

16 February 2009

### Recommended Proposal from Bendigo and Adelaide Bank

- Bendigo and Adelaide Bank proposes to acquire all of the Units in the Adelaide Managed Funds Asset Backed Yield Trust (AYT)
- Consideration of \$1.835 per Unit in mandatory convertible preference shares, plus AYT Unitholders will also be entitled to a cash distribution from AYT currently estimated at approximately \$0.02 per Unit
- Represents 54.3% premium over the one month VWAP<sup>1</sup> of AYT Units
- Recommended by Independent Directors of Adelaide Managed Funds in the absence of a superior proposal and subject to the opinion of the Independent Expert
- Transaction to be implemented by way of trust scheme

Bendigo and Adelaide Bank Limited (BEN) and Adelaide Managed Funds Limited (AMF)<sup>2</sup> have announced a proposal for BEN to acquire all of the Units in AYT for approximately \$174 million, or \$1.835 per Unit.

The proposal – which follows the signing of a Scheme Implementation Agreement (SIA) earlier today – is subject to the approval of AYT Unitholders at a Scheme meeting likely to be held in April 2009.

Under the proposal, AYT Unitholders will receive:

- \$1.835 per AYT Unit in mandatory convertible preference shares (CPS) in BEN<sup>3</sup>; and
- A cash distribution from AYT in April 2009 calculated by reference to any increase in net tangible assets of AYT for the March 2009 quarter (net of AMF's estimated transaction costs to completion). The distribution is currently estimated to be approximately \$0.02 per Unit.

The CPS amount of \$1.835 per AYT Unit represents a premium of 54.3% to the one month VWAP of AYT Units on ASX to 13 February 2009.

The Independent Directors<sup>4</sup> of AMF unanimously recommend that AYT Unitholders vote in favour of the Scheme, and intend to vote all AYT Units they hold or control in favour of the Scheme, subject to no superior proposal being received and confirmation from the Independent Expert that the proposed transaction is fair and reasonable and in the best interests of AYT Unitholders.

AMF Independent Director, Nancy Fox, said "Following consideration of the current Unit price and trading liquidity of AYT, and given the current state of the Australian credit market, the AMF Independent Directors consider that accepting BEN's proposal is in the best interests of Unitholders".

<sup>1</sup> Volume weighted average price of AYT Units on ASX.

<sup>2</sup> AMF is the responsible entity for AYT. References to AMF in this announcement are to it acting in its capacity as responsible entity.

<sup>3</sup> Based on the \$100 face value of the CPS, and does not reflect the expected or actual trading price of the CPS.

<sup>4</sup> AMF is a wholly-owned subsidiary of BEN. AMF's Independent Directors comprise Nancy Fox and Stephen Treanor.

BEN Managing Director, Rob Hunt, said the proposed acquisition provides a good outcome for all parties.

“As the originator of most of the assets in the AYT – predominantly in margin lending – we have a good understanding of the performance of those loans,” Mr Hunt said.

“This is a low-risk acquisition for our shareholders. AYT will require minimal integration, it is expected to boost the Bank’s tier one capital position by approximately \$90 million, and be cash EPS accretive in the first year.”

As a result of the proposal, the Board of AMF has resolved to formally suspend its on-market Unit buyback announced on 4 March 2008.

### Transaction Details and Implementation

Under the proposal, AYT Unitholders will receive 1.835 CPS for each 100 AYT Units held. The CPS have been assigned a provisional rating of Baa1 by Moody’s and are expected to carry a fully franked quarterly dividend calculated as the sum of the 90 day Bank Bill Rate plus a Margin, together multiplied by (1 – Tax Rate). The Margin is 4.50% per annum. The CPS are expected to convert<sup>1</sup> into ordinary shares of BEN twelve months after issue, in accordance with the CPS terms. A summary of the key terms of the CPS is set out in Appendix A.

Completion of the proposal is subject to a number of conditions, including AYT Unitholder approval, no material adverse change in AYT, and confirmation from the Independent Expert that the proposal is fair and reasonable and in the best interests of AYT Unitholders. A summary of the key terms and conditions of the SIA is set out in Appendix B.

The Independent Directors of AMF have appointed KPMG to prepare an Independent Expert’s Report on the proposal. This report, along with full details of the proposed transaction, will be contained in a scheme booklet that is expected to be dispatched to AYT Unitholders in April 2009. A more detailed timetable for the transaction will be set out in the scheme booklet.

The Independent Directors of AMF are being advised on the transaction by Credit Suisse as financial advisor and Mallesons Stephen Jaques as legal advisor. BEN’s financial advisor is Grant Samuel with Allens Arthur Robinson acting as legal advisor.

For further information contact:

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<sup>1</sup> Conversion will occur at a 2.5% discount to the 20 Business Day VWAP of BEN ordinary shares prior to conversion, subject to the satisfaction of the Mandatory Conversion Conditions. Full details of the terms of the CPS will be included in the scheme booklet

## APPENDIX A – KEY TERMS OF CPS

Security	Fully paid mandatory convertible preference shares (CPS) in the capital of Bendigo and Adelaide Bank Limited
Issuer	Bendigo and Adelaide Bank Limited
Issuer Rating	BBB+ / A2
Issue Rating	Baa1 <sup>1</sup>
Issue Price	\$100 per CPS
Quotation on ASX	The Issuer will apply for CPS to be quoted on ASX
Term	CPS are perpetual instruments, until such time as Conversion, Redemption or Resale occurs. However, CPS are expected to convert into ordinary shares of the Issuer twelve months after the date of issue (the Mandatory Conversion Date), provided that the Mandatory Conversion Conditions are satisfied
Dividends	Non-cumulative, fully franked dividends are expected to be paid quarterly, commencing 15 September 2009
Dividend Rate	Dividend Rate = (Bank Bill Rate + Margin) x (1 – Tax Rate) where: Bank Bill Rate means the Bank Bill Rate on the first Business Day of a Dividend Period Tax Rate means the Australian corporate tax rate applicable as at the relevant Dividend Payment Date – currently 30%
Margin	450 basis points per annum
Franking	Dividends are expected to be fully franked. If any Dividend has a franking rate of less than 100%, the Dividend will be grossed up by the unfranked amount of the Dividend
Mandatory Conversion	Holder will receive \$102.56 of BEN ordinary shares on conversion of the CPS on the Mandatory Conversion Date, unless the Mandatory Conversion Conditions are not satisfied or Redemption or Resale occurs
Conversion Discount	2.5%
Mandatory Conversion Date	The Mandatory Conversion Date will be the date 12 months from the date of issue, provided the Mandatory Conversion Conditions are satisfied. If any of the Mandatory Conversion Conditions are not satisfied on a possible Mandatory Conversion Date, the Mandatory Conversion Date will be deferred until the next Dividend Payment Date on which all of the Mandatory Conversion Conditions are satisfied, subject to Redemption or Resale
Mandatory Conversion Conditions	<ol style="list-style-type: none"> <li>1) The VWAP of ordinary shares on the 25<sup>th</sup> Business Day prior to (but not including) a possible Mandatory Conversion Date is greater than 56.0% of the Issue Date VWAP</li> <li>2) The VWAP of ordinary shares during the period of 20 Business Days prior to (but not including) a possible Mandatory Conversion Date is greater than 51.28% of the Issue Date VWAP</li> <li>3) The VWAP of ordinary shares during the period of 10 Business Days prior to (but not including) a possible Mandatory Conversion Date (or an earlier date determined by the Issuer's directors in certain circumstances), is greater than 75.0% of the VWAP of ordinary shares during the 10 Business Day period commencing 40 Business Days before (but not including) a possible Mandatory Conversion Date</li> <li>4) Ordinary shares in the Issuer remain listed or admitted to trading on ASX, and trading of such ordinary shares has not been suspended for more than five Consecutive Business Days prior to and including a possible Mandatory Conversion Date</li> </ol>
Resale	Before a possible Mandatory Conversion Date, the Issuer may choose to arrange for all CPS on issue to be acquired by a third party on the possible Mandatory Conversion Date. Should the Issuer elect Resale, CPS holders will receive a cash amount of \$100 on the possible Mandatory Conversion Date. The third party purchaser must have a credit rating of no less than A- from Standard and Poor's or A3 from Moody's
Redemption	In certain circumstances the Issuer will be entitled to redeem the CPS for their face value

<sup>1</sup> Provisional Issue Rating assigned by Moody's

## APPENDIX B – SUMMARY OF KEY TERMS (SCHEME IMPLEMENTATION AGREEMENT)

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### 1 The Scheme

Adelaide Managed Funds agrees to propose and implement the Scheme upon and subject to the terms and conditions of the SIA. BEN agrees to assist Adelaide Managed Funds in doing so. Both Adelaide Managed Funds and BEN agree to do a number of things under the SIA.

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### 2 Conditions Precedent

The Scheme will not become Effective unless each of the following conditions precedent is satisfied or waived:

- (a) **(Regulatory approvals)** before 8.00am on the Second Court Date, all necessary regulatory approvals required to implement the Scheme (including from ASIC, ASX and APRA) are granted or obtained and those regulatory approvals are not withdrawn, cancelled or revoked;
- (b) **(quotation approval for BEN CPS)** before 8.00am on the Second Court Date, ASX provides approval for the official quotation as equity securities of the CPS in BEN to be issued pursuant to the Scheme, subject to any conditions that ASX may reasonably require, including customary pre-quotation conditions and conditions relating to the Scheme becoming Effective;
- (c) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to Adelaide Managed Funds, stating that in its opinion the Scheme is fair and reasonable and therefore in the best interests of AYT Unitholders, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to Adelaide Managed Funds prior to 8.00am on the Second Court Date;
- (d) **(AYT Unitholder approval)** before 8.00am on the Second Court Date, AYT Unitholders approve the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act and in accordance with Takeovers Panel Guidance Note 15 (subject to any exemption or modification granted by ASIC);
- (e) **(grant of Judicial Advice)** the Court grants the Judicial Advice;
- (f) **(execution and lodgment of Supplemental Deed)** Adelaide Managed Funds executes the Supplemental Deed and lodges a copy of the executed Supplemental Deed with ASIC;
- (g) **(no restraints)** no judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other governmental agency of competent jurisdiction, remains in effect as at 8.00am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Scheme or any Transaction Document;
- (h) **(no AYT Regulated Events)** no AYT Regulated Event occurs or becomes known to BEN between 16 February 2009 and 8.00am on the Second Court Date;
- (i) **(no AYT Material Adverse Change)** no AYT Material Adverse Change occurs, or is discovered, announced or disclosed or otherwise becomes known to BEN, between 16 February 2009 and 8.00am on the Second Court Date;
- (j) **(Adelaide Managed Funds representations and warranties)** the representations and warranties of Adelaide Managed Funds given in the SIA:

- (i) that are qualified as to materiality, are true and correct; and
- (ii) that are not so qualified, are true and correct in all material respects,

as at 16 February 2009 and as at 8.00am on the Second Court Date as though made on and as of that time;

- (k) **(Adelaide Managed Funds independent directors' recommendation)** all of the Adelaide Managed Funds independent directors have, in the scheme booklet to be sent to AYT Unitholders in connection with the Scheme, stated that they consider the Scheme to be fair and reasonable and therefore in the best interests of AYT Unitholders and recommended that AYT Unitholders vote in favour of the Scheme, in the absence of a Superior Proposal, and neither of the Adelaide Managed Funds independent directors has withdrawn, qualified or varied those statements or recommendations before the Scheme is approved at the Scheme Meeting by the requisite majorities of AYT Unitholders;
- (l) **(no BEN Regulated Events)** no BEN Regulated Event occurs between 16 February 2009 and 8.00am on the Second Court Date;
- (m) **(BEN representations and warranties)** the representations and warranties of BEN set out in the SIA:

- (i) that are qualified as to materiality, are true and correct; and
- (ii) that are not so qualified, are true and correct in all material respects,

as at 16 February 2009 and as at 8.00am on the Second Court Date as though made on and as of that time.

The conditions precedent in paragraphs (a) to (g) are for the benefit of both parties, while those in paragraphs (h) to (k) are for the benefit of BEN only and those in paragraphs (l) to (m) are for the benefit of Adelaide Managed Funds only.

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### 3 Termination

The SIA may be terminated:

- (a) by either party, if the conditions precedent are not all satisfied and any such non-satisfaction is not waived by the relevant parties (if permitted) by 30 June 2009 or such later date agreed between them;
- (b) by a party if the other party is in material breach of the SIA which continues unremedied for 5 business days after notice from the terminating party (or any shorter period ending at 5:00pm on the last business day before the Second Court Date), except that if Adelaide Managed Funds breaches its exclusivity obligations or its obligations under the SIA relating to the recommendations of the Adelaide Managed Funds independent directors, BEN may terminate immediately;
- (c) by BEN if an AMF Regulated Event occurs, or by Adelaide Managed Funds if a BEN Regulated Event occurs, and the event continues unremedied for 5 business days after notice from the terminating party (or any shorter period ending at 5:00pm on the last business day before the Second Court Date);
- (d) by BEN if an AMF Material Adverse Change occurs, and is unremedied for 5 business days after notice from BEN (or any shorter period ending at 5:00pm on the last business day before the Second Court Date);
- (e) by BEN if any of the Adelaide Managed Funds independent directors publicly changes or withdraws their statement that they consider the Scheme to be fair and reasonable and

therefore in the best interests of AYT Unitholders or their recommendation that AYT Unitholders approve the Scheme, or publicly recommends or otherwise endorses a Competing Proposal;

- (f) by Adelaide Managed Funds if both of the Adelaide Managed Funds independent directors publicly change or withdraw their statement that they consider the Scheme to be fair and reasonable and therefore in the best interests of AYT Unitholders or their recommendation that AYT Unitholders approve the Scheme (in either case in accordance with the SIA where there is a negative opinion from the Independent Expert or a Superior Proposal), or publicly recommend or otherwise endorse a Superior Proposal, and any liquidated payment payable by Adelaide Managed Funds in such circumstances has been paid to BEN; or
- (g) by BEN, if a Competing Proposal is announced, made, or becomes open for acceptance before the Second Court Date.

In the case of paragraphs (b) to (g), the relevant event must occur before 8.00am on the Second Court Date.

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#### 4 Liquidated Payment

Adelaide Managed Funds has agreed to pay a liquidated payment of \$1.7 million to BEN if the Scheme does not proceed because:

- (a) there is a material breach of the SIA by Adelaide Managed Funds and BEN validly terminates the SIA;
- (b) an Adelaide Managed Funds independent director fails to state that they consider the Scheme to be fair and reasonable and therefore in the best interests of AYT Unitholders or to recommend that AYT Unitholders approve the Scheme, or publicly changes or withdraws that statement or recommendation unless:
  - (i) the Independent Expert concludes in the Independent Expert's Report (including any update) that the Scheme is not fair and reasonable and therefore is not in the best interests of AYT Unitholders (provided that the reasons for the Independent Expert's conclusions do not include the existence of a Competing Proposal); and
  - (ii) all of Adelaide Managed Funds' independent directors, after considering the matter in good faith and after consulting in good faith with BEN in relation to their proposed change of statement and recommendation, no longer consider the Scheme to be fair and reasonable and in the best interests of AYT Unitholders;
- (c) a Competing Proposal is announced or made and is publicly recommended, promoted or otherwise endorsed by either of the Adelaide Managed Funds independent directors; or
- (d) a Competing Proposal is announced or made prior to 30 June 2009 (or such later date agreed between the parties) and is completed at any time prior to 16 February 2010 and, as a result, a third party acquires control of AYT.

BEN has agreed to pay a liquidated payment of \$1.7 million to Adelaide Managed Funds if the Scheme does not proceed because there is a material breach of the SIA by BEN and Adelaide Managed Funds validly terminates the SIA.

Adelaide Managed Funds will not be obliged to pay a liquidated payment if:

- (a) the Scheme becomes Effective notwithstanding the occurrence of the relevant event; or
- (b) it is entitled to validly terminate the SIA.

BEN will not be obliged to pay a liquidated payment if it is entitled to validly terminate the SIA.

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## 5 Exclusivity

Adelaide Managed Funds has agreed that neither it nor its representatives will solicit or initiate any Competing Proposal or any discussions in relation to or that may lead to a Competing Proposal. Adelaide Managed Funds has also agreed that, except to the extent that the fiduciary obligations of its independent directors oblige them to do so because the relevant Competing Proposal is or is likely to be Superior Proposal:

- (a) neither Adelaide Managed Funds nor its representatives will participate in negotiations or discussions, or enter into any agreement, in relation to or that may lead to a Competing Proposal, including providing any non-public information to any third party relating to Adelaide Managed Funds or AYT to assist in the formulation of a Competing Proposal; and
- (b) Adelaide Managed Funds will notify BEN of any unsolicited approach or if Adelaide Managed Funds proposes to take any action that would breach its obligations in (a) above (or would breach those obligations if the fiduciary duty carve-out did not apply).

The above obligations apply from 16 February 2009 until the earlier of termination of the SIA, implementation of the Scheme, and 30 June 2009 (or such later date agreed between the parties).

If Adelaide Managed Funds receives a Superior Proposal which results in its independent directors proposing to publicly change or withdraw their statement that they consider the Scheme to be fair and reasonable and in the best interests of the AYT Unitholders and/or their recommendation to AYT Unitholders to vote in favour of the Scheme, Adelaide Managed Funds must give BEN 5 clear business days notice of the proposed change or withdrawal and provide BEN with all material terms of the applicable Competing Proposal. During this 5-day period, BEN will have the right to offer to amend the terms of the Scheme (a "BEN Counterproposal") so that its terms would provide a superior outcome for the AYT Unitholders than the Competing Proposal. If the independent directors of Adelaide Managed Funds determine that the BEN Counterproposal would provide a superior outcome for the AYT Unitholders than the Competing Proposal and the other terms and conditions of the BEN Counterproposal are not less favourable than those in the Competing Proposal, Adelaide Managed Funds and BEN must use their best endeavours to amend the Transaction Documents as soon as reasonably practicable to implement the BEN Counterproposal.

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## 6 Relevant definitions

**AYT Material Adverse Change** means any event, occurrence or matter that, individually or when aggregated with all such events, occurrences or matters, diminishes, or is reasonably likely to diminish, (whether now or in the future) the consolidated net assets of AYT and Adelaide Managed Funds (together the "AYT Group") by an amount equal to \$10 million or more, as compared to the consolidated net assets of the AYT Group as at 31 December 2008 reported in AYT's financial statements for the half-year ended on that date, other than an event, occurrence or matter:

- (a) required to be undertaken or procured by the AYT Group pursuant to the Transaction Documents;
- (b) to the extent that event, occurrence or matter was fairly disclosed by Adelaide Managed Funds to ASX or BEN prior to 16 February 2009; or
- (c) to the extent that event, occurrence or matter was known to BEN prior to the date of the SIA (which does not include knowledge of the risk of an event, occurrence or matter happening).

**AYT Regulated Event** means the occurrence of any of the following events (other than as required to be undertaken or procured by the AYT Group pursuant to, or otherwise as contemplated by, the

Transaction Documents, or to the extent fairly disclosed by Adelaide Managed Funds to ASX or BEN prior to 16 February 2009, or consented to in writing by BEN:

- (a) Adelaide Managed Funds converts all or any AYT units into a larger or smaller number of AYT units;
- (b) AYT's capital is reduced, or is resolved to be reduced, in any way;
- (c) Adelaide Managed Funds, in respect of AYT units:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Adelaide Managed Funds issues securities, or grants an option over or to subscribe for securities, in AYT or agrees to make such an issue or grant such an option;
- (e) Adelaide Managed Funds issues, or agrees to issue, convertible notes (or any other security or instrument convertible into AYT Units);
- (f) Adelaide Managed Funds issues, or agrees to issue, or grants an option to subscribe for, debentures (as defined in section 9 of the Corporations Act);
- (g) Adelaide Managed Funds creates a subsidiary of AYT;
- (h) Adelaide Managed Funds agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a distribution of income, profits, assets or capital, other than the declaration and payment by Adelaide Managed Funds to pay the proposed distribution in April 2009 permitted by the SIA;
- (i) Adelaide Managed Funds makes a change to the AYT Constitution;
- (j) Adelaide Managed Funds:
  - (i) acquires, leases or disposes of;
  - (ii) agrees to acquire, lease or dispose of; or
  - (iii) offers, proposes or announces a bid or tenders for,  
  
any entity, business or assets, other than as legally committed in any contract fairly disclosed to BEN;
- (k) Adelaide Managed Funds creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of AYT's activities or assets other than in the ordinary course of its business;
- (l) other than as legally committed in any contract fairly disclosed by Adelaide Managed Funds to ASX or BEN prior to 16 February 2009, or in respect of fees payable to advisers in connection with the Scheme:
  - (i) Adelaide Managed Funds enters into any contract or commitment (or any series of related contracts or commitments) that:
    - (A) is for a period of 6 months or more; or
    - (B) requires or may result in expenditure by Adelaide Managed Funds (either alone or together with any AYT Group member) of \$500,000 or more in any year; or

- (ii) Adelaide Managed Funds undertakes capital expenditure in excess of \$100,000;
- (m) Adelaide Managed Fund incurs any financial indebtedness or issues any indebtedness or debt securities;
- (n) Adelaide Managed Funds makes any loans, advances or capital contributions to, or investments in, any other person, other than in the ordinary course of business;
- (o) it is resolved that Adelaide Managed Funds (as a result of any liability, activity or asset relating to AYT) or AYT be wound up or terminated, or an application or order is made for the winding up, dissolution or termination of AYT other than where the application or order (as the case may be) is set aside within 14 days;
- (p) a liquidator or provisional liquidator of any AYT Group member is appointed as a result of any liability, activity or asset relating to AYT;
- (q) an administrator of Adelaide Managed Funds is appointed under the Corporations Act as a result of any liability, activity or asset relating to AYT;
- (r) any AYT Group member ceases, or threatens to cease, to carry on business or activities relating to AYT;
- (s) Adelaide Managed Funds executes a deed of company arrangement as a result of any liability, activity or asset relating to AYT;
- (t) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of AYT;
- (u) any AYT Group member is deregistered as a company (as a result of any liability, activity or asset relating to AYT) or registered managed investment scheme or otherwise dissolved; or
- (v) any AYT Group member is or becomes unable to pay its debts (in the case of Adelaide Managed Funds, only to the extent that such debts relate to AYT) when they fall due.

***BEN Regulated Event*** means the occurrence of any of the following events (other than as required to be undertaken or procured by the BEN or a member of the BEN group of companies (not including the AYT Group, or BEN subsidiaries to the extent they are acting in trustee capacities) ("**BEN Group**") pursuant to the Transaction Documents, or to the extent fairly disclosed, or as agreed to in writing by Adelaide Managed Funds):

- (a) BEN converts all or any of the BEN ordinary shares into a larger or smaller number of securities;
- (b) BEN resolves that it be wound up or an application or order is made for the winding up or dissolution of BEN other than where the application or order (as the case may be) is set aside within 14 days;
- (c) a liquidator or provisional liquidator of BEN is appointed;
- (d) a court makes an order for the winding up of BEN;
- (e) an administrator of BEN is appointed under section 436A, 436B or 436C of the Corporations Act;
- (f) BEN ceases, or threatens to cease, to carry on business;
- (g) BEN executes a deed of company arrangement;

- (h) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of BEN ;
- (i) BEN is deregistered as a company or otherwise dissolved; or
- (j) BEN is or becomes unable to pay its debts when they fall due.

**Competing Proposal** means any expression of interest, proposal, offer, transaction or arrangement (other than any transaction that may be made and implemented in accordance with the SIA) by or with any person pursuant to which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) a third party will:
  - (i) acquire an interest in, or a relevant interest in, or become the holder of, 19.9% or more of the AYT units;
  - (ii) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets, business or activities of any AYT Group member;
  - (iii) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of AYT; or
  - (iv) otherwise directly or indirectly acquire, merge or amalgamate with AYT or in all or a substantial part of its assets or activities, whether by way of takeover offer, scheme of arrangement, trust scheme, member-approved acquisition, capital reduction, buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding vehicle for AYT or other synthetic merger or any other transaction or arrangement,
    - other than as custodian, nominee or bare trustee;
- (b) Adelaide Managed Funds would be required to abandon or otherwise fail to proceed with the Scheme, by whatever means; or
- (c) the responsible entity of AYT would be changed to a person other than any BEN Group member.

**Deed Poll** means a deed poll to be executed by BEN in favour of the AYT Unitholders participating in the Scheme substantially in the form annexed to the SIA (or in such other form as BEN and Adelaide Managed Funds agree in writing).

**Effective** means, when used in relation to the Scheme, each of the conditions precedent has been satisfied or waived in accordance with the SIA.

**Judicial Advice** means the First Judicial Advice and the Second Judicial Advice where:

- (a) **First Judicial Advice** means confirmation from a court of competent jurisdiction under section 63 of the Trustee Act 1925 (NSW) that:
  - (i) Adelaide Managed Funds would be justified in convening the Scheme Meeting for the purposes of considering the Scheme; and
  - (ii) subject to AYT Unitholders approving the Scheme, Adelaide Managed Funds would be justified in proceeding on the basis that amending the AYT Constitution as set out in the Supplemental Deed would be within the powers of alteration conferred by the AYT Constitution and section 601GC of the Corporations Act.

- (b) **Second Judicial Advice** means confirmation from a court of competent jurisdiction under section 63 of the Trustee Act 1925 (NSW) that, AYT Unitholders having approved the Scheme by the requisite majorities, Adelaide Managed Funds would be justified in implementing the Scheme, giving effect to the provisions of AYT's Constitution (as amended by the Supplemental Deed) and in doing all things and taking all necessary steps to put the Scheme into effect.

**Independent Expert** means an independent expert to be engaged by Adelaide Managed Funds to express an opinion on whether the Scheme is fair and reasonable and therefore in the best interests of AYT Unitholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by Adelaide Managed Funds for inclusion in the scheme booklet to be sent to Unitholders in connection with the Scheme, and any update to that report that the Independent Expert issues prior to the Scheme Meeting.

**Scheme** means the arrangement, in accordance with Takeovers Panel Guidance Note 15, under which BEN acquires all of the units in AYT from Unitholders that is facilitated by amendments to AYT's Constitution as set out in the Supplemental Deed, subject to the Scheme being approved by the requisite majorities of AYT Unitholders.

**Scheme Meeting** means the meeting of AYT Unitholders to be convened by Adelaide Managed Funds pursuant to AYT's Constitution and/or section 252A of the Corporations Act to consider the Scheme, and includes any adjournment of that meeting.

**Second Court Date** means the first day of hearing of an application made to a court of competent jurisdiction by Adelaide Managed Funds for the Second Judicial Advice or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Superior Proposal** means a bona fide Competing Proposal that the Adelaide Managed Funds independent directors determine, acting in good faith and in order to satisfy what they consider to be their fiduciary or statutory duties (and after having taken advice from their financial and legal advisers):

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the AYT Unitholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal.

**Supplemental Deed** means a deed poll pursuant to which Adelaide Managed Funds will amend AYT's Constitution, to be executed by Adelaide Managed Funds in the form annexed to the SIA (or in such other form as BEN and Adelaide Managed Funds agree in writing).

**Transaction Documents** means:

- (a) the SIA;
- (b) the Supplemental Deed; and
- (c) the Deed Poll.