

Deed

Avenue Superannuation Plan

Deed of retirement and appointment of trustee

Macquarie Investment Management Limited
ABN 66 002 867 003

Avenue Capital Management Limited
ABN 98 094 986 562

and

IOOF Investment Management Limited
ABN 53 006 695 021

Freehills

MLC Centre Martin Place Sydney NSW 2000 Australia
GPO Box 4227 Sydney NSW 2001 Australia
Sydney Melbourne Perth Brisbane Singapore

Telephone +61 2 9225 5000 Facsimile +61 2 9322 4000
www.freehills.com DX 361 Sydney

Associated offices in Jakarta Beijing Shanghai Hanoi Ho Chi Minh City

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Deed of retirement and appointment of trustee

Date ▶

29/6/

2012

Between the parties

Macquarie Investment Management Limited

ABN 66 002 867 003 of Mezzanine Level, 1 Martin Place Sydney,
NSW

(MIML)

Avenue Capital Management Limited

ABN 98 094 986 562 of Suite 3, Level 2, 100 George Street,
Parramatta, NSW, 2150

(Avenue)

IOOF Investment Management Limited

ABN 53 006 695 021 of Level 6, 161 Collins Street, Melbourne
Victoria

(IOOF)

Recitals

- 1 The Avenue Superannuation Plan (**Plan**) ABN 82 004 832 237 is a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cth) that was established under a trust deed dated 2006 (no day was specified) executed by MIML (as amended by a deed dated 1 July 2007 and a deed dated 21 September 2009) (**Trust Deed**).
- 2 MIML is the trustee (**Trustee**) of the Plan.
- 3 Under transaction documents entered into between Avenue and IOOF in relation to the sale of the primary undertaking of Avenue to IOOF and its related entities, Avenue has assigned its rights under the Trust Deed to IOOF.
MIML ceasing to be the Trustee
- 4 Under clause 3.1(a)(i) of the Trust Deed, MIML was to cease to be the Trustee after the expiry of 5 years from the administration agreement entered into between MIML and Avenue on 14 February 2006 or a longer period agreed between MIML and Avenue.
- 5 Under a Deed dated 15 February 2011, Avenue and MIML agreed that the administration agreement will extend after the end of the period referred to in recital 4 above by rolling periods of 3 months

from 14 February 2011 with MIML and the Avenue each being able to terminate the administration agreement on a rolling date by providing the other party to the administration agreement with at least 90 days' notice.

- 6 MIML and IOOF (an assignee of Avenue's right under the Trust Deed) wish to agree that under clause 3.1(a)(i) of the Trust Deed MIML will cease to be the Trustee of the Plan on the Effective Date.

Appointment of IOOF as Trustee

- 7 Under clause 3.1(e) of the Trust Deed, if MIML ceases to be the Trustee, IOOF (as the assignee of Avenue's right under the Trust Deed) must appoint a new Trustee.
- 8 IOOF (as the assignee of Avenue's rights under the Trust Deed) wishes to appoint itself as Trustee immediately after the Effective Date.
-

This deed witnesses as follows:

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1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Assets	the assets of the Plan.
Business Day	a day on which banks are open for business in both Melbourne and Sydney excluding a Saturday, Sunday or public holiday in that city.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Defence Costs	reasonable expenses, costs and charges (including legal costs) incurred in the investigation, defence or settlement of any action, suit or proceedings in connection with the Plan.
Effective Date	27 August 2012 or such other date that is agreed between MIML and IOOF in writing where: <ul style="list-style-type: none">• IOOF must not unreasonably withhold its agreement to a date other than 27 August 2012; and• the date must permit the orderly transition of the position of Trustee from MIML to IOOF.
Liability	any claim, action, damage, loss, liability, cost, charge, expense, Tax, outgoing or payment.
Plan	the Avenue Superannuation Plan ABN 82 004 832 237.
Plan Liabilities	all costs, charges, damages, expenses, losses, Defence Costs, taxation or other government impost and any other liability and all other claims, demands, causes of action or proceedings of whatsoever nature in relation to the Plan that: <ul style="list-style-type: none">• arise before the Effective Date; or• arise after the Effective Date but which relate to the period before the Effective Date,

Term	Meaning
	<p>but not including any liabilities:</p> <ul style="list-style-type: none"> • for member benefits (other than insured benefits greater than \$200,000); • payments to existing service providers to MIML; • for which MIML is not entitled to indemnification at law from the Assets or under the Trust Deed; or • which are the subject of an accepted claim under a policy of indemnity insurance taken out by MIML.
Platform Services Agreement	the agreement between MIML and IOOF that will be executed immediately after the execution of this deed for MIML to provide administration services to IOOF in relation to the Plan.
Records	any books or records relating to the Plan.
SIS Act	the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
Successor Fund	has the same meaning as in the SIS Regulations.
Tax	any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any government agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of the above.
Transaction Documents	The documents entered into between Avenue and IOOF on or about the date of this Deed pursuant to which Avenue has sold its primary undertaking to IOOF and its related entities, including its rights under the Trust Deed.
Trust Deed	the trust deed dated 2006 (no day was specified) executed by MIML (as amended by a deed dated 1 July 2007 and a deed dated 21 September 2009).
Trustee	the trustee of the Plan.

1.2 Interpretation

A reference to a person in this deed includes that person's successors, permitted assigns and legal personal representatives.

2 Acknowledgment of assignment

Avenue acknowledges that, pursuant to the Transaction Documents, it has assigned its rights under the Trust Deed to IOOF.

3 MIML ceasing to be the Trustee

Under clause 3.1(a)(i) of the Trust Deed, IOOF and MIML agree that the period during which MIML will be the Trustee will cease at the Effective Date and execution of this deed is sufficient evidence of MIML's cessation of being the Trustee.

4 Appointment of IOOF

Immediately after the Effective Date IOOF:

- (a) appoints itself as Trustee under clause 3.1(e) of the Trust Deed; and
- (b) under the Trust Deed:
 - (1) may exercise all of the powers of the Trustee;
 - (2) has the same rights as the Trustee; and
 - (3) must perform all of the obligations of the Trustee.

5 Vesting Assets in IOOF

- (a) MIML must as soon as practicable after the Effective Date:
 - (1) vest the Assets, or cause the Assets to be vested, in IOOF;
 - (2) deliver to IOOF all books, documents, records, contracts and other property in its possession or under its control that relate to any Asset; and
 - (3) upon request, execute any transfer and do any thing necessary to allow IOOF to gain title to the Assets and fulfil the obligations of the Trustee under the Trust Deed.
- (b) IOOF must perform all necessary steps to cause the Assets to be vested in itself as soon as practicable after the Effective Date.
- (c) To the extent that legal title to any of the Assets vest in MIML after the Effective Date:
 - (1) MIML will hold such Assets (and any benefit derived from those Assets) on trust for IOOF until these Assets are transferred to IOOF;
 - (2) MIML and IOOF must each facilitate the transfer of those Assets, as soon as practicable from MIML to IOOF;
 - (3) any liability MIML (or its representatives) may incur in respect of the holding of such Assets shall be limited to the extent to which it can be indemnified from those Assets; and

- (4) MIML, as trustee, can exercise its rights of indemnity for costs and expenses it incurs in holding such Assets on trust for IOOF.
- (d) All expenses reasonably incurred by MIML under clause 5(a) and clause 5(c) must be paid by IOOF from the Assets.

6 Release

MIML is released from all of its obligations and liabilities in relation to the Plan arising after the Effective Date except in relation to any obligation or liability in respect of any existing neglect, default or breach of trust by MIML or any existing or antecedent breach of its duties under the Trust Deed or imposed by law.

7 Indemnity

7.1 Indemnity given by MIML to IOOF

- (a) MIML unconditionally and irrevocably indemnifies IOOF against any Liability arising from any act or omission by MIML in respect of the Plan, which IOOF may incur as a result of its appointment as Trustee for which IOOF is not entitled to be indemnified or reimbursed from the Assets.
- (b) The indemnity under clause 7.1(a) is a continuing indemnity limited to any contingent or actual liability arising in respect of any act or omission occurring before IOOF's appointment as Trustee, irrespective of whether the relevant claim is made before or after the Effective Date.

7.2 Indemnity given by IOOF to MIML

- (a) Subject to clause 7.2(b), IOOF unconditionally and irrevocably indemnifies MIML against any Liability arising from any act or omission by MIML in respect of the Plan to the extent that MIML would have been entitled to be indemnified out of the Assets had it not retired as Trustee.
- (b) Any liability or obligation of IOOF under clause 7.2(a) is:
 - (1) conditional upon the Assets being transferred to IOOF or its custodian;
 - (2) limited to the value of the Assets or the assets of any successor fund;
 - (3) limited to the extent to which IOOF is indemnified out of the assets of the Plan (or any successor fund) in respect of the relevant liability or obligation; and
 - (4) not applicable to the extent that MIML or its representatives intentionally or recklessly do anything or intentionally or recklessly fail to do anything that prejudices their rights in relation to the relevant liability.
- (c) For the sake of clarity, nothing in this deed affects any rights of indemnification of MIML out of the Assets under the Trust Deed or at law.

7.3 Payments

Any payment which is required to be made under clause 7:

- (a) must be without:
 - (1) any set-off, counterclaim or condition; or
 - (2) any deduction or withholding for any tax or any other reason; and
- (b) must be increased by the amount of GST payable in respect of that payment (if any) to the extent that the party that is indemnified is not entitled to an input tax credit or other credit in respect of the Liability for which they are indemnified under clause 7.

7.4 Claims on indemnity

Neither party need pay any expenses or assume any liability before claiming on the indemnity by the other party provided under this Deed.

8 Records

As soon as practicable after the Effective Date, MIML must deliver to IOOF all Records in its possession other than those that MIML requires to perform its obligations under the Platform Services Agreement (copies of which must be provided to IOOF on reasonable request).

9 Plan Liabilities

- (a) MIML covenants that it will, prior to the Effective Date:
 - (1) notify IOOF as soon as practicable after becoming aware of any Plan Liabilities but only to the extent that:
 - (A) the amount exceeds \$50,000; and
 - (B) MIML reasonably considers it unusual in the ordinary course of acting as the Trustee;
 - (2) take such steps as are reasonably open to MIML or its representatives to mitigate any Plan Liabilities that arose before the Effective Date or that may arise after the Effective Date where they are attributable to the actions or omissions of MIML or its representatives; and
 - (3) not admit liability for or settle any Plan Liability or incur any Defence Costs in connection with any Plan Liability without the written consent of IOOF (which consent will not be unreasonably withheld).
- (b) MIML covenants that it will, after the Effective Date:
 - (1) provide IOOF with all reasonable assistance necessary in defending or recovering any Plan Liabilities, including the completion of any documentation required for processing the payment of the Plan Liabilities and pursuing any third parties for Plan Liabilities owed to the Plan provided that IOOF indemnifies MIML for its costs in doing so; and

- (2) not admit liability for or settle any Plan Liability or incur any Defence Costs in connection with any Plan Liability without the written consent of IOOF (which consent will not be unreasonably withheld).

10 Representations and warranties

10.1 Disclosure

- (a) IOOF represents and warrants to MIML that the information contained in its letter dated on or about the Effective Date to MIML is complete and accurate.
- (b) MIML represents and warrants to IOOF that the information contained in its letter dated on or about the Effective Date to IOOF is complete and accurate.
- (c) The letters that are referred to in clauses 10.1(a) and 10.1(b) must:
- (1) be dated and provided to the other party in the 2 Business Days period prior to the Effective Date; and
 - (2) confirm that to the best of the knowledge of the party providing the letter, that party is not aware of any matter that would make the representations and warranties provided by that party under this deed untrue.

10.2 MIML

MIML represents and warrants that that, as at the date of this deed and at the Effective Date, to the best of its knowledge, information and belief:

- (a) **accounts accurate:** the Records have been properly maintained and are accurate, up-to-date and not misleading;
- (b) **no litigation:** no litigation, arbitration, dispute or administrative proceedings has commenced, is pending or to its knowledge is threatened and no claim or threat of litigation received or made in relation to the Plan is not disclosed in writing to IOOF before the date of this deed;
- (c) **Tax returns lodged:** MIML has correctly and punctually lodged all Tax and other statutory returns in respect of the Plan and full disclosure has been made in those returns;
- (d) **Trust Deed:** the Trust Deed is as far as MIML is aware:
- (1) complete and accurate in all respects; and
 - (2) legally binding on MIML;
- (e) **Plan:** the Plan is a regulated and complying superannuation fund within the meaning of SIS Act and as far as MIML is aware has been administered in accordance with the SIS Act and the law that applies to MIML as trustee of the Plan;
- (f) **RSE licence:** MIML is the holder of a RSE licence under the SIS Act;
- (g) **Plan registered:** the Plan is registered as a registrable superannuation entity under the SIS Act;
- (h) **stamp duty paid:** MIML has paid all stamp duty in relation to the Plan required by law;
- (i) **no winding up:** no steps have been taken to wind up the Plan; and

- (j) **power to act:** MIML has and has always had power to act as trustee of the Plan in accordance with the Trust Deed.

10.3 IOOF

IOOF represents and warrants that, as at the date of this deed and at the Effective Date, it will comply with the Corporations Act and the SIS Act in performing its obligations under this deed.

10.4 General

Each party represents and warrants to the other that:

- (a) it is a corporation (as defined in the Corporations Act) having limited liability, registered (or taken to be registered) and validly existing under the Corporations Act;
- (b) it has full power and authority to enter into and perform its obligations under this deed; and
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

11 Costs and Stamp Duty

IOOF shall pay any and all stamp duty, registration or other documentary taxes or charges payable in relation to this deed and in relation to any instrument or transaction contemplated by this deed.

12 Notices

Any notice or other communication under this deed to or by a party:

- (a) must be in writing addressed as shown at the commencement of this deed or to any other address specified by any party to the sender by notice; and
- (b) where the sender is a company, must be signed by an officer or under the common seal of the sender.

13 General

13.1 Governing law and jurisdiction

This deed is governed by the laws of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.

13.2 Prohibition and Enforceability

- (a) Any provision of, or the application of any provision of, this deed or any power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

13.3 Waivers

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 13.3 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this deed and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

13.4 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this deed.

13.5 Variation

A variation of any term of this deed must be in writing and signed by the parties.

13.6 Cumulative Rights

The rights, powers and remedies provided in this deed are cumulative and are not exclusive of any rights, powers or remedies provided by law.

13.7 Counterparts

This deed may be executed in any number of counterparts.

Executed as a deed

THE COMMON SEAL OF Macquarie Investment Management Limited
..... LIMITED
WAS HEREUNTO AFFIXED IN ACCORDANCE
WITH THE COMPANY'S CONSTITUTION:
Signed sealed and delivered by
Macquarie Investment Management Limited
by

sign here ▶ 
Company Secretary/Director

print name TONY GRAHAM

sign here ▶ 
Director **COMPANY SECRETARY**


print name Paula Walsh



Signed sealed and delivered by
Avenue Capital Management Limited
by

sign here ▶ 
Company Secretary/Director

print name MARK LEWIN

sign here ▶ 
Director

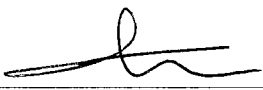
print name DONALD A NICOL

Signed sealed and delivered by
IOOF Investment Management Limited
by

sign here ▶ 

Company Secretary/Director

print name ROGER N SEXTON

sign here ▶ 

Director

print name CF Kelaher