any tax liable to be remitted or otherwise paid (**Liabilities**);

- (ii) any loss or damage of any kind whatsoever caused by or as a result of any act, default or omission, including any payment to a Scheme Creditor, to which the Scheme Creditor is not entitled only by reason of change in law (**Losses**); or
- (iii) any actions, suits, proceedings, accounts, claims or demands arising out of the Schemes or in relation to a Scheme Claim which may be commenced, incurred by or made by any person and all costs, charges and expenses incurred in respect thereof (**Demands**),

whether before, during or after the Effective Date, unless attributable to negligence, breach of duty, breach of trust, fraud or dishonesty.

- (b) References in clause 12.6(a) to "Scheme Administrators" include any person or body corporate or incorporate authorised to act on their behalf under the Schemes.

## 12.7 Indemnity

- (a) The Lift Companies will indemnify and keep indemnified the Scheme Administrators, for:
  - (i) their remuneration, costs, fees and expenses (including legal costs) payable pursuant to clause 12.8; and
  - (ii) all Liabilities, Losses and Demands,unless attributable to negligence, breach of duty, breach of trust, fraud or dishonesty.
- (b) The indemnity under clause 12.7(a) shall take effect on and from the Effective Date and be without limitation as to time and shall enure for the benefit of the Scheme Administrators' respective legal personal representatives notwithstanding the removal of the Scheme Administrators and the appointment of replacement Scheme Administrators or the termination of the Schemes for any reason whatsoever.
- (c) The indemnity under clause 12.7(a) shall not:
  - (i) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Scheme Administrators and shall extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Scheme Administrators, the approval and execution of the Schemes or otherwise; or
  - (ii) affect or prejudice all or any rights that the Scheme Administrators may have in respect of the Scheme Funds or against any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Scheme Administrators of or incidental to the exercise or performance



of any of the powers or authorities conferred on the Scheme Administrators by the Schemes or otherwise.

- (d) Subject to the Corporations Act and any applicable law, the Lift Companies may insure themselves and any other person against any cost, charge, expense or liability with respect to which any person is entitled to be indemnified under clause 12.7(a).
- (e) References in clause 12.7 to "Scheme Administrators" include any person or body corporate or incorporate authorised to act on their behalf under the Schemes.

## **12.8 Remuneration**

- (a) The remuneration of the Scheme Administrators, their partners and staff will be calculated on a time basis at the hourly rates from time to time used by the Scheme Administrators' firm, McGrath Nicol.
- (b) Subject to the Corporations Act, the Scheme Administrators shall be entitled at the end of each and every fortnight or at some longer period at the Scheme Administrators' discretion, to render an invoice for their remuneration, together with their costs, charges and expenses including, without limitation, all legal costs (on an indemnity basis) including the legal costs associated with the negotiation, preparation, execution and performance of the Schemes, to the Creditors Committee.
- (c) At a meeting of the Creditors' Committee pursuant to clause 13.2, the Creditors' Committee shall consider and, if thought fit, approve by resolution the amount of an invoice rendered pursuant to clause 12.8(b).
- (d) If the Creditors' Committee does not approve an invoice pursuant to clause 12.8(c), the Scheme Administrators may apply to the Court to approve payment of that invoice.
- (e) An invoice approved by pursuant to clause 12.8(c) or 12.8(d) is to be paid from the moneys held in the Scheme Funds to the Scheme Administrators' firm, McGrath Nicol, of Level 31, 60 Margaret Street, Sydney, in the State of New South Wales.

## **13. Creditors' Committee**

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### **13.1 Composition**

On and from the Effective Date, the Committee of Inspection from time to time will be appointed as the Creditors' Committee under the Schemes.

### **13.2 When meeting may be convened**

The Scheme Administrators:

- (a) may at any time convene a meeting of the Creditors' Committee; and



- (b) will convene a meeting of the Creditors' Committee, if so requested in writing by the Creditors' Committee, and the written request sets out the purpose of, and the wording of any resolution to be proposed at, the meeting.

### 13.3 Applicable Rules

- (a) Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of the Schemes, sections 549, 550 and 551 of the Corporations Act and Corporations Regulations 5.6.11 to 5.6.36A apply to the Creditor's Committee, or meetings of the Creditors' Committee convened and held pursuant to this clause 13, as applicable.
- (b) Unless the contrary is proved, a meeting of the Creditors' Committee convened and held pursuant to this clause 13 is taken to have been properly convened and all proceedings are taken to have properly occurred.

### 13.4 Reports and Confidentiality

- (a) Subject to clause 13.4(b), the Scheme Administrators will report to the Creditors' Committee on any matters which the Scheme Administrators consider should be brought to the attention of Creditors' Committee. Each report will be given when the Scheme Administrators consider it appropriate in their absolute discretion.
- (b) The Scheme Administrators are not obliged to disclose to a member of the Creditors' Committee any information relating to a matter with respect to which that member's interests conflict with those of the Lift Companies (other than where the conflict arises solely as a result of the member being a Scheme Creditor).
- (c) Each member of the Creditors' Committee will not disclose or authorise the disclosure of information they receive as members of the Creditors' Committee and will only use that information for the purposes of exercising their functions pursuant to clause 13.5.

### 13.5 Functions

- (a) The Creditors' Committee shall have the following functions:
  - (i) to receive and consider reports by the Scheme Administrators
  - (ii) to consult with the Scheme Administrators about matters relating to the Lift Companies and the Schemes;
  - (iii) to receive and consider a Scheme Administrators notice of resignation given in accordance with clause 12.2(e)(ii);
  - (iv) to consider and, if thought fit, approve the Scheme Administrators' remuneration in accordance with clause 12.8(a); and
  - (v) to do all other things specifically referred the Creditors' Committee in the Schemes.
- (b) The Creditors' Committee has no power to make decisions binding on the Lift Companies or the Scheme Administrators.



- (c) Without limiting this clause 13.5, the Creditors' Committee may exercise all of the powers and functions of the Committee of Inspection.

## **13.6 Liability**

- (a) Subject to the Corporations Act, in the performance or exercise of the Creditors' Committee's powers, obligations, functions and duties under the Schemes, a member of the Creditors' Committee shall not be personally liable for:
- (i) any debts, liabilities, obligations or claims of any kind whatsoever incurred by or on behalf of the Lift Companies;
  - (ii) any loss or damage of any kind whatsoever caused by or as a result of any act, default or omission; or
  - (iii) any actions, suits, proceedings, accounts, claims or demands arising out of the Schemes or in relation to a Scheme Claim which may be commenced, incurred by or made by any person and all costs, charges and expenses incurred in respect thereof,

whether before, during or after the Effective Date, unless attributable to negligence, breach of duty, breach of trust, fraud or dishonesty.

## **13.7 No remuneration**

- (a) No member of the Creditors' Committee is entitled to claim or receive from the Lift Companies, the Scheme Funds, the Scheme Administrators or a Scheme Creditor any remuneration for acting as a member of the Creditors' Committee or any costs or expenses incurred by him or her in attending any meetings of the Creditors' Committee.

## **14. Creditors' Meetings**

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### **14.1 Application**

This clause 14 does not apply to the Scheme Meetings.

### **14.2 When meeting may be convened**

The Scheme Administrators:

- (a) may at any time convene a meeting of Scheme Creditors, or any class of Scheme Creditors;
- (b) will convene a meeting of Scheme Creditors, or any class of the Scheme Creditors, if so requested in writing by way of a resolution of the Creditors' Committee, and the written request sets out the purpose of, and the wording of any resolution to be proposed at, the meeting; and
- (c) will convene a meeting of Scheme Creditors if so requested in writing by Scheme Creditors the value of whose Established Scheme Claims are [10%] of the total



amount of the Established Scheme Claims, and the written request sets out the purpose of, and the wording of any resolution to be proposed at, the meeting.

### **14.3 Applicable rules**

- (a) Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of these Schemes, Corporations Regulations 5.6.11 to 5.6.36A apply to meetings of Scheme Creditors convened and held pursuant to this clause 14.
- (b) Unless the contrary is proved, meetings of Scheme Creditors convened and held pursuant to this clause 14 are taken to have been properly convened and all proceedings are taken to have properly occurred.

## **15. Moratorium on claims by Scheme Creditors**

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Subject to any rights of appeal under section 1321 of the Corporations Act, no Scheme Creditor may institute or continue any proceedings:

- (a) against the Lift Companies in relation to or in any way relating to a Scheme Creditor's Scheme Claim; or
- (b) in relation to any act, default or omission of a Scheme Administrator, Liquidator, member of the Creditors' Committee, other Scheme Creditor or any person or body corporate or incorporate acting on their behalf, in exercising their powers, obligations, functions or duties under these Schemes,

without the Scheme Administrators' written consent.

## **16. Termination**

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### **16.1 Termination of these Schemes**

These Schemes will terminate on the earlier of any of the following:

- (a) the Scheme Administrators have distributed all of the Scheme Funds as required under clause 8.10 and the Liquidators are of the view that there will be no further Liquidator Recoveries; or
- (b) all of the Established Scheme Claims have been discharged.

### **16.2 Consequences of termination**

- (a) Termination of these Schemes does not affect any accrued rights or remedies of any party.
- (b) The following provisions of these Schemes (and all other provisions necessary to give effect to those provisions) will continue to apply notwithstanding termination of the Schemes: clauses 9.1, 9.2, 9.3, 9.4, 11, 12.6, 12.7, 12.8, 13.3(b), 13.5, 13.6, 13.7, 16, 17.4, 17.5(a) and 17.6.



## 17. General Provisions

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### 17.1 Further Scheme Creditor assurances and consents

- (a) Each Scheme Creditor will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of these Schemes and the transactions contemplated by it.
- (b) Each Scheme creditor irrevocably consents to the Lift Companies, the Scheme Administrators and the Liquidators doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of these Schemes and the transactions contemplated by these Schemes and without the need for any further act by that Scheme Creditor.

### 17.2 Alterations and conditions to these Schemes

If the Court proposes to approve these Schemes subject to any alterations or conditions, the Liquidators may consent on behalf of Scheme Creditors to those alterations or conditions.

### 17.3 Notice to Scheme Companies and Scheme Administrators

- (a) Any notice to be given to the Scheme Administrators or a Scheme Company under or in relation to the Schemes (or any of them) must be given in writing and may be given by:
  - (i) hand delivery;
  - (ii) pre-paid post;
  - (iii) facsimile transmission;
  - (iv) email; or
  - (v) such other method as may be determined by the Scheme Administrators.
- (b) Notice to be given to the Scheme Administrators or a Scheme Company is to be given to them at:
  - (i) McGrath Nicol, Level 31, 60 Margaret St, Sydney; or
  - (ii) such other address as the Scheme Administrators may notify to Scheme Creditors for the purpose of this clause 17.3.

### 17.4 Notice to Scheme Creditors

Notices and any other written communications or documents to be given to Scheme Creditors pursuant to the Schemes may be given by:

- (a) hand delivery;
- (b) pre-paid post;
- (c) facsimile transmission; or

(d) email,  
to the last postal address, facsimile number or email address (as applicable) as advised by each Scheme Creditor to the Liquidators or Scheme Administrators and will be deemed to have been received by each Scheme Creditor if sent to that postal address, facsimile number or email address.

## **17.5 Date of notice**

- (a) Notice to the Scheme Creditors will be deemed to have been given:
- (i) by pre-paid post, on the second day following the day on which it is posted;
  - (ii) by hand delivery, on the day of delivery if delivered during business hours at the place of delivery or if not during business hours, the next Business Day;
  - (iii) by facsimile transmission, on the date of transmission if delivered during business hours at the place the facsimile is sent to or, if not during business hours, the next Business Day; or
  - (iv) by email, on the date the email was sent if sent during business hours at the place the email is sent or, if not sent during business hours, the next Business Day.
- (b) Notice to the Scheme Administrators or a Scheme Company will be given on the date the notice is received by the Scheme Administrators (and will not be deemed to have been given any sooner than that date).

## **17.6 Governing law and jurisdiction**

These Schemes are governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning these Schemes.

**Annexure 1 – Scheme Deed of Release and Indemnity**

**Annexure 2 – Ratification Deed Poll**

## Ratification Deed Poll

Given by



(the **Foreign Scheme Creditor**)

in favour of each party to the Scheme Deed of Release and  
Indemnity other than the Lift Clients

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)

<b>Date</b>	
<b>By</b>	[Name] of [Address] 2000 (the <i>Foreign Scheme Creditor</i> )
<b>In favour of</b>	Each party to the Scheme Deed of Release and Indemnity other than the Lift Clients
<b>Recitals</b>	
A	The parties to the Scheme Deed of Release and Indemnity are the Lift Companies, the Liquidators, MLI, MLIA and the Lift Clients.
B	The Liquidators executed the Scheme Deed of Release and Indemnity as agent and attorney of each Lift Client (including the Foreign Scheme Creditor) in accordance with the Schemes.
C	The Foreign Scheme Creditor is entering into this Deed Poll for the purposes of ratifying the execution of the Scheme Deed of Release and Indemnity by the Liquidators and confirming that it is bound by and will comply with the Scheme Deed of Release and Indemnity.

**It is declared** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed Poll:

- (a) **Scheme Deed of Release and Indemnity** means the deed contained as Annexure A to this Deed Poll which was executed by its parties on [ ]; and
- (b) terms defined in the Scheme Deed of Release and Indemnity have the same meaning in this Deed Poll, unless the context requires otherwise.

### 1.2 Interpretation

The provisions of clause 1.2 of the Scheme Deed of Release and Indemnity form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to "this Deed" in that clause are references to "this Deed Poll".

## 2. Ratification

The Foreign Scheme Creditor hereby:

- (a) ratifies and approves the execution of the Scheme Deed of Release and Indemnity by the Liquidators (or any of them) as agents and attorneys of the Foreign Scheme Creditor; and
- (b) confirms that it is bound by and undertakes to comply with all obligations of a Scheme Creditor under the Schemes and of a Lift Client under the Scheme Deed of Release and Indemnity.

## **3. General**

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### **3.1 Governing law and jurisdiction**

This Deed Poll is governed by the laws of the State of New South Wales, Australia. All questions regarding this Deed Poll, including (without limitation) questions relating to execution, interpretation and construction, are to be answered by reference to the laws of the State of New South Wales, Australia. The Foreign Scheme Creditor submits to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia and waives any right to claim that those courts are an inconvenient forum.

### **3.2 Variation**

A provision of this Deed Poll or any right created under it may not be varied, altered or otherwise amended unless the variation is agreed in writing by each of the parties to the Scheme Deed of Release and Indemnity other than the Lift Clients, in which event the Foreign Scheme Creditor will enter into a further Deed Poll in favour of each of the parties to the Scheme Deed of Release and Indemnity other than the Lift Clients giving effect to the variation, alteration or amendment.

### **3.3 Assignment**

The rights and obligations of the Foreign Scheme Creditor under this Deed Poll are personal and must not be assigned or otherwise dealt with at law or in equity.

### **3.4 Further action**

The Foreign Scheme Creditor will promptly do all things and execute and deliver all further documents necessary or expedient to give effect to this Deed Poll.

## **Executed and delivered as a Deed Poll**

[Insert relevant execution clause]

**Annexure A – Scheme Deed of Release and Indemnity**

---

**Annexure 3 – Scheme Administrator Deed Poll**

## Scheme Administrator Deed Poll

Given by

[Anthony Gregory McGrath] / [Joseph David Hayes]  
(the ***Scheme Administrator***)

in favour of

each Lift Company and its Scheme Creditors

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)



<b>Date</b>	
<b>By</b>	[Anthony Gregory McGrath] / [Joseph David Hayes] of McGrath Nicol of Level 31, 60 Margaret Street, Sydney NSW 2000 (the <b>Scheme Administrator</b> )
<b>In favour of</b>	Each Lift Company and its Scheme Creditors
<b>Recitals</b>	
A	Each Lift Company and its Scheme Creditors is party to a Scheme.
B	Each Scheme Administrator has been appointed as a Scheme Administrator in accordance with the Schemes.
C	The appointment of each Scheme Administrator is subject to the execution and delivery of this Deed Poll.

**It is declared** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed Poll:

- (a) **Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between a Lift Company and its Scheme Creditors, [which took effect on the date of this Deed Poll]/[to take effect on or about [\*]], and a reference to **Schemes** shall be a reference to both a Scheme between Lift Capital and its Scheme Creditors and to a Scheme between Lift Nominees and its Scheme Creditors; and
- (b) terms defined in the Schemes have the same meaning in this Deed Poll, unless the context requires otherwise.

### 1.2 Interpretation

The provisions of clause 1.2 of the Schemes form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to "these Schemes" in that clause are references to "this Deed Poll".

## 2. Consent to Act

The Scheme Administrator consents to act as a Scheme Administrator in accordance with the terms and conditions of the Schemes.

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### 3. Covenant

The Scheme Administrator covenants in favour of each Lift Company and its Scheme Creditors that he will be bound by the terms of the Schemes as if he is a party to the Schemes.

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### 4. Acknowledgement

The Scheme Administrator acknowledges and agrees that the benefit of this Deed Poll can be enforced directly by each Lift Company and each Scheme Creditor against the Scheme Administrator.

---

### 5. Continuing Obligations

This Deed Poll is irrevocable and remains in full force and effect until the earlier of:

- (a) the Scheme Administrator having fully performed its obligations under this Deed Poll; and
- (b) the Scheme Administrator ceasing to be a Scheme Administrator in accordance with clause 12.2(e) of the Schemes.

---

### 6. Notices

- (a) Any notice to be given to the Scheme Administrator under or in relation to this Deed Poll must be given in writing and may be given by:
  - (i) hand delivery;
  - (ii) pre-paid post;
  - (iii) facsimile transmission;
  - (iv) email; or
  - (v) such other method as may be determined by the Scheme Administrator.
- (b) Notice to be given to the Scheme Administrator is to be given to him at:
  - (i) McGrath Nicol, Level 31, 60 Margaret St, Sydney; or
  - (ii) such other address as the Scheme Administrator may notify to Scheme Creditors in accordance with clause 17 of the Schemes.
- (c) Notice to the Scheme Administrator will be given on the date the notice is received by the Scheme Administrator (and will not be deemed to have been given any sooner than that date).

## 7. General

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### 7.1 Governing law and jurisdiction

This Deed Poll is governed by the laws of New South Wales. The Scheme Administrator irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

### 7.2 Waiver

- (a) A waiver of any right arising from a breach of this Deed Poll or of any right, power, authority, discretion or remedy arising upon default under this Deed Poll must be in writing and signed by the persons granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this Deed Poll; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Deed Poll,does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) The Scheme Administrator is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed Poll or on a default under this Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.

### 7.3 Remedies cumulative

The rights and remedies of the Scheme Administrator, the Lift Companies and the Scheme Creditors under this Deed Poll are in addition to other rights and remedies given by law independently of this Deed Poll.

### 7.4 Assignment

The rights and obligations of the Scheme Administrator, each Lift Company and each Scheme Creditor under this Deed Poll are personal and must not be assigned or otherwise dealt with at law or in equity.

### 7.5 Further action

The Scheme Administrator will promptly do all things and execute and deliver all further documents necessary or expedient to give effect to this Deed Poll and the transactions contemplated by it.

**Executed and delivered as a Deed Poll** in Sydney

**Signed Sealed and Delivered** by [Anthony  
Gregory McGrath] / [Joseph David Hayes]  
in the presence of:

# Scheme Administrator Deed Poll

Allens Arthur Robinson 

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Witness Signature

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Signature

---

Print Name

**Annexure 4 – List of Surplus Securities**

<b>Code</b>	<b>Investment Description</b>	<b>Quantity</b>	<b>ISIN</b>
ABS	A.B.C LEARNING CENTRES LTD SHS	500	AU000000ABS3
AFI	AUSTRALIAN FOUNDATION INVESTMENT CO LTD	3,700	AU000000AFI5
AGIG	AINSWORTH 8.0 12/31/09	3,500	AU000000AGIG5
AIO	ASCIANO GROUP STAPLED SECURITY	1,000	AU000000AIO7
ALR	ABERDEEN LEADERS LTD SHS	22,600	AU000000ALR4
AMP	AMP LIMITED SHS	146,103	AU000000AMP6
ANZ	AUSTRALIA & NEW ZEALAND BANKING GROUP LT	797	AU000000ANZ3
APD	APN PROPERTY GROUP LTD SHS	44,837	AU000000APD5
AUF	ASIAN MASTERS FUND LTD SHS	818,000	AU000000AUF0
AUI	AUSTRALIAN UNITED INVESTMENT CO LTD SHS	7,876	AU000000AUI4
AUUPA	AUSTCORP TOWE 9.7 PFD	4,450	AU000000AUUPA5
AWC	ALUMINA LTD SHS	2,194	AU000000AWC3
AXE	ARCHER EXPLORATION LTD SHS	140,500	AU000000AXE7
AXEO	ARCHER EXP WT 02/13/10	67,500	AU000000AXEO3
BBI	BABCOCK & BROWN INFRASTRUCTURE GROUP STA	31,500	AU000000BBI2
BHP	BHP BILLITON LTD SHS	1,428	AU000000BHP4
BKI	BRICKWORKS INVESTMENT COMPANY LTD SHS	334,540	AU000000BKI3
BKN	BRADKEN LTD SHS	1,000	AU000000BKN3
BLG	BLUGLASS LTD SHS	3,451,575	AU000000BLG5
BOL	BOOM LOGISTICS LTD SHS	10,000	AU000000BOL9
CBA	COMMONWEALTH BANK OF AUSTRALIA SHS	760	AU000000CBA7
CCQ	CONTANGO CAPITAL PARTNERS LTD SHS	2,120	AU000000CCQ1
CDD	CARDNO LTD SHS	10,822	AU000000CDD7
CEU	CONNECTEAST GROUP STAPLED SECURITIES	4,908	AU000000CEU9
CIF	CHALLENGER INFRASTRUCTURE FUND	13,500	AU000000CIF1
CMS	COMMSECURE LTD SHS	2,953	AU000000CMS6
COH	COCHLEAR LIMITED SHS	1,500	AU000000COH5
COJ	COMMSTRAT LTD SHS	100,000	AU000000COJ1
COV	CORVETTE RESOURCES LTD SHS	60,000	AU000000COV6
CSL	CSL LTD SHS	4,217	AU000000CSL8
CTN	CONTANGO MICROCAP LTD SHS	58,500	AU000000CTN2
CYA	CENTURY AUSTRALIA INVESTMENTS LTD SHS	77,332	AU000000CYA9
DUI	DIVERSIFIED UNITED INVESTMENT LTD SHS	170,012	AU000000DUI8
DVM	DVM INTERNATIONAL LTD SHS	1,905	AU000000DVM8
DYL	DEEP YELLOW LTD SHS	8,205	AU000000DYL4
EAL	E & A LIMITED SHS	5,000	AU000000EAL2
EHL	EMECO HOLDINGS LTD SHS	35,000	AU000000EHL7
EQN	EQUINOX MINERALS LTD CHESS DEPOSITORY IN	910,317	AU000000EQN4
ESV	ESERVGLOBAL LTD SHS	10,000	AU000000ESV3
ETT	ETT LTD SHS	2,000,000	NZPLKE0001S9



FCLPA	FUTURI FRB 06/30/49	860	AU0000FCLPA1
FLT	FLIGHT CENTRE LTD SHS	4,851	AU000000FLT9
FRE	FRESHTEL HOLDINGS LTD SHS	3,704,931	AU000000FRE8
GINHA	GENERATO FRB 10/08/11	87	AU0000GINHA9
GMI	GLOBAL MINING INVESTMENTS LTD SHS	83,116	AU000000GMI8
GOLD	ETFS METAL SECURITIES AUSTRALIA LTD REDE	360	AU000000GOLD7
GPM	GEO PROPERTY GROUP LTD STAPLED SECURITY	2,000	AU000000GPM3
HDF	HASTINGS DIVERSIFIED UTILITIES FUND, MEL	8,000	AU000000HDF1
HHV	HUNTER HALL GLOBAL VALUE LTD SHS	125,096	AU000000HHV9
HLG	HEDLEY LEISURE AND GAMING PROPERTY FUND	4,914,849	AU000000HLG2
IAG	INSURANCE AUSTRALIA GROUP LTD SHS	2,510	AU000000IAG3
IDL	INDUSTREA LTD SHS	160,000	AU000000IDL7
IFM	INFOMEDIA LTD SHS	280,000	AU000000IFM0
ILF	ING REAL ESTATE COMMUNITY LIVING GROUP	45,376	AU000000ILF2
IMI	IM MEDICAL LIMITED SHS	16,000	AU000000IMI4
IPDO	IMPEDIMED WT 10/24/12	3,000	AU000000IPDO4
KTE	K2 ENERGY LTD SHS	7,500	AU000000KTE4
LML	LINCOLN MINERALS LTD SHS	374,641	AU000000LML2
LMLO	LINCOLN MI WT 06/30/10	195,000	AU000000LMLO8
MEG	MCM ENTERTAINMENT GROUP LTD SHS	489,084	AU000000MEG7
MHYHA	MAHOGA FRB 12/10/11	3,500	AU0000MHYHA6
MIR	MIRRABOOKA INVESTMENTS LTD SHS	34,000	AU000000MIR5
MQG	MACQUARIE GROUP LTD SHS	2,500	AU000000MQG1
MSCHE	MINERALS 10.5 12/31/09	10,000	AU0000MSCHE1
MTS	METCASH LTD SHS	500	AU000000MTS0
MTY	MEDICAL THERAPIES LTD SHS	150,000	AU000000MTY8
NAB	NATIONAL AUSTRALIA BANK LTD SHS	2,114	AU000000NAB4
NCM	NEWCREST MINING LTD SHS	675	AU000000NCM7
NFNG	NUFARM F FRB 04/29/49	112	NZFCND0004S9
NVT	NAVITAS LTD SHS	1,048,682	AU000000NVT2
NWS	NEWS CORP CHESS DEPOSITORY INTERESTS	100	AU000000NWS2
NXS	NEXUS ENERGY LTD SHS	52,000	AU000000NXS0
OSH	OIL SEARCH LTD SHS	600	PG0008579883
OZL	OZ MINERALS LTD SHS	26,782	AU000000OZL8
PPT	PERPETUAL LTD SHS	30	AU000000PPT9
PPX	PAPERLINX LTD SHS	310	AU000000PPX1
PRN	PELSART RESOURCES NL	2,500	AU000000PRN8
PRWOA	PROTO RESO WT 12/31/13	41,667	AU0000PRWOA8
PTM	PLATINUM ASSET MANAGEMENT LTD SHS	32,500	AU000000PTM6
QBE	QBE INSURANCE GROUP LTD SHS	340	AU000000QBE9
RCI	ROCKLANDS RICHFIELD LTD SHS	2,617,855	AU000000RCI6
RCY	RIVERCITY MOTORWAY GROUP STAPLED SECURIT	16,550	AU000000RCY3
REF	REVERSE CORP LTD SHS	65,932	AU000000REF8
RHG	RHG LTD SHS	160,000	AU000000RHG9



RMD	RESMED INC CHESS DEPOSITARY INTERESTS	600	AU000000RMD6
ROC	ROC OIL COMPANY LIMITED SHS	47,163	AU000000ROC4
SAKHA	SOUTHERN CROSS AIRPORTS CORPORATION HOLD	100	AU000000SAKHA7
SHV	SELECT HARVESTS LIMITED SHS	13,650	AU000000SHV6
SIP	SIGMA PHARMACEUTICALS LTD SHS	68,000	AU000000SIP6
SLX	SILEX SYSTEMS LTD SHS	250	AU000000SLX4
SRK	STRIKE RESOURCES LTD SHS	2,807	AU000000SRK8
SRV	SERVCORP LIMITED SHS	30,000	AU000000SRV5
STO	SANTOS LTD SHS	744	AU000000STO6
STW	SPDR S&P/ASX 200 FUND	143	AU000000STW9
SYL	SYLVASTATE LTD SYL SHS	61,476	AU000000SYL2
TDO	3D OIL LTD SHS	87,500	AU000000TDO8
TIM	TIMBERCORP LTD SHS	129,278	AU000000TIM1
TJN	TROJAN EQUITY LTD SHS	53,350	AU000000TJN7
TLS	TELSTRA CORPORATION LTD SHS	2,000	AU000000TLS2
TOL	TOLL HOLDINGS LTD SHS	1,700	AU000000TOL1
TRG	TREASURY GROUP LTD SHS	7,720	AU000000TRG4
TTS	TATTS GROUP LTD SHS	780	AU000000TTS5
UGL	UNITED GROUP LTD SHS	700	AU000000UGL5
USAO	URANIUMSA WT 01/18/10	20,000	AU000000USAO9
VBA	VIRGIN BLUE HOLDINGS LTD SHS	1,700	AU000000VBA7
VID	VIDELLI LTD SHS	8,400	AU000000VID6
VTP	VAN EYK THREE PILLARS LIMITED SHS	2,227,875	AU000000VTP7
WBC	WESTPAC BANKING CORP SHS	638	AU000000WBC1
WCN	WHITE CLIFF NICKEL LTD SHS	20,000	AU000000WCN6
WDC	WESTFIELD GROUP STAPLED SECURITY	8,793	AU000000WDC7
WESN	WESFARMERS LTD PARTIALLY PROTECTED SHS	54	AU000000WESN9
WHF	WHITEFIELD LTD SHS	321,071	AU000000WHF1
WIL	WILSON INVESTMENT FUND LTD SHS	13,677	AU000000WIL7
WOR	WORLEYPARSONS LTD SHS	156	AU000000WOR2
WOW	WOOLWORTHS LTD SHS	1,701	AU000000WOW2
YLDSO1	CITIGROUP FRB 07/22/10	39,000	AU0000YLDSO14
<b>Total Quantity Held</b>		<b>26,428,187</b>	

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## **ANNEXURE C - SCHEME IMPLEMENTATION AGREEMENT**

(excluding any annexures which are otherwise annexed to this Explanatory Statement)

## Scheme Implementation Agreement

Lift Capital Partners Pty Limited (in liquidation)

Lift Capital Nominees No 1 Pty Limited (in liquidation)

Anthony Gregory McGrath

Joseph David Hayes

Merrill Lynch International

Merrill Lynch International (Australia) Ltd

Merrill Lynch UK Capital Holdings (ML UK Capital Holdings)

SNC Securities Limited

Merrill Lynch Markets (Australia) Pty Limited

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)

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**Date**

November 2009

**Parties**

1. **Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500)** registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (**Lift Capital**)
2. **Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)** registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (**Lift Nominees**)
3. **Anthony Gregory McGrath** and **Joseph David Hayes** in their capacity as liquidators of Lift Capital and Lift Nominees of McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (the **Liquidators**)
4. **Merrill Lynch International (ARBN 125 336 567)** incorporated in the United Kingdom of 2 King Edward Street London EC1A 1HQ United Kingdom (**MLI**)
5. **Merrill Lynch International (Australia) Ltd (ACN 002 892 846)** of Level 38, Governor Philip Tower, 1 Farrer Place Sydney NSW 2000 (**MLIA**)
6. **ML UK Capital Holdings (Company No 4971231)** of 2 King Edward Street, London EC1A 1HQ, United Kingdom
7. **SNC Securities Limited (Company No 1317798)** of 2 King Edward Street, London EC1A 1HQ, United Kingdom
8. **Merrill Lynch Markets (Australia) Pty Limited (ACN 086 294 028)** of Level 38, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000 (**ML Markets Australia**)

**Recitals**

- A The Liquidators were appointed as liquidators of the Lift Companies on 12 November 2008, having previously acted as the administrators of those companies from 10 April 2008 until 12 November 2008.
- B The Liquidators, in their capacity as liquidators of the Lift Companies, have foreshadowed claims against Merrill Lynch arising from the transfer by Lift Nominees of certain securities, that it previously held on behalf of Lift Clients, to Merrill Lynch and which were subsequently sold by Merrill Lynch.

- C The Lift Clients, or some of them, have foreshadowed claims against Merrill Lynch and the Lift Companies arising from the transfer by Lift Nominees of certain securities, that it previously held on behalf of Lift Clients, to Merrill Lynch and which were subsequently sold by Merrill Lynch.
- D Merrill Lynch denies any liability in respect of any of the foreshadowed claims. Merrill Lynch has foreshadowed cross-claims against the Lift Companies in the event that proceedings are brought against them by the Lift Companies or the Lift Clients.
- E The parties to this Agreement and others participated in a without prejudice mediation before the Honourable Alex Chernov AO QC in July 2009 with a view to exploring a possible settlement of all claims as between Lift Capital, Lift Nominees, Merrill Lynch and Lift Clients and engaged in further discussions following that mediation.
- F The parties to this Agreement have agreed upon a basis for a resolution of the claims foreshadowed by the Liquidators and Lift Clients and the cross-claims foreshadowed by Merrill Lynch.

**It is agreed** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Agreement** means this Scheme Implementation Agreement.

**ASIC** means the Australian Securities and Investments Commission.

**Appeals End Date** means the date that is 28 days after the Effective Date or the first date after such longer period as the Court may, within the period from the Effective Date to the date that is 28 days after the Effective Date, allow an appeal to be made.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in New South Wales.

**Cash Contribution** means \$10.3 million.

**Claim** means any debt, claim, cause of action, proceeding, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent, or sounding only in damages.

**Conditions Precedent** means the conditions precedent set out in clause 4.1.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court** means the Federal Court of Australia or such other court of competent jurisdiction as the parties may agree in writing.

**Effective** means, when used in relation to the Schemes, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Schemes.

**Effective Date** means the date on which the Schemes become Effective.

**End Date** means 31 March 2010, or such later date as the parties may agree in writing.

**Escrow Agent** means the escrow agent referred to in the Surplus Securities Escrow Agreement.

**Explanatory Statement** means the explanatory memorandum to be prepared in respect of the Schemes in accordance with the terms of this Agreement and to be despatched by the Liquidators to Scheme Creditors, including the Notice of Meetings.

**Financial Product** has the meaning given to it in the Corporations Act.

**First Court Date** means the first day of hearing of an application made to the Court by the Liquidators for orders, pursuant to section 411(1) of the Corporations Act, convening the Scheme Meetings or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, and any regulatory organisation established under statute.

**Lift Client** means:

- (a) any Scheme Creditor who transferred, or asserts it transferred, any Financial Product to a Lift Company;
- (b) any Scheme Creditor who instructed, or asserts it instructed, a Lift Company to purchase any Financial Product on its behalf or to be held to its account; or
- (c) any person who entered into a facility agreement with Lift Capital and borrowed money from Lift Capital to purchase securities and who, arising out of the transfer by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a debt or claim admissible to proof against one or both of the Lift Companies within the meaning of section 553 of the *Corporations Act 2001* (Cth).

**Lift Companies** means Lift Capital and Lift Nominees, and a reference to **Lift Company** is to either one of them, as applicable.

**Merrill Lynch** means MLI and MLIA or either one of them, as applicable.

**Merrill Lynch Parties** means Merrill Lynch, ML UK Holdings, SNC Securities Limited and ML Markets (Australia) or any one of them, as applicable.

**Notice of Meetings** means the notice convening the Scheme Meetings, together with the proxy form(s) for the Scheme Meetings.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Release Date** means the latest of:

- (a) the date which is one Business Day after the Appeals End Date;
- (b) the date which is one Business Day after all appeals and applications for leave or for further time to appeal commenced before the Appeals End Date, and any further appeals or applications therefrom and any proceedings on remittal from any such appeal, have been finally disposed of; and
- (c) the date which is one Business Day after expiration of any stay preventing or affecting the implementation of these Schemes ordered by a court in connection with any appeal or application for leave or for further time to appeal commenced before the Appeals End Date or any further appeal or application for further time to appeal therefrom.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between a Lift Company and its Scheme Creditors, substantially in the form set out in Schedule 1, or such other Scheme as the parties may agree in writing, and a reference to **Schemes** shall be a reference to both a Scheme between Lift Capital and its Scheme Creditors and to a Scheme between Lift Nominees and its Scheme Creditors.

**Scheme Application** means an application by the Liquidators for the Court to make orders approving the Schemes under section 411(4)(b) of the Corporations Act.

**Scheme Claim** means a Claim against a Lift Company, the circumstances giving rise to which occurred on or before 10 April 2008.

**Scheme Creditor** means a creditor of a Lift Company with a Scheme Claim, excluding the Swaby and Crabb Claimants and Merrill Lynch.

**Scheme Meetings** means the meetings of Scheme Creditors to be ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Schemes, and includes any adjournment of those meetings.

**Scheme Release and Indemnity Deed** means a deed of release and indemnity between the Lift Companies, Merrill Lynch, the Liquidators and the Lift Clients substantially in the form of Schedule 2 to this Agreement.

**Scheme Resolutions** means the resolutions to be put to the Scheme Creditors to approve the Schemes (such resolutions to be put to the Scheme Creditors at the Scheme Meetings and that, to be passed, must be approved by the requisite majorities of the Scheme Creditors under section 411(4)(a)(i) of the Corporations Act).

**Second Court Date** means the first day of hearing of an application made to the Court by the Liquidators for orders pursuant to section 411(4)(b) of the Corporations Act approving the Schemes or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Surplus Securities** means:

- (a) the securities transferred by Lift Nominees to Merrill Lynch or its nominees and which are listed in Annexure 4 to the Schemes;
- (b) cash in the amount of \$4,662,537; and

- (c) all other interest, dividends and other distributions received and continuing to be held by Merrill Lynch in respect of the Surplus Securities, whether received in the form of cash, securities or other assets.

**Surplus Securities Escrow Agreements** means the Escrow Deed between Merrill Lynch, the Escrow Agent and the Custodian (both as defined in that deed) and the Escrow Ancillary Deed between Merrill Lynch, Lift Nominees and the Liquidators substantially in the form set out at Schedule 3.

**Swaby and Crabb Claimants** means Ms Gillian Swaby, Mr Rick Crabb and Mr Rick Crabb and Ms Carol Crabb as trustee of the Intermax Trust.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to legislation or to a provision of legislation includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to \$ is to the lawful currency of Australia.
- (i) Words and phrases not specifically defined in this Agreement have the same meanings (if any) given to them in the Corporations Act.
- (j) A reference to time is a reference to time in Sydney.
- (k) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (l) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (m) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

## 1.3 Best and reasonable endeavours

Any provision of this Agreement that requires a party to use best endeavours, or reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs, requires that party to do so as soon as is reasonably practicable, but does not include any obligation:

- (a) to pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency or fees to any professional advisers; or
- (b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens,

except where that provision expressly specifies otherwise.

## 2. Agreement to Proceed with Schemes

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### 2.1 Liquidators to propose Schemes

The Liquidators agree to propose and implement the Schemes, upon and subject to the terms and conditions of this Agreement, and to use all reasonable endeavours to do so as soon as is reasonably practicable.

### 2.2 Condition precedent to proposal of Scheme

Unless the Liquidators otherwise agree in writing, the obligations of the Liquidators to propose the Scheme is subject to:

- (a) **(Surplus Securities)** the Surplus Securities Escrow Agreements being entered by each of the parties to those agreements and the delivery of the Surplus Securities by Merrill Lynch to the Escrow Agent in accordance with the terms of the Surplus Securities Escrow Agreements.

### 2.3 Merrill Lynch to assist

Subject to clause 7.2, Merrill Lynch agrees to assist the Liquidators to propose and implement the Schemes upon and subject to the terms and conditions of this Agreement, and to use all reasonable endeavours to do so as soon as is reasonably practicable.

## 3. Steps for approval of Schemes

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### 3.1 Liquidators' obligations in respect of the Scheme

Subject to clause 2.2, the Liquidators must take all steps reasonably necessary to propose and implement the Schemes as soon as is reasonably practicable after the date of this Agreement, and in particular the Liquidators must:

- (a) **(preparation of Explanatory Statement)** as soon as reasonably practicable after the date of this Agreement prepare the Explanatory Statement;

- (b) **(liaison with ASIC)** as soon as reasonably practicable after the date of this Agreement but no later than 14 days before the First Court Date, provide an advanced draft of the Explanatory Statement to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;
- (c) **(section 411(17)(b) statement)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Schemes;
- (d) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Schemes (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws;
- (e) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for orders under section 411(1) of the Corporations Act directing the Liquidators to convene the Scheme Meetings;
- (f) **(Scheme Meetings)** take all reasonable steps necessary to comply with the orders of the Court, including, as required, despatching the Explanatory Statement to the Scheme Creditors, convening and holding the Scheme Meetings in accordance with the Court orders, and putting the Scheme Resolutions to the Scheme Creditors at the Scheme Meetings;
- (g) **(Court approval)** if the Scheme Resolutions are passed by the requisite majorities of the Scheme Creditors under section 411(4)(a)(i) of the Corporations Act, as soon as practicable after such time apply to the Court for orders approving the Schemes;
- (h) **(implementation of the Schemes)** if the Court approves the Schemes:
  - (i) lodge with ASIC an office copy of the orders approving the Schemes in accordance with section 411(10) of the Corporations Act, as soon as possible after the Court makes those orders; and
  - (ii) do all other things contemplated by or necessary to give effect to the Schemes and the orders of the Court approving the Schemes; and
- (i) **(representation)** not oppose any application by Merrill Lynch for leave of the Court to be represented, or the separate representation of Merrill Lynch by counsel, at the Court hearings heard for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Schemes, provided that in making any application for representation or in appearing before the Court, Merrill Lynch act in accordance with their obligations under this Agreement.
- (j) **(Release of claims relating to the Swaby & Crabb Claimants)**. Subject to the Liquidators obtaining any required approval under s 477(2A) of the Corporations Act, before the Second Court Date the Lift Companies will execute and deliver executed counterparts of a deed of release in substantially the form of Schedule 4 to this Agreement to each other party to that deed.

- (k) **(Swaby and Crabb Claimants)** subject to the Swaby and Crabb Claimants first delivering to the Liquidators and the Lift Companies an executed deed of release in substantially the form of Schedule 4 of this Agreement and the releases in that deed taking effect in accordance with the terms of that deed, the Liquidators agree and acknowledge that the Swaby and Crabb Claimants are not debtors of a Scheme Company and that the Lift Companies have no Claims in relation to the Lift Companies against any Swaby and Crabb Claimant, and will adjudicate accordingly.

### 3.2 Appeal process

If the Court at first instance or on appeal refuses to make any orders convening the Scheme Meetings or approving the Schemes, the Liquidators must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or counsel for the Liquidators with at least 5 years' experience advises that, in his or her view, an appeal would have no reasonable prospect of success before the End Date).

### 3.3 Merrill Lynch's obligations in respect of the Schemes

Merrill Lynch must take all steps reasonably necessary to assist the Liquidators to propose and implement the Schemes as soon as is reasonably practicable after the date of this Agreement (save that nothing in this clause shall oblige Merrill Lynch to execute the Scheme Release and Indemnity Deed), and in particular Merrill Lynch must:

- (a) **(liaison with ASIC)** provide reasonable assistance to the Liquidators to assist the Liquidators to resolve any matter raised by ASIC regarding the Explanatory Statement or the Schemes during its review of the Explanatory Statement; and
- (b) **(Court representation)** procure that, if requested by the Liquidators, it is represented by counsel at the Court hearings convened in connection with the Schemes, at which, through its counsel and if requested by the Court, Merrill Lynch will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this Agreement and the Schemes.

## 4. Conditions Precedent and Pre-Implementation Steps

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### 4.1 Conditions Precedent

Subject to this clause 4, the obligations of the Liquidators and Merrill Lynch under clauses 3.1(h), 5, 6 and 7 are subject to the satisfaction (or waiver in accordance with clause 4.2) of each of the following Conditions Precedent:

- (a) **(Leave to act as administrators of the Schemes)** the Court grants leave or ASIC directs in writing permitting the appointment of the Liquidators as administrators of the Schemes in accordance with s411(7) of the Corporations Act before 8 am on the Second Court Date;

- (b) **(Scheme Creditor approval)** the Scheme Resolutions are approved by the requisite majorities of Scheme Creditors under section 411(4)(a)(i) of the Corporations Act before 8 am on the Second Court Date; and
- (c) **(Court approval of Schemes)** the Schemes are approved by the Court in accordance with section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act.
- (d) **(Release of claims relating to the Swaby and Crabb Claimants)** Merrill Lynch procures that the Swaby and Crabb Claimants execute and deliver, and the Swaby and Crabb Claimants and the Lift Companies execute and deliver, a deed of release in substantially the form of Schedule 4 to this Agreement.

## 4.2 Benefit and waiver of Conditions Precedent

- (a) The Condition Precedent in clause 4.1(a) may be waived by the Liquidators giving their written consent.
- (b) The Conditions Precedent in clauses 4.1(b), 4.1(c) and 4.1(d) cannot be waived.
- (c) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 4.2 may do so in its absolute discretion.
- (d) If a waiver by a party of a Condition Precedent is itself expressed to be conditional on the other party or parties accepting the conditions, the terms of the conditions apply accordingly. If the other party or parties do not accept the conditions, the relevant Condition Precedent has not been waived.
- (e) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party or parties for any breach of this Agreement constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent.
- (f) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

## 4.3 Best endeavours and co-operation

Without prejudice to any other obligations of the parties under this Agreement:

- (a) the parties must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 4.1 to the extent that it is within their respective control; and
- (b) no party will take any action that will or is likely to hinder or prevent the satisfaction of the Conditions Precedent in clause 4.1, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this Agreement or is required by law.

## 4.4 Notifications

Each party must:

- (a) keep the other parties promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other parties in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other parties in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 4.3).

## 4.5 Failure of Conditions Precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 4.2 before the End Date; or
  - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 4.3 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived),

each party may serve notice on the other parties, and the parties must then consult in good faith with a view to determining whether:

- (iii) the Schemes may proceed by way of alternative means or methods;
  - (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
  - (v) to change the date of the application to be made to the Court for orders under the Corporations Act approving the Schemes or to adjourn that application (as applicable) to another date agreed by the parties; or
  - (vi) to extend the End Date.
- (b) If the parties are unable to reach agreement under clauses 4.5(a)(iii), 4.5(a)(iv), 4.5(a)(v) or 4.5(a)(vi) within 5 Business Days after the delivery of the notice under that clause or any shorter period ending at 5 pm on the day before the Second Court Date, each party may terminate this Agreement by notice in writing to the other parties, provided that there has been no failure by that party to comply with its obligations under this Agreement, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date, in which case clause 12.2 will have effect.

## 4.6 Certificates in relation to Conditions Precedent

On the Second Court Date the Liquidators must provide to the Court a certificate (or such other evidence as the Court may request) confirming whether or not as at 8 am on the Second Court Date the Condition Precedents set out in clause 4.1 (other than the Condition Precedent in clause 4.1(c)) have been satisfied or waived in accordance with this Agreement.

## 5. Payment of Cash Contribution

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- (a) Merrill Lynch will, within five Business Days of the Effective Date, pay the Cash Contribution to the Liquidators.
- (b) Upon payment to the Liquidators, the Cash Contribution will be held by the Liquidators in trust in an interest bearing account until released:
  - (i) if, at the Release Date, the Schemes remain Effective, in accordance with the Scheme Release and Indemnity Deed; or,
  - (ii) if the Schemes cease to be Effective prior to the Release Date, on the Release Date (at which time the Cash Contribution will be returned to Merrill Lynch with accrued interest).

## 6. Scheme Administrators

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On or prior to the Effective Date, the Liquidators will execute a deed poll by which, upon the Effective Date, they will be appointed as joint and several scheme administrators to administer the Schemes in accordance with the terms of the Schemes and this Agreement. The Liquidators will carry out their duties as Scheme Administrators in accordance with the terms of the Schemes.

## 7. Scheme Release and Indemnity Deed

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### 7.1 Execution of Scheme Release and Indemnity Deed

On the Effective Date:

- (a) each of the Lift Companies and the Liquidators will execute and deliver to each other party an executed counterpart of the Scheme Release and Indemnity Deed, the Liquidators doing so for the Lift Companies, for the Lift Clients as their duly appointed agents and attorneys under the Schemes, as well as in their capacity as liquidators of the Lift companies;
- (b) ML UK Capital Holdings and SNC Securities Limited will procure that MLI execute and deliver to each other party an executed counterpart of the Scheme Release and Indemnity Deed; and
- (c) ML Markets Australia will procure that MLIA executes and delivers to each other party an executed counterpart of the Scheme Release and Indemnity Deed.

## 7.2 No other obligation to execute Scheme Release and Indemnity Deed

Nothing in this Agreement other than this clause 7 will give rise to any obligation on the part of the Merrill Lynch Parties to execute the Scheme Release and Indemnity Deed.

## 8. Consideration

Each party acknowledges that any obligations it incurs or rights it provides under this Agreement is for valuable consideration received from the other parties.

## 9. Liability

Each party does not, by entering into this Agreement, make any admission of liability to any other party.

## 10. Confidentiality

- (a) The parties acknowledge that the terms of this Agreement may be disclosed to the committee of inspection of the Lift Companies, the creditors of the Lift Companies, the Lift Clients, ASIC and the Court.
- (b) Subject to clause 10(a), each party agrees not to disclose or authorise the disclosure of this Agreement to any other person except as required for the purposes of obtaining financial or legal advice or as required by law or to the extent that the other parties to this agreement consent in writing.

## 11. Representations and Warranties

### 11.1 General representations and warranties

The Lift Companies and Merrill Lynch represent and warrant that, except as consented to in writing by the parties, on each date from the date of this Agreement until (and including) the Effective Date:

- (a) it has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
- (b) has taken all necessary action to authorise the entry into this Agreement and has taken or will take all necessary action to authorise the performance of this Agreement;
- (c) this Agreement is its valid and binding obligation enforceable in accordance with its terms; and
- (d) the execution and performance by it of this Agreement and each transaction contemplated by this Agreement did not and will not violate in any respect a provision of:
  - (i) a law, judgment, ruling, order or decree binding on it;
  - (ii) its constitution; or

- (iii) any other document or agreement that is binding on its assets.

## 11.2 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this Agreement each other party has relied on the representations and warranties provided by the Representor under this clause 11;
- (b) any breach of the representations and warranties provided by the Representor under this clause 11 after the Schemes become Effective may only give rise to a claim in damages and cannot result in a termination of this Agreement; and
- (c) it has not entered into this Agreement in reliance on any warranty or representation made by or on behalf of any other party except those warranties and representations set out in this Agreement.

## 11.3 Merrill Lynch representations and warranties

The Merrill Lynch Parties represent and warrant that:

- (a) MLIA is wholly owned by ML Markets (Australia);
- (b) MLI is wholly owned by a combination of ML UK Capital Holdings and SNC Securities Limited;
- (c) Under either or both their respective constituent documents and the practices and customs operating between them, Merrill Lynch is bound to comply with instructions or directions given to it by ML UK Capital Holdings and SNC Securities Limited, in respect of the obligations of ML UK Capital Holdings and SNC Securities Limited under clause 8.1; and
- (d) under either or both their respective constituent documents and the practices and customs operating between them, MLIA is bound to comply with instructions or directions given to it by ML Markets (Australia), in respect of the obligations of ML Markets (Australia) under clause 8.1.

## 11.4 Notifications

Each party will promptly advise the other parties in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 11.

## 11.5 Status of representations and warranties

Each representation and warranty in this clause 11:

- (a) is severable;
- (b) will survive the termination of this Agreement; and
- (c) is given with the intent that liability under it will not be confined to breaches that are discovered prior to the date of termination of this Agreement.

## 12. Termination

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### 12.1 Termination

Each party may terminate this Agreement by notice to each other party:

- (a) in accordance with clause 4.5; or
- (b) if the Schemes have not come into effect pursuant to s411(10) of the Corporations Act on or before the End Date.

### 12.2 Effect of termination

In the event of termination of this Agreement by a party pursuant to clause 12.1, this Agreement will have no further force or effect and the parties will have no further obligations under this Agreement, provided that:

- (a) this clause 12 and clauses 11 and 13 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other parties in respect of any past breach of this Agreement.

## 13. Miscellaneous

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### 13.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address (being an address in Australia) or fax number last notified by the intended recipient to the sender:
  - (i) to the Lift Companies / Liquidators: Level 31, 60 Margaret Street  
Sydney NSW 2000  
Attention: Anthony McGrath and Joseph Hayes  
Fax No: (02) 9338 2699
  - (ii) to Merrill Lynch/ML UK Capital Holdings/SNC Securities Limited/ML Markets Australia: Level 38, Governor Phillip Tower  
1 Farrer Place, Sydney NSW 2000  
Attention: Michael Horrax  
Fax No: (02) 9225 6644.
- (c) will be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country); and

- (iii) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

## **13.2 No waiver**

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **13.3 Remedies cumulative**

The rights, powers and remedies provided to each party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

## **13.4 Entire agreement**

This Agreement contains the entire agreement between the parties as at the date of this Agreement with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

## **13.5 Amendment**

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by each of the parties, which may so make an amendment or variation notwithstanding that one or more other parties or persons may be entitled to the benefit of all or any of the provisions of this Agreement.

## **13.6 Assignment**

The rights and obligations of each party under this Agreement are personal. They cannot be assigned, encumbered or otherwise dealt with and no party may attempt, or purport, to do so without the prior consent of the other parties.

## **13.7 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

## **13.8 Further assurances**

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

## **13.9 Costs and stamp duty**

Except as otherwise provided in this Agreement, each party must bear its own costs, charges and expenses arising out of or incidental to the negotiations leading to or the preparation of this Agreement and the proposed, attempted or actual implementation of this Agreement.

## **13.10 Severability of provisions**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

## **13.11 Governing law and jurisdiction**

This Agreement is governed by the laws of New South Wales. Each party submits to the non exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

## **13.12 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

# Scheme Implementation Agreement

**Executed** in Sydney.

**Signed by**

**Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500)** by its joint and several liquidator in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath / Joseph David Hayes

\_\_\_\_\_  
Print Name

**Signed by**

**Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)** by its joint and several liquidator in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath / Joseph David Hayes

\_\_\_\_\_  
Print Name

**Signed by Anthony Gregory McGrath** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Signed by Joseph David Hayes** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

# Scheme Implementation Agreement

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Print Name

**Signed for Merrill Lynch International (ARBN 125 336 567)** by its authorised representative in the presence of:

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Authorised Representative Signature

---

Witness Signature

---

Print Name

---

Print Name

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Position

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Merrill Lynch International (Australia) Ltd (ACN 002 892 846)**:

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Signed for Merrill Lynch UK Capital Holdings (Company No 497 1231)** by its authorised representative in the presence of:

---

Authorised Representative Signature

---

Witness Signature

---

Print Name

---

Print Name

---

Position

**Signed for SNC Securities Limited (Company No 11317798)** by its authorised representative in the presence of:

---

Authorised Representative Signature

# Scheme Implementation Agreement

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Merrill Lynch Markets (Australia) Pty Ltd (ACN 075 587 816)**:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Schedule 1**

**The Schemes**

---

**Schedule 2**

**Scheme Release and Indemnity Deed**

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**Schedule 3**

**Surplus Securities Escrow Agreements**

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# Escrow Deed

Merrill Lynch International  
Merrill Lynch International (Australia) Ltd

[RBS Nominees]

and

[Custodian]

Escrow of Surplus Securities

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)

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<b>Date</b>	2009
<b>Parties</b>	
1.	<b>Merrill Lynch International (ARBN 125 336 567)</b> of 2 King Edward Street London EC1AHQ United Kingdom ( <i>MLI</i> )
2.	<b>Merrill Lynch International (Australia) Ltd (ACN 002 892 846)</b> of Level 38, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000 ( <i>MLIA</i> )
3.	[RBS Nominees] [ACN of RBS Nominees] [registered in [*]]of [Address of RBS Nominees] (the <b>Escrow Agent</b> )
4.	[Custodian] [ACN] [registered in [*]]of [Address of Custodian] (the <b>Custodian</b> )
<b>Recitals</b>	
A	The Escrow Parties propose that the Escrow Agent will hold the Surplus Securities in escrow on the terms and conditions set out in this Deed.
B	The Escrow Agent has appointed the Custodian to hold the Surplus Securities as its custodian for the purposes of this Deed.

**It is agreed** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**ASTC Settlement Rules** means the operating rules of the settlement facility provided by ASX Settlement and Transfer Corporation Pty Limited (ACN 008 504 532).

**ASX** means the Australian Securities Exchange.

**Business Day** means a day on which banks are open for general banking business in Sydney, New South Wales.

**Cash** means such part of the Surplus Securities that comprises money.

**CHES** means the Clearing House Electronic Subregister System, which provides for the electronic transfer, settlement and registration of securities in Australia.

**Delivery Confirmation** means a notice given by the Escrow Agent substantially in the form of **Schedule 5**.

**Delivery Notice** means a notice given by or on behalf of the Escrow Parties to the Escrow Agent in accordance with clause 6.1 substantially in the form of **Schedule 4**.



**Effective** means that term as defined in the Scheme Implementation Agreement.

**End Date** means that term as defined in the Scheme Implementation Agreement.

**Escrow Account** means the bank account in the name of the Escrow Agent having the following particulars:

Account Number:       [\*]

Account Name:         [\*]

Sydney Swift Code:    [\*]

**Escrow Amount** means at any time, all amounts standing to the credit of the Escrow Account.

**Escrow Holding** means the CHESS holdings in the name of the Escrow Agent having the HIN or HINs notified by the Escrow Agent to the Escrow Parties from time to time and, in respect of any shares, securities or financial products not quoted on the ASX, the registered holding of such securities in the name of the Escrow Agent.

**Escrow Interest** means interest which accrues on the Escrow Amount, and interest on interest whilst on deposit in the Escrow Account.

**Escrow Parties** means the parties to this Deed other than the Escrow Agent and the Custodian, and any one of them.

**Escrow Securities** means, at any time, all Securities held by the Escrow Agent in accordance with this Deed and any New Rights on the Escrow Securities held by the Escrow Agent (other than New Rights that form part of the Escrow Amount).

**HIN** means holder identification number, being the number used to identify a holder of securities on the CHESS subregister of an ASX-listed entity.

**Instruction Notice** means a notice given by or on behalf of the Escrow Parties to the Escrow Agent in accordance with clause 5.3 substantially in the form of **Schedule 3**.

**Lift Nominees** means Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 522).

**Liquidator** means one of Tony McGrath or Joseph Hayes acting in their capacity as joint liquidators of Lift Nominees acting pursuant to a power of attorney granted to them by the Escrow Parties.

**New Rights** means all assets, rights, powers and proceeds of any nature at any time attaching to, or arising out of a holding in, any Securities. It includes:

- (a) any Securities, any right to take up further shares or other securities or any allotment of further shares or other securities;
- (b) any shares or other securities resulting from the conversion, consolidation or sub division of Securities;
- (c) any certificate or other evidence of title to Securities or to anything specified in this definition; and
- (d) any distribution or dividend under, and any proceeds of, or of the disposal of, anything specified in this definition.

**Release Date** means that term as defined in the Scheme Implementation Agreement.

**Schemes** means that term as defined in the Scheme Implementation Agreement.

**Scheme Implementation Agreement** means the Scheme Implementation Agreement between, among others, the Escrow Parties dated on or about the date of this Deed.

**Securities** means the shares, securities or other financial products previously transferred by Lift Nominees to the Escrow Parties or their nominees and which are listed in **Schedule 1**.

**Securities Sale Notice** means a notice given by or on behalf of the Escrow Parties to the Escrow Agent in accordance with clause 5.1 substantially in the form of **Schedule 2**.

**Surplus Securities** means:

- (a) the securities transferred by Lift Nominees to Merrill Lynch or its nominees and which are listed in Annexure 4 to the Schemes;
- (b) cash in the amount of \$4,662,537; and
- (c) all other interest, dividends and other distributions received and continuing to be held by Merrill Lynch in respect of the Surplus Securities, whether received in the form of cash, securities or other assets.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule is a reference to a clause of, or a schedule to, this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to that agreement or document as amended, supplemented, novated, varied or replaced from time to time, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *dollars* or \$ is to Australian currency.



- (j) A reference to *writing* includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (k) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (l) A reference to an *agreement* includes any undertaking, Deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to it includes an agreement (as so defined) in writing and any certificate, notice, instrument or document of any kind.
- (m) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (n) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

## **2. Appointment of Escrow Agent and Effectiveness**

---

- 2.1 The Escrow Parties appoint the Escrow Agent as escrow agent for the purposes set out in this Deed, and the Escrow Agent accepts such appointment on the terms provided in this Deed.
- 2.2 This Deed shall become effective on the date that the Escrow Parties deliver Surplus Securities to the Escrow Agent under clause 3.1 and will continue in full force and effect until the fulfilment by the Escrow Agent of its obligations set out in clause 6 unless terminated subject to and in accordance with clause 7.
- 2.3 The Escrow Agent has appointed the Custodian to hold the Surplus Securities on its behalf.
- 2.3 The obligations of the Escrow Parties under this Deed are several.

## **3. Delivery to Escrow Agent**

---

- 3.1 The Escrow Parties shall, on execution of this Deed, deliver to the Escrow Agent the Surplus Securities as follows:
  - (a) the Escrow Parties shall remit the Cash to the Escrow Account with the Custodian; and
  - (b) the Escrow Parties shall transfer the Securities to the Escrow Holding with the Custodian, provided that, in relation to those Securities which are securities quoted on the ASX, the Escrow Parties will effect such transfer in accordance with the ASTC Settlement Rules and CHESS procedures.
- 3.2 The Escrow Agent shall hold the Escrow Amount and the Escrow Securities for the benefit of the Escrow Parties on trust in accordance with the terms of this Deed from the time of receipt by the Escrow Agent until the delivery of all Escrow Amount or Escrow Securities pursuant to clause 6.

- 3.3 Each Escrow Party irrevocably directs and authorises the Escrow Agent and the Escrow Agent agrees with each of the Escrow Parties that, subject to clauses 5 and 6:
- (c) the Escrow Agent must hold the Escrow Amount in the Escrow Account with the Custodian and no moneys may be paid or disbursed from the Escrow Account for any purpose other than in accordance with this Deed; and
  - (d) the Escrow Agent must hold the Escrow Holding with the Custodian and not transfer any Escrow Securities other than in accordance with this Deed.
- 3.4 The parties acknowledge and agree that all instructions, authorisations and directions given to the Escrow Agent under this Deed in respect of:
- (e) all moneys received in or credited to the Escrow Account and the remittance or application of the same; and
  - (f) all Escrow Securities transferred to the Escrow Holding,
- will be irrevocable unless otherwise agreed in writing by the Escrow Parties and notified to the Escrow Agent.

## **4. Escrow Account**

---

- 4.1 Each Escrow Party authorises and directs and the Escrow Agent agrees, to arrange for the Custodian to open, maintain and operate the Escrow Account with an Australian bank as an interest-bearing account in the name of the Escrow Agent in accordance with, and upon the terms and conditions of, this Deed solely for the purposes of receiving, holding and disbursing the Cash, the Escrow Interest and any other moneys credited to the Escrow Account in accordance with this Deed.
- 4.2 Payments to be made to or by the Escrow Agent under this Deed will be made:
- (a) without set-off or counterclaim; and
  - (b) free and clear of, and without deduction for or on account of, any present or future taxes, unless the Escrow Agent is compelled by law to make payment subject to any such tax.
- 4.3 Where the Escrow Agent receives any New Rights which consist of a payment of money, the Escrow Agent must promptly deposit those New Rights into the Escrow Account.
- 4.4 As between the Escrow Parties and the Escrow Agent, the Escrow Parties have a vested and indefeasible interest in all income of the Escrow Amount and the Escrow Securities.

## **5. Dealings in relation to Escrow Securities**

---

### **5.1 Authorised sales**

The Escrow Parties or a Liquidator on behalf of the Escrow Parties may issue to the Escrow Agent a Securities Sale Notice (which may be signed by a Liquidator on behalf of the Escrow Parties) at any time during the term of this Deed and, in relation to such a Securities Sale Notice:

- (a) in the event that a Securities Sale Notice is signed or given by a Liquidator on behalf of the Escrow Parties, the Escrow Agent shall, within 1 Business Day of receipt by the Escrow Agent of the Securities Sale Notice, provide a copy of the Securities Sale Notice to the Escrow Parties (**Securities Sale Notice Notification**);
- (b) in the event that a Securities Sale Notice is signed and given by the Escrow Parties personally (and not by a Liquidator on behalf of the Escrow Parties), the Escrow Parties authorise and direct and the Escrow Agent agrees, that on the receipt by the Escrow Agent of the Securities Sale Notice, the Escrow Agent shall use its best endeavours to procure the sale within 2 Business Days of the number and type of Escrow Securities specified in the Securities Sale Notice on the ASX and deposit the proceeds from the sale into the Escrow Account;
- (c) in the event that a Securities Sale Notice is signed or given by a Liquidator on behalf of the Escrow Parties, the Escrow Parties authorise and direct and the Escrow Agent agrees, that the Escrow Agent shall use its best endeavours to procure the sale, no earlier than 2 Business Days and no later than 4 Business Days after giving the Securities Sale Notice Notification, of the number and type of Escrow Securities specified in the Securities Sale Notice on the ASX, and deposit the proceeds from the sale into the Escrow Account; and
- (d) in the event that the Securities Sale Notice specifies a number of a type of Escrow Securities greater than the number of that type of Escrow Securities held at the time by the Escrow Agent, the Escrow Agent is only required in (b) to procure the sale of all of that type of Escrow Securities actually held and the Securities Sale Notice will be taken to be for that number.

## 5.2 Sharing of information

If the Escrow Agent receives any correspondence or other communications relating to the Escrow Securities from, or on behalf of, the issuer(s) of any Escrow Securities or any other person, the Escrow Agent must, within 1 Business Day of receiving such correspondence or other communications:

- (a) in respect of any correspondence, provide the Escrow Parties and Lift Nominees with copies of such correspondence; and
- (b) in respect of any other communications, provide the Escrow Parties and Lift Nominees with written details of such correspondence.

## 5.3 Corporate actions

To the extent that any correspondence or other communications referred to in clause 5.2 requests or requires the Escrow Agent or the Custodian, as the registered or beneficial holder of Escrow Securities, to take or consider taking any action or to do or consider doing anything in relation to the Escrow Securities, including (without limitation):

- (i) taking up New Rights;
- (ii) voting at any general meeting of security holders;

- (iii) participating in a dividend or distribution reinvestment plan; or
- (iv) accepting a takeover offer;

then, in relation to such correspondence or communication:

- (b) the Escrow Agent must not take any action or do anything in response to such correspondence or other communication, except in accordance with an Instruction Notice which the Escrow Parties or a Liquidator on behalf of the Escrow Parties may issue to the Escrow Agent (and which may be signed by a Liquidator on behalf of the Escrow Parties).
- (c) the Escrow Parties authorise and direct, and the Escrow Agent agrees, that on the receipt by the Escrow Agent of an Instruction Notice, the Escrow Agent must undertake the relevant action specified in the Instruction Notice within 1 Business Day after the Escrow Agent receives the Instruction Notice.

## 6. Release of the Escrow Amount and Escrow Securities

---

### 6.1 Delivery Notice

The Escrow Agent must pay the Escrow Amount and transfer the Escrow Securities in accordance with one or more Delivery Notices and, in relation to such Delivery Notices:

- (a) a Delivery Notice may be given by the Escrow Parties or by a Liquidator on behalf of the Escrow Parties (and may be signed by a Liquidator on behalf of the Escrow Parties);
- (b) in the event that a Delivery Notice is signed or given by a Liquidator on behalf of the Escrow Parties, the Escrow Agent shall, within 1 Business Day of receipt by the Escrow Agent of the Delivery Notice, provide a copy of the Delivery Notice to the Escrow Parties (**Delivery Notice Notification**);
- (c) in the event that a Delivery Notice is signed and given by the Escrow Parties personally (and not by a Liquidator on behalf of the Escrow Parties), the Escrow Parties authorise and direct and the Escrow Agent agrees, that on the receipt by the Escrow Agent of the Delivery Notice, the Escrow Agent shall, within 2 Business Days:
  - (i) remit from the Escrow Account the amount specified in the Delivery Notice; and/or
  - (ii) transfer the amount of Escrow Securities specified in the Delivery Notice, to the person or entity specified in the Delivery Notice, and
  - (iii) issue a Delivery Confirmation to the Escrow Parties and the Liquidators;
- (d) in the event that a Delivery Notice is signed or given by a Liquidator on behalf of the Escrow Parties, the Escrow Parties authorise and direct and the Escrow Agent agrees, that the Escrow Agent shall, no earlier than 2 Business Days and no later than 4 Business Days after giving the Delivery Notice Notification:

- (i) remit from the Escrow Account the amount specified in the Delivery Notice; and/or
  - (ii) transfer the amount of Escrow Securities specified in the Delivery Notice, to the person or entity specified in the Delivery Notice, and
  - (iii) issue a Delivery Confirmation to the Escrow Parties and the Liquidators; and
- (e) if the Delivery Notice specifies a number greater than the Escrow Amount and/or a number of a type of Securities greater than the number of that type of Escrow Securities held at the time by the Escrow Agent, the Escrow Agent is only required in (b) to remit the Escrow Amount and/or transfer the number of that type of Escrow Securities actually held (as the case may be) and the Delivery Notice will be taken to be for that amount and/or number.

## 7. Termination

---

This Deed shall immediately terminate if:

- (a) all of the Escrow Amount and Escrow Securities are released by the Escrow Agent; and
- (b) all Delivery Confirmations are delivered to the Escrow Parties in accordance with this Deed,

each in accordance with this Deed, save that termination will not prejudice the rights of the Escrow Parties to make a claim against the Escrow Agent for fraud, wilful misconduct or gross negligence or the rights of the Escrow Agent or the Custodian to make a claim under clause 8.6.

## 8. Escrow Agent

---

### 8.1 Duties of Escrow Agent

The Escrow Agent has no duties or responsibilities except those expressly contained in this Deed.

### 8.2 Not obliged to consult

The Escrow Agent is only subject to, and obliged to recognise, directions or notices given in accordance with this Deed and is entitled to rely on any notice which it in good faith believes to be genuine.

### 8.3 Delegation

The Escrow Agent may authorise any of its employees to perform any of its obligations under this Deed.

## 8.4 Liability of Escrow Agent

Neither the Escrow Agent nor any of its officers, agents or employees, is responsible to the Escrow Parties for, or will be liable in respect of:

- (a) any failure by any Escrow Party to perform its obligations; or
- (b) any action taken or omitted to be taken by it or them under this Deed, except in the case of its or their own breach of this Deed, negligence or wilful misconduct.

## 8.5 Escrow Agent may engage in any business

The Escrow Agent may engage in any kind of business with any Escrow Party as if it were not the Escrow Agent.

## 9. Custodian

---

### 9.1 Duties of Custodian

The Custodian has no duties or responsibilities to the Escrow Parties and is appointed by the Escrow Agent to act only on behalf of the Escrow Agent and on the instructions of the Escrow Agent.

### 9.2 Not obliged to consult

The Custodian is only subject to, and obliged to recognise, directions or notices given in accordance with its appointment by the Escrow Agent and is entitled to rely on any notice which it in good faith believes to be genuine.

### 9.3 Liability of Custodian

Neither the Custodian nor any of its officers, agents or employees, is responsible to the Escrow Parties or the Escrow Agent for, or will be liable in respect of:

- (a) any failure by any Escrow Party or the Escrow Agent to perform its obligations; or
- (b) any action taken or omitted to be taken by it or them under the Custodian's appointment by the Escrow Agent (including without limitation a breach of this Deed, or the negligence or wilful misconduct of any party to this Deed other than the Custodian).

### 9.4 Custodian may engage in any business

The Custodian may engage in any kind of business with the Escrow Agent or any Escrow Party as if it were not the Custodian.

## 10. Confidentiality

---

- (a) Subject to paragraph (b), the Escrow Agent and the Custodian must ensure that the contents of the Escrow Deed and the Escrow Agent's appointment under this Deed are kept confidential and are not disclosed or published other than in accordance with this Deed.

- (b) The Escrow Agent and the Custodian may disclose the contents of the Escrow Deed or the Escrow Agent's appointment under this Deed:
- (i) if it is required to do so by any applicable law or order of any court, government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity acting within its powers, but only to the extent required to comply with the applicable law or order; or
  - (ii) the contents of the Escrow Deed or the Escrow Agent's appointment are in the public domain other than as a result of a breach of this Deed, but only to the extent they are already in the public domain.

## 11. Further Assurances

---

Each party must do anything (including executing agreements and documents) necessary or desirable to give full effect to this Deed and the actions and transactions contemplated by it.

## 12. Notices

---

Any notice, demand, consent or other communication (a **Notice**) given or made under this Deed:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Deed:
  - (i) to the Escrow Parties      Level 38, Governor Phillip Tower 1 Farrer Place, Sydney NSW 2000  
Attention: Michael Horrax]  
Fax No: (02) 9225 6644
  - (ii) to Lift Nominees      Level 31, 60 Margaret Street  
Sydney NSW 2000  
Attention: Anthony McGrath and  
Joseph Hayes  
Fax No: (02) 9338 2699
  - (iii) to the Escrow Agent      [\*]  
Attention: [\*]  
Fax No: [\*]
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 5.00pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

## **13. Fees and Costs**

---

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All stamp duty (including fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the Escrow Parties equally.

## **14. Governing Law and Jurisdiction**

---

This Deed is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## **15. Counterparts**

---

This Deed may be executed in any number of counterparts, each of which shall be deemed an original. All counterparts together will be taken to constitute one instrument.

**Schedule 1**

**List of Securities**

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## Schedule 2

### Securities Sale Notice

---

To: [RBS Nominees Limited]

Merrill Lynch International and, or Merrill Lynch International (Australia) Ltd, being parties to the Escrow Deed (the **Escrow Deed**) dated [ \* ], authorises and instructs you in accordance with clause 5.1 of the Escrow Deed, to sell the following Escrow Securities: [insert type and number of Securities] in accordance with the Escrow Deed and deposit the proceeds of the sale into the Escrow Account.

Signed: \_\_\_\_\_

for and on behalf of

Merrill Lynch International (Australia) Ltd

Dated [ \* ]

## Schedule 3

### Instruction Notice

---

To: [RBS Nominees Limited]

Merrill Lynch International and, or Merrill Lynch International (Australia) Ltd, being parties to the Escrow Deed (the **Escrow Deed**) dated [ \* ], authorise and instruct you in accordance with clause 5.2 of the Escrow Deed, to take the following action with respect to the following Escrow Securities:

Escrow Securities: [ \* ]

Action: [ \* ]

Signed: \_\_\_\_\_

for and on behalf of

Merrill Lynch International (Australia) Ltd

Dated [ \* ]

## Schedule 4

### Delivery Notice

---

To: [RBS Nominees Limited]

Merrill Lynch International and, or Merrill Lynch International (Australia) Ltd, being parties to the Escrow Deed (the **Escrow Deed**) dated [\*]: authorise and direct you in accordance with clause 6.1 of the Escrow Deed, to transfer \$[\*] from the Escrow Account [and/or] the following Escrow Securities: [insert number and type of Securities] to [\*] [Insert CHESS holding details].

Signed:

---

for and on behalf of

Merrill Lynch International (Australia) Ltd

Dated [\*]

## Schedule 5

### Delivery Confirmation

---

To: [Escrow Parties]

Dear Sirs

#### **Escrow Deed – Delivery Confirmation**

We refer to the Escrow Deed (**Escrow Deed**) dated [ ] between ourselves and each of the addressees to this Delivery Confirmation. This letter is a Delivery Confirmation that we are required to provide to you pursuant to the Escrow Deed.

We confirm that we have:

- remitted \$[ ] from the Escrow Account; and/or
- transferred [ ] of the following Escrow Securities: [insert type of Escrow Securities],

to the following entity: [ ].

Signed: \_\_\_\_\_ [RBS Nominees]

Dated [ ]

# Escrow Ancillary Deed

Merrill Lynch International

Merrill Lynch International (Australia) Ltd

Lift Capital Nominees No 1 Pty Limited (in liquidation)

Tony McGrath and Joe Hayes in their capacity as joint  
liquidators of Lift Capital Nominees No 1 Pty Limited (in  
liquidation)

Escrow of Surplus Securities

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)

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<b>Date</b>	2009
<b>Parties</b>	
1.	<b>Merrill Lynch International (ARBN 125 336 567)</b> of 2 King Edward Street London EC1AHQ United Kingdom ( <i>MLI</i> )
2.	<b>Merrill Lynch International (Australia) Ltd (ACN 002 892 846)</b> of Level 38, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000 ( <i>MLIA</i> )
3.	<b>Tony McGrath and Joseph Hayes</b> in their capacity as joint liquidators of Lift Capital Nominees No 1 Pty Limited (in liquidation) ( <i>Liquidators</i> )
<b>Recitals</b>	
A	MLI and MLIA are party to an Escrow Deed dated on or around the date of this Agreement (the <i>Escrow Deed</i> ).
B	This Deed sets out the terms and conditions upon which MLI and MLIA agree to exercise certain rights under the Escrow Deed and other ancillary matters between the parties in relation to the Escrow Deed.

**It is agreed** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Irrevocable Authority** means the irrevocable authority given by the Escrow Parties to the Liquidators pursuant to the Power of Attorney.

**Lift Capital** means Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500).

**Lift Clients** means each person who entered into a facility agreement with Lift Capital and borrowed money from Lift Capital to purchase securities and who, arising out of the transfer by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a debt or claim admissible to proof against one or both of the Lift Capital or Lift Nominees within the meaning of section 553 of the *Corporations Act 2001* (Cth).

**Power of Attorney** means the irrevocable power of attorney, substantially in the form set out in the Schedule, granted by the Escrow Parties to the Liquidators severally to take certain actions on behalf of the Escrow Parties for the purposes of the Escrow Deed



## 1.2 Escrow Deed definitions

Definitions in the Escrow Deed apply in this Deed unless the context requires otherwise or the relevant term is defined in this Deed.

## 1.3 Interpretation

The provisions of clause 1.2 of the Escrow Deed are incorporated in, and apply to, this Deed as if set out in full.

## 2. Delivery to Escrow Agent

---

- 2.1 The Escrow Parties must, on execution of this Deed, deliver to the Escrow Agent the Surplus Securities to be held in accordance with the Escrow Deed.

## 3. Delivery Notices

---

### 3.1 Delivery Notices not to be given

The parties agree that neither the Escrow Parties nor a Liquidator on behalf of the Escrow Parties shall give any Delivery Notice to the Escrow Agent before the following dates (as applicable):

- (a) if the Schemes become Effective and are Effective on the Release Date, the Release Date;
- (b) if the Schemes become Effective and are no longer Effective on the Release Date, the Release Date; and
- (c) if the Schemes do not become Effective before the End Date, the End Date;

and no Delivery Notice shall be given other than in accordance with clauses 3.2 or 3.3 as applicable.

### 3.2 Delivery Notices if Schemes become Effective

If paragraph (a) of clause 3.1 applies, then a Liquidator may on or after the Release Date, pursuant to the Irrevocable Authority, execute and give one or more Delivery Notices to the Escrow Agent, directing the Escrow Agent to pay the Escrow Amount and transfer the Escrow Securities to Lift Nominees or a Lift Client.

### 3.3 Delivery Notices if Schemes do not become Effective or cease to be Effective

If either paragraph (b) or paragraph (c) of clause 3.1 applies, then the Escrow Parties may execute and give one or more Delivery Notices to the Escrow Agent, directing the Escrow Agent to pay the Escrow Amount and transfer the Escrow Securities to any person, except that the Escrow Parties shall not give a Delivery Notice to the Escrow Agent unless one of the following conditions has been satisfied on or before the date on which the Delivery Notice is given:



- (a) the Escrow Parties have given the Liquidators notice in writing of its intention to issue a Delivery Notice more than 14 days before the date on which the Delivery Notice is given;
- (b) the Liquidators have consented in writing to the Escrow Parties giving the Delivery Notice; or
- (c) the Delivery Notice is given pursuant to an obligation which the Escrow Parties have to cause the Escrow Amount or the Escrow Securities to be delivered to a person under either an order of an Australian court binding on the Escrow Parties or a requirement of a law to which the Escrow Parties are subject.

## 4. Securities Sale Notices

---

- 4.1 The Escrow Parties shall not give a Securities Sale Notice to the Escrow Agent under clause 5.1 of the Escrow Deed unless, prior to giving such Securities Sale Notice, the Escrow Parties have received a request from the Liquidators to give the Securities Sale Notice or the Securities Sale Notice is given by the Liquidators on behalf of the Escrow Parties, pursuant to the Irrevocable Authority. Prior to making such a request or giving such Securities Sale Notice pursuant to the Irrevocable Authority, the Liquidators must have:
- (a) obtained a written consent from one or more relevant Lift Clients to the sale of relevant Surplus Securities; and
  - (b) formed the view that the relevant Lift Clients have a proprietary claim to the relevant Surplus Securities.
- 4.2 The Liquidators must not give a Securities Sale Notice to the Escrow Agent if paragraph (b) or (c) of clause 3.1 applies.

## 5. Instruction Notices

---

- 5.1 The Escrow Parties shall not give an Instruction Notice to the Escrow Agent under clause 5.3 of the Escrow Deed unless, prior to giving such Instruction Notice, the Escrow Parties have received a request from the Liquidators to give the Instruction Notice or the Instruction Notice is given by the Liquidators on behalf of the Escrow Parties, pursuant to the Irrevocable Authority.
- 5.2 The Liquidators must not give an Instruction Notice to the Escrow Agent if paragraph (b) or (c) of clause 3.1 applies.

## 6. Return of Irrevocable Authority

---

In the event paragraph (b) or (c) of clause 3.1 applies, the Liquidators:

- (a) must not do any act pursuant to the Irrevocable Authority; and

- (b) must within a reasonable time return the Irrevocable Authority to the Escrow Parties.

## **7. Reservation of Rights**

---

Each party reserves all rights and claims it may have in connection with any Surplus Securities, the Escrow Amount and the Escrow Securities (including without limitation claims regarding the beneficial ownership of any Surplus Securities, the Escrow Amount and the Escrow Securities).

## **8. Governing Law and Jurisdiction**

---

This Deed is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## **9. Counterparts**

---

This Deed may be executed in any number of counterparts, each of which shall be deemed an original. All counterparts together will be taken to constitute one instrument.

**Executed** in Sydney

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Merrill Lynch International (Australia) Ltd:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a Deed by **Merrill Lynch International (ARBN 125 336 567)** by its authorised representative in the presence of:

\_\_\_\_\_  
Authorised Representative Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Lift Capital Nominees No 1 Pty Limited (in liquidation)** by its joint and several liquidators in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath / Joseph David Hayes

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
\_\_\_\_\_

**Signed, sealed and delivered by Anthony  
Gregory McGrath** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
\_\_\_\_\_

**Signed, sealed and delivered by Joseph  
David Hayes** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Joseph David Hayes

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
\_\_\_\_\_

**Schedule – The Power of Attorney**

## Power of Attorney

Merrill Lynch International  
Merrill Lynch International (Australia) Ltd

Allens Arthur Robinson  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000  
Australia  
Tel 61 2 9230 4000  
Fax 61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)

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# Power of Attorney

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**Form of Power of Attorney**

<b>Date</b>	2009
<b>Party</b>	<p><b>Merrill Lynch International (ARBN 125 336 567)</b> of 2 King Edward Street London EC1AHQ United Kingdom (<i>MLI</i>)</p> <p><b>Merrill Lynch International (Australia) Ltd (ACN 002 892 846)</b> of Level 38, Governor Philip Tower, 1 Farrer Place, Sydney NSW 2000 (together with MLI, <i>the Principals</i>)</p>
<b>Recitals</b>	<p>A The Principals are party to an Escrow Deed and the Principals and Attorneys are party to an Escrow Ancillary Deed dated on or about the date of this Power of Attorney.</p> <p>B This power of attorney is executed by the Principal to give effect to the ability of the Liquidators to give certain instructions to the Escrow Agent on behalf of the Principal for the purposes of the Escrow Deed and the Escrow Ancillary Deed.</p>

**IT IS DECLARED** as follows.

**1. Definitions**

**Delivery Notice** has the meaning contained in the Escrow Deed.

**Escrow Agent** means [ ]

**Escrow Ancillary Deed** means the deed between the Principal and Lift Nominees dated on or around the date of this Power of Attorney.

**Escrow Deed** means the deed between the Principal, Lift Nominees, [ ] and [ ] dated on or around the date of this Power of Attorney.

**Instruction Notice** has the meaning contained in the Escrow Deed.

**Lift Nominees** means Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)

**Liquidator** means one of Tony McGrath or Joseph Hayes acting in their capacity as joint liquidators of Lift Nominees acting pursuant to a power of attorney granted to them by the Principal.

**Securities Sales Notice** has the meaning contained in the Escrow Deed.

---

## 2. Appointment

The Principals jointly appoint each Liquidator (each, **an Attorney**) severally as the attorney of the Principal with the powers and authorities conferred by this Deed.

---

## 3. Power

3.1 Each Attorney may in the Principals' name or in the Attorney's own name and as the Principals' act, give:

- (a) a Delivery Notice to the Escrow Agent where clause 3.2 of the Escrow Ancillary Deed permits it to do so;
- (b) a Securities Sales Notice to the Escrow Agent where clause 4 of the Escrow Ancillary Deed permits it to do so; and
- (c) an Instruction Notice to the Escrow Agent where clause 5 of the Escrow Ancillary Deed permits it to do so.

3.2 Prior to doing any act or thing authorised by this Deed an Attorney must notify the Principals of the act or thing which the Attorney proposes to do in writing by email to the following email addresses:

michael\_horrax@ml.com; and  
andrew.carter@blakedawson.com

---

## 4. Ratification

The Principals agree to ratify and confirm whatever an Attorney does under this Deed.

---

## 5. Conflict of Interest

An Attorney may enter into a transaction or do anything (and that transaction or thing will be valid) even if the transaction conflicts with the Principal's interest.

---

## 6. Liability of Attorney

The Principals acknowledge that the purpose of the Liquidators' appointment is to facilitate the arrangements between the Principals and Lift Nominees under the Escrow Deed and the Escrow Ancillary Deed. The Attorney shall have no personal liability to the Principals in respect of any act or omission done pursuant to this Deed except in the case of fraud or gross negligence on the part of the Liquidators.

---

## 7. Irrevocability

- (a) This Deed is given for valuable consideration. It is irrevocable.

- (b) Any person dealing with an Attorney in good faith may rely on a written statement by the Attorney to the effect that the Attorney powers under this Deed are irrevocable as conclusive evidence of that fact.

## 8. Personal Liability and No Warranty

---

An Attorney's exercise of any power under this Deed does not involve on the part of the Attorney, any partner of the Attorney or any entity (including a partnership) of which the Attorney is an officer or employee, an express or implied warranty as to the validity of this Deed or the Attorney's authority to exercise the power.

## 9. Registration

---

The Principal shall register this Deed in any jurisdiction where registration is necessary or advisable for validity. Any Attorney may register this Deed.

## 10. Governing Law

---

This Deed is governed by the laws of New South Wales.

**EXECUTED** and delivered as a deed in Sydney

**Executed** as a Deed in accordance with section 127 of the *Corporations Act 2001* by **Merrill Lynch International (Australia) Ltd:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a Deed by **Merrill Lynch International (ARBN 125 336 567)** by its authorised representative in the presence of:

\_\_\_\_\_  
Authorised Representative Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**Executed and delivered as a Deed** in Sydney

**Executed** as a Deed by **Merrill Lynch International (ARBN 125 336 567)** by its authorised representative in the presence of:

\_\_\_\_\_  
Authorised Representative Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**Executed** as a Deed in accordance with section 127 of the *Corporations Act 2001* by **Merrill Lynch International (Australia) Ltd:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a Deed in accordance with section 127 of the *Corporations Act 2001* by **[RBS Nominees]:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

# Escrow Deed

**Executed** as a Deed in accordance with section 127 of the *Corporations Act 2001* by **[Custodian]**:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Schedule 4**

**Deed of release between the Swaby and Crabb Claimants and the Lift  
Companies**

---

# Deed of Release

Lift Capital Partners Pty Limited (in liquidation)

Lift Capital Nominees No 1 Pty Limited (in liquidation)

Anthony McGrath

Joseph Hayes

Ms Gillian Swaby

Mr Rick Wayne Crabb

Mr Rick Wayne Crabb and Ms Carol Jean Crabb in their  
capacity as trustees of the Intermax Trust

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)



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**Date**

November 2009

**Parties**

1. **Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500)** registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (**Lift Capital**)
2. **Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)** registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (**Lift Nominees**)
3. **Anthony McGrath and Joseph Hayes** in their capacity as liquidators of Lift Capital and Lift Nominees of McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 (**the Liquidators**)
4. **Gillian Swaby**
5. **Rick Wayne Crabb**
6. **Rick Wayne Crabb and Carol Jean Crabb** in their capacity as trustees of the Intermax Trust

**Recitals**

- A The Swaby and Crabb Claimants entered into lending arrangements with Lift Capital on 22 August 2005, 7 September 2005 and 27 August 2007. As security for these lending arrangements, the Swaby and Crabb Claimants mortgaged or purported to mortgage certain securities in favour of Lift Capital which securities were transferred to Lift Nominees.
- B The Liquidators were appointed as liquidators of the Lift Companies on 12 November 2008, having previously acted as the administrators of those companies from 10 April 2008 until 12 November 2008.
- C The Swaby and Crabb Claimants brought claims against the Lift Companies and Merrill Lynch arising from the transfer by Lift Nominees of certain securities to Merrill Lynch and the subsequent sale of some of those securities by Merrill Lynch.
- D The parties to this deed wish to enter into a mutual deed of release.

**It is agreed** as follows.

## 1. Definitions and Interpretation

---

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Administration** means the administration of the Lift Companies pursuant to Part 5.3A of the Corporations Act, which commenced on the appointment of administrators on 10 April 2008.

**Claim** means any debt, claim, cause of action, proceeding, suit, liability or demand which arose prior to the date of this Deed (whether prospective or contingent, including one the amount of which is not ascertained, and including causes of action, provable claims in a liquidation and costs (whether or not the subject of a court order)) and which arose out of or in connection with any facts, matters or circumstances relating in any way to the Lift Companies including:

- (a) the business of the Lift Companies;
- (b) the Administration or Liquidation of the Lift Companies;
- (c) the transfer of securities by the Lift Companies to Merrill Lynch and its Related Bodies Corporate in the period from 7 June 2005 to 10 April 2008;
- (d) the sell-down of securities transferred by the Lift Companies to Merrill Lynch conducted by Merrill Lynch in the period from 10 April 2008 to 17 April 2008;
- (e) the retention by Merrill Lynch of securities transferred by the Lift Companies to Merrill Lynch in the period after 10 April 2008;
- (f) the Transaction Documents; or
- (g) the circumstances or matters referred to in the NSW Proceeding or the WA Proceeding.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Effective** means, when used in relation to the Schemes, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Schemes.

**Lift Companies** means Lift Capital Partners Pty Limited (in liquidation) and Lift Capital Nominees No 1 Pty Limited (in liquidation) or either one of them, as applicable.

**Liquidation** means the liquidation of the Lift Companies which commenced on the appointment of Liquidators on 8 November 2008.

**Merrill Lynch** means Merrill Lynch International (ARBN 125 336 567) and Merrill Lynch International (Australia) Limited (ACN 002 892 846) or either one of them, as applicable.

**NSW Proceeding** means Supreme Court of NSW Proceeding No 2661 of 2008 between the Lift Companies, the Liquidators, Merrill Lynch and others.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Release Date** has the meaning given to it in the Schemes.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between a Lift Company and its Scheme Creditors, substantially in the form set out in Schedule 1 to the Scheme Implementation Agreement, or any other such Scheme as the parties to the Scheme Implementation Agreement may agree in writing, and a reference to **Schemes** shall be a reference to both a Scheme between Lift Capital and its Scheme Creditors and to a Scheme between Lift Nominees and its Scheme Creditors.

**Scheme Claim** means a Claim against a Lift Company, the circumstances giving rise to which occurred on or before 10 April 2008.

**Scheme Creditor** means a creditor of a Lift Company with a Scheme Claim, excluding the Swaby and Crabb Claimants and Merrill Lynch.

**Scheme Implementation Agreement** means the Scheme Implementation Agreement between, among others, the Lift Companies, Merrill Lynch and the Liquidators entered into in about November 2009.

**Swaby and Crabb Claimants** means Ms Gillian Swaby, Mr Rick Wayne Crabb and Mr Rick Wayne Crabb and Ms Carol Jean Crabb as trustee of the Intermax Trust.

**Transaction Documents** means:

- (a) Australian Master Securities Lending Agreement between Lift Capital and Merrill Lynch Equities (Australia) Limited dated 7 June 2005;
- (b) the Global Master Securities Lending Agreements between Lift Capital and MLIA dated 13 February 2007;
- (c) the Global Master Securities Lending Agreements between Lift Capital and MLI dated 13 February 2007 (including a UK Tax Addendum);
- (d) the International Prime Broking Agreement between MLI and Lift Capital dated 12 March 2007;
- (e) the Australian Addendum to International Prime Broking Agreement between MLI, MLIA and Lift Capital dated 13 February 2007;
- (f) the International Prime Broking Agreement between MLI and Lift Capital dated 21 November 2007;
- (g) the Australian Addendum to International Prime Broking Agreement between MLI, MLIA and Lift Capital dated 21 November 2007;

**WA Proceeding** means Proceeding WAD 66 of 2008 in the Federal Court of Australia between the Swaby and Crabb Claimants, Lift Capital, MLI, MLIA and various Related Body Corporates of Merrill Lynch.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.



- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a clause is a reference to a clause of this Deed.
- (d) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (e) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (j) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

## 2. Condition Precedent

---

The parties' obligations under this Deed are subject to: the Schemes becoming Effective.

## 3. Release, covenant and acknowledgment by the Lift Companies and the Liquidators

---

### 3.1 Release by the Liquidators and the Lift Companies

With effect from the Release Date and providing that the Schemes are Effective at the Release Date, the Lift Companies and the Liquidators (in their capacity as liquidators of the Lift Companies) release the Swaby and Crabb Claimants from all Claims.

## **3.2 Covenant by the Liquidators and the Lift Companies**

The Lift Companies and the Liquidators (in their capacity as liquidators of the Lift Companies) covenant in favour of the Swaby and Crabb Claimants not to bring or pursue any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 3.1.

## **3.3 Acknowledgment by the Liquidators**

With effect from the Release Date and providing that the Schemes are Effective at the Release Date, the Liquidators agree and acknowledge that the Swaby and Crabb Claimants are not debtors of a Lift Company and that the Lift Companies have no Claims against any Swaby and Crabb Claimant.

## **4. Release and covenant by the Swaby and Crabb Claimants**

---

### **4.1 Release by the Swaby and Crabb Claimants**

With effect from the Release Date and providing that the Schemes are Effective at the Release Date, the Swaby and Crabb Claimants release the Lift Companies and the Liquidators (in their capacity as liquidators of the Lift Companies) from all Claims.

### **4.2 Covenant by the Swaby and Crabb Claimants**

The Swaby and Crabb Claimants covenant in favour of the Lift Companies, the Liquidators (in their capacity as liquidators of the Lift Companies) not to bring or pursue any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 4.1.

## **5. Liability**

---

Each party does not, by entering into this deed, make any admission of liability to any other party.

## **6. Termination**

---

This Deed will terminate and cease to be of effect if the Schemes cease to be Effective prior to the Release Date. The termination of this Deed will not affect any right or obligation which may have arisen under this Deed as a result of any act or omission which took place prior to the termination of this Deed.

## **7. Acknowledgment and Representation**

---

Each party acknowledges that:

- (a) it is aware that it, its legal advisers or other agents or advisers may discover facts different from or in addition to the facts it now knows or believes to be true with respect to the subject matter of this Deed; and

- (b) it fully, finally, absolutely and forever settles according to the provisions of this Deed any and all Claims which it releases under clauses 3 and 4.

---

## 8. Entire Agreement

This Deed contains the entire agreement between the parties with respect to their subject matter. They set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

---

## 9. Assignment

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party.

---

## 10. No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

---

## 11. Bar to Proceedings

Notwithstanding anything to the contrary, this Deed may be produced by any person having the benefit of any release or covenant not to sue under this Deed as a complete bar to any Claim in respect of the matters subject to clauses 3 and 4.

---

## 12. Further Assurances

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

---

## 13. No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

---

## 14. Governing Law and Jurisdiction

This Deed is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of courts exercising jurisdiction there with respect to any legal action

or proceedings arising out of or in connection with or in any way related to this Deed or its subject matter, and waives any right to object to the venue or to claim that those courts are an inconvenient forum or that the courts or another place are a more appropriate forum.

## **15. Counterparts**

---

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**Executed as a Deed** in Sydney.

**Signed, sealed and delivered by Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500)** by its joint and several liquidator in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath / Joseph David Hayes

\_\_\_\_\_  
Print Name

**Signed, sealed and delivered by Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)** by its joint and several liquidator in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath / Joseph David Hayes

\_\_\_\_\_  
Print Name

**Signed, sealed and delivered by Anthony Gregory McGrath** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

# Deed of Release

**Signed, sealed and delivered by Joseph David Hayes** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered by Gillian Swaby** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered by Rick Wayne Crabb** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Signed, sealed and delivered by the Intermax Trust by its trustee** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Rick Wayne Crabb / Carol Jean Crabb

\_\_\_\_\_  
Print Name

---

**ANNEXURE D - SCHEME DEED OF RELEASE AND INDEMNITY**

# Scheme Deed of Release and Indemnity

Lift Capital Partners Pty Limited (in liquidation)  
Lift Capital Nominees No 1 Pty Limited (in liquidation)  
Anthony McGrath  
Joseph Hayes  
Merrill Lynch International  
Merrill Lynch International (Australia) Ltd  
The Lift Clients (as defined)

Allens Arthur Robison  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)

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<b>Date</b>	2009
<b>Parties</b>	
1.	<b>Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500)</b> registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 ( <b>Lift Capital</b> )
2.	<b>Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)</b> registered in Victoria of c/- McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 ( <b>Lift Nominees</b> )
3.	<b>Anthony McGrath and Joseph Hayes</b> in their capacity as liquidators of Lift Capital and Lift Nominees of McGrath Nicol, Level 31, 60 Margaret Street Sydney NSW 2000 ( <b>the Liquidators</b> )
4.	<b>Merrill Lynch International (ARBN 125 336 567)</b> incorporated in the United Kingdom of 2 King Edward Street London EC1A 1HQ United Kingdom ( <b>MLI</b> ).
5.	<b>Merrill Lynch International (Australia) Ltd (ACN 002 892 846)</b> of Level 38, Governor Philip Tower, 1 Farrer Place Sydney NSW 2000 ( <b>MLIA</b> )
6.	<b>The Lift Clients</b> (as defined)
<b>Recitals</b>	
A	The Liquidators were appointed as liquidators of the Lift Companies on 12 November 2008, having previously acted as the administrators of those companies from 10 April 2008 until 12 November 2008.
B	The Liquidators, in their capacity as liquidators of the Lift Companies, have foreshadowed claims against Merrill Lynch arising from the transfer by Lift Nominees of certain securities, that it previously held on behalf of Lift Clients, to Merrill Lynch and which were subsequently sold by Merrill Lynch.
C	The Lift Clients, or some of them, have foreshadowed claims against Merrill Lynch and the Lift Companies arising from the transfer by Lift Nominees of certain securities, that it previously held on behalf of Lift Clients, to Merrill Lynch and which were subsequently sold by Merrill Lynch.
D	Merrill Lynch denies any liability in respect of any of the foreshadowed claims. Merrill Lynch has foreshadowed cross-claims against the Lift Companies in the event that proceedings are brought against them by the Lift Companies or the Lift Clients.



- E Lift Capital, Lift Nominees, the Liquidators, MLI and MLIA have entered into a Scheme Implementation Agreement dated 10 November 2009 which sets out a basis for the resolution of the claims foreshadowed by the Liquidators and the Lift Clients and the cross-claims foreshadowed by Merrill Lynch.

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Administration** means the administration of the Lift Companies pursuant to Part 5.3A of the Corporations Act, which commenced on the appointment of administrators on 10 April 2008.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in New South Wales.

**Cash Contribution** means \$10.3 million.

**Claim** means any debt, claim, cause of action, proceeding, suit, liability or demand which arose prior to the date of this Deed (whether prospective or contingent, including one the amount of which is not ascertained, and including causes of action, provable claims in a liquidation or under the terms of a deed of company arrangement and costs (whether or not the subject of a court order)) and which arose out of or in connection with any facts, matters or circumstances relating in any way to the Lift Companies including:

- (a) the business of the Lift Companies;
- (b) the Administration or Liquidation of the Lift Companies;
- (c) the transfer of securities by the Lift Companies to Merrill Lynch and its Related Bodies Corporate in the period from 7 June 2005 to 10 April 2008;
- (d) the sell-down of securities transferred by the Lift Companies to Merrill Lynch conducted by Merrill Lynch in the period from 10 April 2008 to 17 April 2008;
- (e) the retention by Merrill Lynch of securities transferred by the Lift Companies to Merrill Lynch in the period after 10 April 2008;
- (f) the Transaction Documents; or
- (g) the circumstances or matters referred to in the NSW Proceeding or the WA Proceeding.

**Corporations Act** means the *Corporations Act 2001* (Cth).



**Effective** means, when used in relation to the Schemes, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Schemes.

**Financial Product** has the meaning given in the Corporations Act.

**Lift Client** means:

- (a) any Scheme Creditor who transferred, or asserts it transferred, any Financial Product to a Lift Company;
- (b) any Scheme Creditor who instructed, or asserts it instructed, a Lift Company to purchase any Financial Product on its behalf or to be held to its account; or
- (c) any person who entered into a facility agreement with Lift Capital and borrowed money from Lift Capital to purchase securities and who, arising out of the transfer by Lift Nominees of securities that it held on behalf of that person to Merrill Lynch, has a debt or claim admissible to proof against one or both of the Lift Companies within the meaning of section 553 of the Corporations Act or their assignees

and includes the persons named in the Lift Companies' records as the account holders of the accounts listed by number under the heading "Client ID" in Schedule 1 to this Deed.

**Lift Companies** means Lift Capital Partners Pty Limited (in liquidation) and Lift Capital Nominees No 1 Pty Limited (in liquidation) or either one of them, as applicable.

**Liquidation** means the liquidation of the Lift Companies which commenced on the appointment of Liquidators on 8 November 2008.

**Merrill Lynch** means MLI and MLIA or either one of them, as applicable.

**NSW Proceeding** means Supreme Court of NSW Proceeding No 2661 of 2008 between the Lift Companies, the Liquidators, Merrill Lynch and others.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Related Entity** means, in relation to a person, a Related Body Corporate, officer, employee or agent of the person or an officer, employee or agent of a Related Body Corporate of the person.

**Release Date** has the meaning given to it in the Schemes.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between a Lift Company and its Scheme Creditors, substantially in the form set out in Schedule 1 to the Scheme Implementation Agreement, or such other Scheme as the parties may agree in writing, and a reference to **Schemes** shall be a reference to both a Scheme between Lift Capital and its Scheme Creditors and to a Scheme between Lift Nominees and its Scheme Creditors.

**Scheme Application** means an application by the Liquidators for the Court to make orders approving the Schemes under section 411(4)(b) of the Corporations Act.

**Scheme Claim** means a Claim against a Lift Company, the circumstances giving rise to which occurred on or before 10 April 2008.



**Scheme Creditor** means a creditor of a Lift Company with a Scheme Claim, excluding the Swaby and Crabb Claimants and Merrill Lynch.

**Scheme Implementation Agreement** means the Scheme Implementation Agreement between the Lift Companies, Merrill Lynch and the Liquidators dated 10 November 2009.

**Surplus Securities** means:

- (a) the securities transferred by Lift Nominees to Merrill Lynch or its nominees and which are listed in Annexure 4 to the Schemes;
- (b) cash in the amount of \$4,662,537; and
- (c) all other interest, dividends and other distributions received and continuing to be held by Merrill Lynch in respect of the Surplus Securities, whether received in the form of cash, securities or other assets.

**Swaby and Crabb Claimants** means Ms Gillian Swaby, Mr Rick Crabb and Mr Rick Crabb and Ms Carol Crabb as trustee of the Intermax Trust.

**Transaction Documents** means:

- (a) Australian Master Securities Lending Agreement between Lift Capital and Merrill Lynch Equities (Australia) Limited dated 7 June 2005;
- (b) the Global Master Securities Lending Agreements between Lift Capital and MLIA dated 13 February 2007;
- (c) the Global Master Securities Lending Agreements between Lift Capital and MLI dated 13 February 2007 (including a UK Tax Addendum);
- (d) the International Prime Broking Agreement between MLI and Lift Capital dated 12 March 2007;
- (e) the Australian Addendum to International Prime Broking Agreement between MLI, MLIA and Lift Capital dated 13 February 2007;
- (f) the International Prime Broking Agreement between MLI and Lift Capital dated 21 November 2007;
- (g) the Australian Addendum to International Prime Broking Agreement between MLI, MLIA and Lift Capital dated 21 November 2007;

**WA Proceeding** means Proceeding WAD 66 of 2008 in the Federal Court of Australia between the Swaby and Crabb Claimants, Lift Capital, MLI, MLIA and various Related Body Corporates of Merrill Lynch.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a clause is a reference to a clause of this Deed.



- (d) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (e) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (j) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

## **2. Obligations under the Schemes and the Scheme Implementation Agreement**

Notwithstanding any other provision of this Deed, no provision of this Deed or anything to be done pursuant to this Deed shall constitute a release of, relieve any party from, vary or otherwise affect any right or obligation which any party may have under the Schemes or the Scheme Implementation Agreement.

## **3. Release, covenant and indemnity by the Lift Clients**

### **3.1 Release by the Lift Clients**

With effect from the Release Date, each of the Lift Clients, acting through the Liquidators as its duly appointed agent and attorney, releases Merrill Lynch and each of its Related Entities from all Claims.

### **3.2 Covenant by the Lift Clients**

The Lift Clients covenant in favour of Merrill Lynch and each other person in favour of whom a release is given under clause 3.1 not to bring or pursue, procure that a third party bring or pursue, provide financial support for or otherwise support any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 3.1.



### **3.3 Indemnity from the Lift Clients**

On and from the Release Date, each Lift Client indemnifies and will hold harmless Merrill Lynch and its Related Entities against any loss or liability to the extent arising from, related to or connected with:

- (a) a breach by that Lift Client of clause 3.2; and
- (b) subject to clause 3.4, a Claim brought by a person (whether or not for contribution or indemnity) against Merrill Lynch or any of its Related Entities in connection with:
  - (i) a Claim by that Lift Client; or
  - (ii) a Claim by any transferee of a Claim of that Lift Client,in each case, in respect of any matter that is the subject of a release under clause 3.1.

### **3.4 Limitation on Indemnity**

A Lift Client's total liability to Merrill Lynch and its Related Entities under clause 3.3(b) will be limited to, and must not exceed, the amount equal to the aggregate of:

- (a) the amounts actually received by the Lift Client under the Schemes; and
- (b) the proceeds actually received by the Lift Client or any transferees of Claims of the Lift Client in respect of any Third Party Claims (net of any costs and expenses incurred by the Lift Client or the transferees of Claims of the Lift Client in the Third Party Claims).

For the purposes of this clause 3.4, "Third Party Claim" means a Claim by the Lift Client, or a Claim by a transferee of a Claim of the Lift Client, referred to in clause 3.3(b)(i) or 3.3(b)(ii) in connection with which a claim for indemnification is made by Merrill Lynch or any of its Related Entities under clause 3.3.

## **4. Release and covenant by the Lift Companies and the Liquidators**

---

### **4.1 Release by the Liquidators and the Lift Companies**

With effect from the Release Date, the Lift Companies and the Liquidators (in their capacity as liquidators of the Lift Companies) release Merrill Lynch and each of its Related Entities from all Claims.

### **4.2 Covenant by the Liquidators and the Lift Companies**

The Lift Companies and the Liquidators (in their capacity as liquidators of the Lift Companies) covenant in favour of Merrill Lynch and each other person in favour of whom a release is given under clause 4.1 not to bring or pursue, procure that a third party bring or pursue, provide financial support for or otherwise support any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 4.1.



---

## 5. Release and covenant by Merrill Lynch

---

### 5.1 General release by Merrill Lynch

With effect from the Release Date, Merrill Lynch release the Lift Companies, each of their Related Bodies Corporate, the Liquidators (in their capacity as liquidators of the Lift Companies) and the Lift Clients from all Claims.

### 5.2 Covenant by Merrill Lynch

Merrill Lynch covenant in favour of the Lift Companies, the Liquidators (in their capacity as liquidators of the Lift Companies) and each other person in favour of whom a release is given under clause 5.1 not to bring or pursue, procure that a third party bring or pursue, provide financial support for or otherwise support any claim, action, dispute, demand or proceeding in any court or tribunal in respect of any matter which is the subject of a release under clause 5.1.

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## 6. Trust

---

- (a) The Liquidators agree to hold the Cash Contribution paid to them by Merrill Lynch pursuant to clause 6 of the Scheme Implementation Agreement in trust in an interest bearing account until released in accordance the remainder of this clause 6.
- (b) In the event that a Scheme has ceased to be Effective prior to the Release Date, and remains ineffective on the Release Date, the Liquidators must, in accordance with any written direction of Merrill Lynch, return the Cash Contribution to Merrill Lynch together with any accrued interest on that amount.
- (c) Subject to the Schemes being Effective at the Release Date, in consideration for the releases and other matters agreed in this Deed, Merrill Lynch releases the Cash Contribution from trust on and from the Release Date. Such release does not require any action by any party and is deemed to occur despite any contrary instructions by any party. This provision does not operate to exclude any other consideration a party may have received from being valuable consideration in respect of this Deed
- (d) The Liquidators agree that, following the release of the Cash Contribution from trust in accordance with paragraph (c) above, they will make the Cash Contribution available to the administrators of the Schemes for distribution in accordance with the Schemes.

---

## 7. Liability

---

Each party does not, by entering into this deed, make any admission of liability to any other party.



---

## 8. Termination

This Deed will terminate and cease to be of effect if the Schemes are not Effective on the Release Date. The termination of this Deed will not affect any right or obligation which may have arisen under this Deed as a result of any act or omission which took place prior to the termination of this Deed.

---

## 9. Related Bodies Corporate

- (a) It is not intended that any Related Body Corporate of a party will execute this Deed.
- (b) To the extent that clauses 3, 4 and 5 purports to give a right or a benefit to Related Body Corporate of a party, the Related Body Corporate may enforce clauses 3, 4 and 5 of this Deed as if it were a party to the Deed.

---

## 10. Acknowledgment and Representation

Each party acknowledges that:

- (i)
- (ii) it is aware that it, its legal advisers or other agents or advisers may discover facts different from or in addition to the facts it now knows or believes to be true with respect to the subject matter of this Deed; and
- (iii) it fully, finally, absolutely and forever settles according to the provisions of this Deed any and all Claims which it releases under clauses 3, 4 and 5.

---

## 11. Entire Agreement

This Deed, the Scheme Implementation Agreement and the Schemes contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

---

## 12. Assignment

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party.

---

## 13. No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other

right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **14. Bar to Proceedings**

---

Notwithstanding anything to the contrary, this Deed may be produced by any person having the benefit of any release or covenant not to sue under this Deed as a complete bar to any Claim in respect of the matters subject to clauses 3, 4 and 5.

## **15. Further Assurances**

---

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

## **16. No Merger**

---

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

## **17. Governing Law and Jurisdiction**

---

This Deed is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of courts exercising jurisdiction there with respect to any legal action or proceedings arising out of or in connection with or in any way related to this Deed or its subject matter, and waives any right to object to the venue or to claim that those courts are an inconvenient forum or that the courts or another place are a more appropriate forum.

## **18. Counterparts**

---

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**Executed as a Deed** in Sydney.

**Signed by**

**Lift Capital Partners Pty Limited (in liquidation) (ACN 111 015 500)** by its joint and several liquidator in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath / Joseph David Hayes

\_\_\_\_\_  
Print Name

**Signed by**

**Lift Capital Nominees No 1 Pty Limited (in liquidation) (ACN 112 913 532)** by its joint and several liquidator in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Anthony Gregory McGrath / Joseph David Hayes

\_\_\_\_\_  
Print Name

**Signed, sealed and delivered by Anthony Gregory McGrath** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Signed, sealed and delivered by Joseph David Hayes** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Signed, sealed and delivered** for Merrill Lynch International (**ARBN 125 336 567**) by its attorney in the presence of:

\_\_\_\_\_  
Authorised Representative Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Merrill Lynch International (Australia) Ltd (ACN 002 892 846)**:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Signed, sealed and delivered by Joseph David Hayes** as attorney for each **Lift Client** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

**Schedule 1 – Client ID**

88831	109222	110994	120182	125294	128614	131997	134310	136680	8899523
88832	109223	111048	120271	125386	128638	132035	134314	136688	8899691
89203	109224	111519	120309	125541	128743	132045	134327	136696	8899714
91176	109227	112637	120327	125595	128752	132047	134334	136848	8899716
92885	109230	112838	120329	125740	128838	132049	134503	136872	8899718
94326	109231	113522	120660	125750	128853	132063	134509	136922	8899848
95583	109232	113712	120745	125774	128867	132077	134525	136958	88100165
95615	109268	114130	120771	125872	128869	132550	134591	136967	88100213
96471	109269	114164	120844	125994	128878	132584	134609	137135	88100284
96780	109273	114171	120903	126367	128906	132598	134620	137176	88100292
97213	109275	114319	120906	126375	128916	132612	134631	137397	88100469
97218	109380	114380	120947	126461	128917	132655	134636	137466	88100511
97265	109383	115031	120981	126518	128920	132750	134645	137477	88100513
97450	109397	115269	121010	126552	128923	132792	134694	137529	88100808
97454	109400	115284	121047	126646	128924	132886	134735	137536	88101312
97657	109401	115312	121119	126660	128929	132909	134769	137552	88101505
97930	109403	115466	121140	126714	128930	132993	134794	137566	88101608
97931	109425	115773	121284	127077	129012	132997	134797	137583	88101681
98434	109427	115784	121290	127083	129021	133047	134809	137588	88102534
98444	109428	116494	121338	127217	129047	133052	134851	137590	88102562
98516	109435	116545	121378	127229	129055	133173	134869	137592	88102565
98580	109440	116563	121877	127280	129149	133435	134941	137593	88102567
98629	109544	117093	121882	127385	129155	133003	134947	137624	
99101	109549	117132	122003	127538	129198	133171	134980	137625	
99108	109656	117218	122039	127574	129232	133459	135029	137626	
99113	109659	117343	122056	127936	129268	133463	135052	137627	
99214	109660	117489	122123	127937	129274	133516	135061	137629	
100031	109661	117575	122131	128042	129279	133521	135167	137632	
103438	109668	117671	122235	127413	129286	133535	135180	137637	
106281	109727	117719	122290	127739	129302	133539	135193	137643	
106714	109745	117748	122414	128001	129413	133590	135199	8898824	
106796	109746	118246	122527	128062	129426	133697	135210	8898826	
107066	109748	118395	122537	128075	129452	133711	135276	8898835	
107270	109749	118397	122549	128093	129455	133773	135277	8898860	
107610	109751	118532	122603	128119	129473	133785	135284	8898865	
107616	109801	118654	122646	128146	129606	133792	135346	8898873	
107884	109804	118730	122754	128169	129821	133803	135352	8898934	
108013	109805	118791	123003	128208	130001	133809	135358	8898998	
108026	109806	118804	123282	128234	130113	133920	135469	8899007	
108204	109807	118815	123287	128235	130121	133931	135690	8899051	
108219	109929	118823	123437	128236	130216	133934	135721	8899072	
108502	109937	118835	123553	128417	130223	133942	135839	8899074	
108701	109950	118875	123801	128434	130369	133964	135879	8899077	
108702	109961	118931	123891	128457	130456	133965	135947	8899130	
108769	109969	118939	124484	128466	130533	134025	136059	8899133	
108828	109972	119005	124542	128478	130564	134027	136079	8899174	
108889	110223	119013	124549	128495	130898	134045	136094	8899185	
109012	110229	119029	124641	128517	130931	134123	136261	8899239	
109022	110232	119063	124782	128543	130996	134196	136266	8899245	

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109112	110285	119101	124847	128548	131005	134198	136327	8899248	
109117	110410	119415	124881	128550	131269	134207	136447	8899293	
109211	110433	119490	124911	128554	131327	134213	136500	8899364	
109213	110438	119547	124941	128555	131460	134273	136509	8899366	
109214	110512	119585	124960	128558	131690	134278	136529	8899422	
109218	110624	119720	125027	128563	131753	134285	136530	8899486	
109219	110742	120035	125150	128568	131852	134297	136576	8899489	
109220	110770	120154	125287	128604	131966	134305	136599	8899490	

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**ANNEXURE E - SCHEME ADMINISTRATOR DEED POLL**

## Scheme Administrator Deed Poll

Given by

[Anthony Gregory McGrath] / [Joseph David Hayes]  
(the ***Scheme Administrator***)

in favour of

each Lift Company and its Scheme Creditors

Allens Arthur Robinson  
Level 28  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.aar.com.au](http://www.aar.com.au)



<b>Date</b>	
<b>By</b>	[Anthony Gregory McGrath] / [Joseph David Hayes] of McGrath Nicol of Level 31, 60 Margaret Street, Sydney NSW 2000 (the <b>Scheme Administrator</b> )
<b>In favour of</b>	Each Lift Company and its Scheme Creditors
<b>Recitals</b>	
A	Each Lift Company and its Scheme Creditors is party to a Scheme.
B	Each Scheme Administrator has been appointed as a Scheme Administrator in accordance with the Schemes.
C	The appointment of each Scheme Administrator is subject to the execution and delivery of this Deed Poll.

**It is declared** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed Poll:

- (a) **Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between a Lift Company and its Scheme Creditors, [which took effect on the date of this Deed Poll]/[to take effect on or about [\*]], and a reference to **Schemes** shall be a reference to both a Scheme between Lift Capital and its Scheme Creditors and to a Scheme between Lift Nominees and its Scheme Creditors; and
- (b) terms defined in the Schemes have the same meaning in this Deed Poll, unless the context requires otherwise.

### 1.2 Interpretation

The provisions of clause 1.2 of the Schemes form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to "these Schemes" in that clause are references to "this Deed Poll".

## 2. Consent to Act

The Scheme Administrator consents to act as a Scheme Administrator in accordance with the terms and conditions of the Schemes.

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### 3. Covenant

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The Scheme Administrator covenants in favour of each Lift Company and its Scheme Creditors that he will be bound by the terms of the Schemes as if he is a party to the Schemes.

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### 4. Acknowledgement

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The Scheme Administrator acknowledges and agrees that the benefit of this Deed Poll can be enforced directly by each Lift Company and each Scheme Creditor against the Scheme Administrator.

---

### 5. Continuing Obligations

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This Deed Poll is irrevocable and remains in full force and effect until the earlier of:

- (a) the Scheme Administrator having fully performed its obligations under this Deed Poll; and
- (b) the Scheme Administrator ceasing to be a Scheme Administrator in accordance with clause 12.2(e) of the Schemes.

---

### 6. Notices

---

- (a) Any notice to be given to the Scheme Administrator under or in relation to this Deed Poll must be given in writing and may be given by:
  - (i) hand delivery;
  - (ii) pre-paid post;
  - (iii) facsimile transmission;
  - (iv) email; or
  - (v) such other method as may be determined by the Scheme Administrator.
- (b) Notice to be given to the Scheme Administrator is to be given to him at:
  - (i) McGrath Nicol, Level 31, 60 Margaret St, Sydney; or
  - (ii) such other address as the Scheme Administrator may notify to Scheme Creditors in accordance with clause 17 of the Schemes.
- (c) Notice to the Scheme Administrator will be given on the date the notice is received by the Scheme Administrator (and will not be deemed to have been given any sooner than that date).

## 7. General

---

### 7.1 Governing law and jurisdiction

This Deed Poll is governed by the laws of New South Wales. The Scheme Administrator irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

### 7.2 Waiver

- (a) A waiver of any right arising from a breach of this Deed Poll or of any right, power, authority, discretion or remedy arising upon default under this Deed Poll must be in writing and signed by the persons granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this Deed Poll; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Deed Poll,does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) The Scheme Administrator is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed Poll or on a default under this Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.

### 7.3 Remedies cumulative

The rights and remedies of the Scheme Administrator, the Lift Companies and the Scheme Creditors under this Deed Poll are in addition to other rights and remedies given by law independently of this Deed Poll.

### 7.4 Assignment

The rights and obligations of the Scheme Administrator, each Lift Company and each Scheme Creditor under this Deed Poll are personal and must not be assigned or otherwise dealt with at law or in equity.

### 7.5 Further action

The Scheme Administrator will promptly do all things and execute and deliver all further documents necessary or expedient to give effect to this Deed Poll and the transactions contemplated by it.

**Executed and delivered as a Deed Poll** in Sydney

**Signed Sealed and Delivered** by [Anthony  
Gregory McGrath] / [Joseph David Hayes]  
in the presence of:

# Scheme Administrator Deed Poll

Allens Arthur Robinson 

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Witness Signature

---

Signature

---

Print Name

---

**ANNEXURE F - REPORT AS TO THE AFFAIRS OF THE LIFT COMPANIES**



## Report as to Affairs

**Related Forms:**

507A Statement verifying document under s475(1)

911 Verification of certification of a document

---

**Company details**

Company name

LIFT CAPITAL PARTNERS PTY LTD (IN LIQUIDATION)

ACN / ABN

111 015 500

---

**Lodgement details**

Who should ASIC contact if there is a query about this form?

Firm/organisation

MCGRATHNICOL

Name

JONATHAN HENRY

ASIC registered agent number (if applicable)

Telephone Number

(02) 9338 2643

Postal Address

LEVEL 31, 60 MARGARET STREET, SYDNEY NSW 2000

---

**1 Annexure**

For the purposes of the statement in Form 507A only.

This is the annexure of  pages marked "A" referred to in the Statement verifying report signed by me/us and dated as follows:

Date of the Statement verifying report: 18 / 11 / 09

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**Annexure (continued)**

For the purposes of the statement in Form 507A only.

Each signatory must complete and sign a copy of **Form 507A Statement verifying report under s475(1)** to be lodged with Form 507

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Name	<input type="text" value="JOSEPH HAYES (LIQUIDATOR)"/>
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Signature	<input type="text"/>
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Name	<input type="text"/>
------	----------------------

Signature	<input type="text"/>
-----------	----------------------

Name	<input type="text"/>
------	----------------------

Signature	<input type="text"/>
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**2 Reason for Report**

\$	Managing controller if a receiver and manager	421A(1)
----	--------------------------------------------------	---------

Date of Appointment	/ /
---------------------	-----

If a person is in possession, or has control of the property for the purpose of enforcing a charge

Date when person took control	/ /
-------------------------------	-----

\$	Appointment of controller Under 429(2)(c)(i) a notice setting out any comments relating to the report, or statement that no comment is made, should accompany the report. A <b>Form 911 Verification or certification of a document</b> should also be lodged.	429(2)(b)
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Date of Receipt of Report	/ /
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\$	Appointment of liquidator/provisional liquidator by the Court A <b>Form 911 Verification or certification of a document</b> should also be lodged.	475(1)
----	-------------------------------------------------------------------------------------------------------------------------------------------------------	--------

Date of Receipt of Report	/ /
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\$	Appointment of liquidator - creditors voluntary winding up	446C(7)
----	------------------------------------------------------------	---------

Date of Receipt of Report	/ /
---------------------------	-----

### 3 Assets and Liabilities

Date specified under the relevant section as the date of the report (see directions):

/ /

	<b>Valuation</b> (for each entry show whether cost or net book amount) \$	<b>Estimated Realisable Value</b> \$
1. Assets not specifically charged:		
(a) interest in land as detailed in schedule A	NIL	NIL
(b) sundry debtors as detailed in schedule B	59,279,007	2,443,610
(c) cash on hand	1,100	1,100
(d) cash at bank	46,990,752	46,990,752
(e) stock as detailed in annexed inventory	NIL	NIL
(f) work in progress as detailed annexed inventory	NIL	NIL
(g) plant and equipment as detailed in inventory	5,480	2,209
(h) other assets as detailed in schedule C	NIL	NIL
Sub Total	106,276,339	49,437,671

	<b>Valuation</b> (for each entry show whether cost or net book amount) \$	<b>Estimated Realisable Value</b> \$
2. Assets subject to specific charges, as specified in schedule D	NIL	NIL
Less amounts owing as detailed in schedule D	NIL	NIL
Total Assets	NIL	NIL
<b>Total Estimated Realisable Values</b>	106,276,339	49,437,671
3. Less payable in advance of secured creditor(s)	NIL	NIL
Amounts owing for tax instalment deductions and prescribed payments tax	NIL	NIL
Amounts owing for employee entitlements as detailed in schedule E	15,598	15,598
4. Less amounts owing and secured by debenture or floating charge over assets	NIL	NIL
5. Less preferential claims ranking behind secured creditors as detailed in schedule F	NIL	NIL
6. Balance owing to partly secured creditors as detailed in schedule G	NIL	NIL
Total Claims (\$ 15,598 )		
Security Held (\$ NIL )		
7. Creditors (unsecured) as detailed in schedule H		
Amount claimed (\$ 114,004,808 )*		
8. Contingent assets (\$ Nil ) Estimated to produce as detailed in schedule I		
9. Contingent liabilities (\$ Nil ) Estimated to rank as detailed in schedule J		
<b>Estimated Surplus / Deficiency</b> (\$ - 64,582,735 )		
Subject to estimated future costs of (\$ 3,000,000 )		
<b>Shared capital</b>		
<b>Issued</b> (\$ 1,912,502 )		
<b>Paid Up</b> (\$ 1,912,502 )		

\*Prior to provisions and allowances.



**Form 507**

Corporations Act 2001  
421A(1), 429(2)(b), 475(1), 446C(7)

## Report as to Affairs

**Related Forms:**

507A Statement verifying document under s475(1)

911 Verification of certification of a document

---

**Company details**

Company name

LIFT CAPITAL NOMINEES NO.1 PTY LTD (IN LIQUIDATION)

ACN / ABN

112 913 532

---

**Lodgement details**

Who should ASIC contact if there is a query about this form?

Firm/organisation

MCGRATHNICOL

Name

JONATHAN HENRY

ASIC registered agent number (if applicable)

Telephone Number

(02) 9338 2643

Postal Address

LEVEL 31, 60 MARGARET STREET, SYDNEY NSW 2000

---

**1 Annexure**

For the purposes of the statement in Form 507A only.

This is the annexure of  pages marked "A" referred to in the Statement verifying report signed by me/us and dated as follows:

Date of the Statement verifying report:     /     /

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---

**Annexure (continued)**

For the purposes of the statement in Form 507A only.

Each signatory must complete and sign a copy of **Form 507A Statement verifying report under s475(1)** to be lodged with Form 507

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Name	<input type="text" value="JOSEPH HAYES (LIQUIDATOR)"/>
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Signature	<input type="text"/>
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Name	<input type="text"/>
------	----------------------

Signature	<input type="text"/>
-----------	----------------------

Name	<input type="text"/>
------	----------------------

Signature	<input type="text"/>
-----------	----------------------

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**2 Reason for Report**

\$	Managing controller if a receiver and manager	421A(1)
----	--------------------------------------------------	---------

Date of Appointment	/ /
---------------------	-----

If a person is in possession, or has control of the property for the purpose of enforcing a charge

Date when person took control	/ /
-------------------------------	-----

\$	Appointment of controller Under 429(2)(c)(i) a notice setting out any comments relating to the report, or statement that no comment is made, should accompany the report. A <b>Form 911 Verification or certification of a document</b> should also be lodged.	429(2)(b)
----	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------

Date of Receipt of Report	/ /
---------------------------	-----

\$	Appointment of liquidator/provisional liquidator by the Court A <b>Form 911 Verification or certification of a document</b> should also be lodged.	475(1)
----	-------------------------------------------------------------------------------------------------------------------------------------------------------	--------

Date of Receipt of Report	/ /
---------------------------	-----

\$	Appointment of liquidator - creditors voluntary winding up	446C(7)
----	------------------------------------------------------------	---------

Date of Receipt of Report	/ /
---------------------------	-----

### 3 Assets and Liabilities

Date specified under the relevant section as the date of the report (see directions):

/ /

	<b>Valuation</b> (for each entry show whether cost or net book amount) \$	<b>Estimated Realisable Value</b> \$
1. Assets not specifically charged:	NIL	NIL
(a) interest in land as detailed in schedule A	NIL	NIL
(b) sundry debtors as detailed in schedule B	NIL	NIL
(c) cash on hand	NIL	NIL
(d) cash at bank	NIL	NIL
(e) stock as detailed in annexed inventory	NIL	NIL
(f) work in progress as detailed annexed inventory	NIL	NIL
(g) plant and equipment as detailed in inventory	NIL	NIL
(h) other assets as detailed in schedule C	NIL	NIL
Sub Total	NIL	NIL

	<b>Valuation</b> (for each entry show whether cost or net book amount) \$	<b>Estimated Realisable Value</b> \$
2. Assets subject to specific charges, as specified in schedule D	NIL	NIL
Less amounts owing as detailed in schedule D	NIL	NIL
Total Assets	NIL	NIL
<b>Total Estimated Realisable Values</b>	NIL	NIL
3. Less payable in advance of secured creditor(s)	NIL	NIL
Amounts owing for tax instalment deductions and prescribed payments tax	NIL	NIL
Amounts owing for employee entitlements as detailed in schedule E	NIL	NIL
4. Less amounts owing and secured by debenture or floating charge over assets	NIL	NIL
5. Less preferential claims ranking behind secured creditors as detailed in schedule F	NIL	NIL
6. Balance owing to partly secured creditors as detailed in schedule G	NIL	NIL
Total Claims (\$ NIL )		
Security Held (\$ NIL )		
7. Creditors (unsecured) as detailed in schedule H		
Amount claimed (\$ 114,004,808 )*		
8. Contingent assets (\$ NIL )		
Estimated to produce as detailed in schedule I		
9. Contingent liabilities (\$ NIL )		
Estimated to rank as detailed in schedule J		
<b>Estimated Surplus / Deficiency</b> (\$ -114,004,808 )		
Subject to estimated future costs of (\$ 100,000 )		
<b>Shared capital</b>		
<b>Issued</b> (\$ 2 )		
<b>Paid Up</b> (\$ 2 )		

\*Prior to provisions and allowances.

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**ANNEXURE G - LIQUIDATORS' REMUNERATION SUMMARY & FEE  
STRUCTURE**

**Lift Capital Partners Pty Ltd / Lift Capital Nominees No.1 Pty Ltd**

**(In Liquidation) ("Lift")**

**Remuneration Tasks Summary**

The Liquidators estimate fees of approximately \$1,000,000 to \$1,250,000 from 12 November 2009 to deregistration of the Lift Companies. Tasks to be completed include:

<b>Task Category</b>	<b>General Description</b>	<b>Tasks</b>
<b>Assets</b>	Debtors	+ Collection of margin loans.
	Securities	+ Dealing with securities on behalf of clients.
	Plant and equipment	+ Selling plant and equipment.
	Legal Action	+ Working with advisors on a number of legal actions regarding debtors.
<b>Creditors</b>	Legal Action	+ Working with advisors on a number of legal actions regarding creditors.
	Creditor Reports/Circulars	+ Receive and follow up on creditor enquiries. + Maintain creditor records. + Review and prepare correspondence to creditors and their representatives. + Maintain website and media updates. + Communicate with Committee of Inspection. + Convene and hold meetings of the Committee of Inspection.
	Claims	+ Receive and adjudicate creditor claims. + Calculation of Established Scheme Claims.
	Secured Creditors	+ Liaise with Merrill Lynch regarding operation issues. + Liaise with Merrill Lynch regarding the Scheme.
	Scheme of Arrangement	+ Meeting and reporting to Committee of Inspection + Preparation of Scheme documents. + ASIC dealings and reporting. + Preparation and attendance of First Court Hearing (to approve explanatory memorandum). + Preparation and lodgement scheme booklet with ASIC (booklet released to market) and dispatch to creditors. + Preparation and convening of Scheme meetings. + Preparation and attendance of Second Court Hearing (for approval of the Scheme). + Dealing with appeals to the Scheme.

<b>Task Category</b>	<b>General Description</b>	<b>Tasks</b>
		<ul style="list-style-type: none"> <li>+ Dividend modelling.</li> <li>+ Preparation of Report as to Affairs.</li> <li>+ Paying dividends under the Scheme.</li> </ul>
<b>Employees</b>	Employee dealings	<ul style="list-style-type: none"> <li>+ Calculate and pay pre-appointment employee entitlements.</li> <li>+ Calculate and pay monthly employee entitlements.</li> <li>+ Monitor workflow and output of remaining employees.</li> </ul>
<b>Trade On</b>	Trade On Management	<ul style="list-style-type: none"> <li>+ Liaison with service and utility providers.</li> <li>+ Procured supplies for company office.</li> <li>+ Monthly lease payments.</li> <li>+ Attendance on site.</li> <li>+ Maintaining insurance.</li> <li>+ Dealing with office and plant and equipment leasing.</li> <li>+ Continue margin lending operations, including maintenance of client accounts, transferring, selling securities and dealing with dividend receipts and corporate actions.</li> </ul>
<b>Investigation</b>	Conducting Investigation	<ul style="list-style-type: none"> <li>+ Completion and lodgement of 533 Report to ASIC.</li> <li>+ Meeting with ASIC.</li> </ul>
<b>Administration</b>	General administration.	<ul style="list-style-type: none"> <li>+ Maintaining banking records.</li> <li>+ Receipt and payment of funds.</li> <li>+ Management of documents (electronic and hard-copy) and client files.</li> <li>+ Monitored Liquidation and advisor remuneration and disbursements.</li> <li>+ Continued liaison with insurance broker to meeting ongoing insurance requirements.</li> </ul>
<b>Statutory</b>	Statutory Reporting	<ul style="list-style-type: none"> <li>+ Dealing with Government bodies.</li> <li>+ Lodgement of statutory reports and forms.</li> </ul>

# MCN+

# McGRATHNICOL

## McGrathNicol Rates from January 2009

Position	Hourly Rate	Hourly Rate with 15% Discount
Partner	\$690	\$586.50
Director	\$550	\$467.50
Senior Manager	\$490	\$416.50
Manager 1	\$435	\$369.75
Manager 2	\$390	\$331.50
Assistant Manager	\$320	\$272.00
Senior Accountant	\$250	\$212.50
Accountant	\$210	\$178.50
Undergraduate/Cadet	\$195	\$165.75
Vacationer	\$195	\$165.75
PA	\$140	\$119.00
Professional/Senior Administrator	\$160	\$136.00
Group Secretary	\$130	\$110.50
Clerical	\$125	\$106.25