



Tuesday, 22 March 2022

Scheme now Legally Effective

Australian Pharmaceutical Industries (ASX:API) ("API") confirms that it has lodged a copy of the orders made by the Federal Court of Australia ("Court") with the Australian Securities and Investments Commission. As announced, yesterday the Court approved the scheme of arrangement between API and its shareholders, under which WFM Investments Pty Ltd, a wholly owned subsidiary of Wesfarmers Limited, will acquire 100% of the shares in API that it does not already own ("Scheme").

A copy of the Court orders are attached to this announcement.

The Scheme is now legally effective and it is expected that quotation of API shares on the ASX will be suspended from close of trading today.

API shareholders will be paid the Scheme consideration upon implementation of the Scheme (expected to be on Thursday, 31 March 2022) in respect of API shares they hold as at 7.00pm (Melbourne time) on Tuesday, 29 March 2022.

If API shareholders have any questions about the Scheme, please contact the API Shareholder Information Line on 1300 103 401 (within Australia) or +61 2 9066 4063 (outside Australia) between 8.30 am and 5.00 pm (Melbourne time) Monday to Saturday, excluding public holidays.

This announcement is authorised for release by the Board of Directors of API.

For further information:

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Federal Court of Australia

District Registry: Victoria

Division: General

No: VID708/2021

**IN THE MATTER OF AUSTRALIAN PHARMACEUTICAL INDUSTRIES
LIMITED ACN: 000 004 320**

AUSTRALIAN PHARMACEUTICAL INDUSTRIES LIMITED ACN: 000 004 320
Plaintiff

ORDER

JUDGE: JUSTICE BEACH

DATE OF ORDER: 21 March 2022

WHERE MADE: Melbourne

THE COURT NOTES THAT:

There has been produced to the Court a statement in writing by the Australian Securities and Investments Commission (ASIC) in accordance with section 411(17)(b) of the *Corporations Act 2001* (Cth) (Act) stating that ASIC has no objection to the Scheme of Arrangement between the plaintiff (API) and its shareholders other than the “Excluded Shareholders” as defined in the Scheme of Arrangement (API Shareholders), the terms of which are set out in Annexure A to this order (Scheme), which Scheme was approved by the API Shareholders at a meeting on 17 March 2022.

THE COURT ORDERS THAT:

1. Pursuant to section 411(4)(b) of the Act, the Scheme be and is hereby approved.
2. Pursuant to section 411(12) of the Act, API be exempted from compliance with section 411(11) of the Act in respect of the Scheme.

Note: Entry of orders is dealt with in rule 39.34 of the *Federal Court Rules 2011* (Cth).

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Date that entry is stamped: 21 March 2022.

Sia Lagos
Registrar

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Annexure A
Scheme of Arrangement

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Scheme of Arrangement

Australian Pharmaceutical Industries Limited
ACN 000 004 320

Scheme Shareholders

2021

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SCHEME OF ARRANGEMENT

Under section 411 of the Corporations Act

BETWEEN:

- (1) **Australian Pharmaceutical Industries Limited** (ACN 000 004 320) whose registered office is at Level 5, 250 Camberwell Road, Camberwell, Victoria 3124 (**API**); and
- (2) each Scheme Shareholder.

BACKGROUND:

- (A) API is a public company incorporated in Australia under the Corporations Act. It is registered in New South Wales and is a company limited by shares. API is admitted to the official list of ASX and API Shares are quoted on ASX.
- (B) Wesfarmers Limited (ACN 008 984 049) (**Wesfarmers**) is a public company incorporated in Australia under the Corporations Act. It is registered in Western Australia and is a company limited by shares. Wesfarmers is admitted to the official list of ASX and its fully paid ordinary shares are quoted on ASX.
- (C) WFM Investments Pty Ltd (ACN 651 355 501) (**Wesfarmers Sub**), a wholly-owned subsidiary of Wesfarmers, is registered in Western Australia and is a company limited by shares.
- (D) API, Wesfarmers Sub and Wesfarmers have agreed, by executing the Scheme Implementation Deed, to facilitate the implementation of this Scheme.
- (E) This Scheme attributes actions to Wesfarmers Sub but does not itself impose an obligation on it to perform those actions. Wesfarmers and Wesfarmers Sub covenant in favour of the Scheme Shareholders, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including to provide or procure the provision of the Scheme Consideration in accordance with the terms of this Scheme.
- (F) If this Scheme becomes Effective:
 - (1) in consideration of the transfer of the Scheme Shares to Wesfarmers Sub, Wesfarmers Sub must provide or procure the provision of the Scheme Consideration in accordance with the terms of this Scheme and the Deed Poll;
 - (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Wesfarmers Sub; and
 - (3) API will enter the name of Wesfarmers Sub in the Register as the holder of all Scheme Shares.

OPERATIVE PROVISIONS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

API Share means a fully paid ordinary share in the capital of API.

API Shareholder means a person or persons (in the case of joint shareholdings) entered in the Register as a holder of API Shares.



API Withholding Amount Shareholder means a Scheme Shareholder in relation to whom Wesfarmers Sub determines (acting reasonably) that a Withholding Amount must be paid to the Commissioner in relation to the acquisition of API Shares from such API Withholding Amount Shareholder.

ASIC means the Australian Securities and Investments Commission.

ASX means the Australian Securities Exchange or ASX Limited (ACN 008 624 691), as the context requires.

ASX Operating Rules means the operating rules of ASX.

ASX Settlement Rules means operating rules of the settlement facility provided by ASX Settlement Pty Ltd (ACN 008 504 532).

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Victoria and Perth, Western Australia.

CHESS means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement Pty Limited (ACN 008 504 532), which provides for the electronic transfer, settlement and registration of securities.

CHESS Holding has the meaning given in the ASX Settlement Rules.

Commissioner means the Commissioner of Taxation of the Commonwealth of Australia.

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

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing between API and Wesfarmers Sub.

Deed Poll means the deed poll under which Wesfarmers and Wesfarmers Sub covenant in favour of the Scheme Shareholders to perform the actions attributed to them under this Scheme.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

Effective Date means the date on which this Scheme becomes Effective.

End Date has the meaning given in the Scheme Implementation Deed.

Excluded Shareholder means any API Shareholder who is a member of the Wesfarmers Group or any API Shareholder who holds any API Shares on behalf of, or for the benefit of, any member of the Wesfarmers Group and does not hold API Shares on behalf of, or for the benefit of, any other person.

Government Agency means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the ACCC, ASIC, ATO, ASX, any Office of State Revenue, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX.

Implementation Date has the meaning given in the Scheme Implementation Deed.

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Issuer Sponsored Holding has the meaning given in the ASX Settlement Rules.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Register means the register of members of API maintained by API or the Registry in accordance with the Corporations Act.

Registered Address means, in relation to an API Shareholder, the address of the shareholder shown in the Register.

Registry means Boardroom Pty Limited (ACN 003 209 836).

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between API and Scheme Shareholders, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed in writing between API and Wesfarmers Sub.

Scheme Consideration means the consideration to be provided by Wesfarmers Sub to each Scheme Shareholder for the transfer to Wesfarmers Sub of each Scheme Share, being \$1.55 cash for each API Share held by a Scheme Shareholder as at the Scheme Record Date, subject to and as adjusted in accordance with clause 2.3(c) of the Scheme Implementation Deed (if applicable).

Scheme Implementation Deed means the Scheme Implementation Deed between API, Wesfarmers Sub and Wesfarmers dated 8 November 2021 relating to the implementation of this Scheme.

Scheme Meeting means the meeting of API Shareholders (other than Excluded Shareholders) to be convened, as ordered by the Court under section 411(1) of the Corporations Act, to consider this Scheme and includes any adjournment or postponement of that meeting.

Scheme Record Date has the meaning given in the Scheme Implementation Deed.

Scheme Share means an API Share on issue as at the Scheme Record Date (other than an API Share recorded in the Register as at the Scheme Record Date as being held by Wesfarmers Sub).

Scheme Shareholder means an API Shareholder recorded in the Register as at the Scheme Record Date (other than Wesfarmers Sub), taking into account registration of any transfer or transmission application or other request received in accordance with clause 5.1.

Scheme Transfer means a duly completed and executed proper instrument of transfer of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Wesfarmers Sub as transferee, which may be a master transfer of all or part of the Scheme Shares.

Second Court Date means the first day on which the Court hears the application for an order under section 411(4)(b) of the Corporations Act approving this Scheme or, if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned or appealed application is heard.

TAA means the *Taxation Administration Act 1953* (Cth).

Total Withholding Amount means the aggregate Withholding Amounts in respect of all API Withholding Amount Shareholders.

Trust Account has the meaning given in clause 4.1(a)(i).

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Wesfarmers has the meaning given in recital (B).

Wesfarmers Group means Wesfarmers and its subsidiaries.

Wesfarmers Sub has the meaning given in recital (C).

Withholding Amount means the amount that Wesfarmers Sub is required to pay to the Commissioner under Subdivision 14-D of Schedule 1 of the TAA in respect of the acquisition of any API Shares from a relevant Scheme Shareholder.

1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **entity**, **officer** and **security interest** have the same meanings as given by the Corporations Act.
- (g) A reference to \$ or **dollar** is to Australian currency.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) A reference to time in this document is a reference to time in Melbourne, Victoria.

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1.3 Non-Business Days

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the next Business Day.

2. CONDITIONS PRECEDENT

2.1 Conditions precedent to this Scheme

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

- (a) as at 8.00 am on the Second Court Date, all the conditions set out in clause 3.2 of the Scheme Implementation Deed, other than the condition in item 3 (Court approval of Scheme) of clause 3.2 of the Scheme Implementation Deed, having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (b) as at 8.00 am on the Second Court Date, neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed in writing between API and Wesfarmers Sub;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed in writing between API and Wesfarmers Sub having been satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(1) of the Corporations Act, on or before the End Date (or any later date API and Wesfarmers Sub agree in writing).

2.2 Certificate in relation to conditions precedent

- (a) Before 8.00 am on the Second Court Date, each of API and Wesfarmers Sub must provide to the Court a certificate signed by a duly authorised representative (or such other evidence as the Court requests), confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 2.1(a) and 2.1(b) have been satisfied or waived.
- (b) A certificate provided under clause 2.2(a) constitutes conclusive evidence that the relevant conditions precedent have been fulfilled, waived or taken to be waived.

2.3 Termination

- (a) The Scheme will lapse and be of no further force or effect if:
 - (i) the Effective Date does not occur on or before the End Date; or
 - (ii) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with their terms,unless API and Wesfarmers Sub otherwise agree in writing.
- (b) Without limiting any rights under the Scheme Implementation Deed, in the event that the Scheme Implementation Deed is terminated in accordance with its terms



before 8.00 am on the Second Court Date, API and Wesfarmers Sub are each released from:

- (i) any further obligation to take steps to implement this Scheme; and
- (ii) any liability with respect to this Scheme.

3. IMPLEMENTATION OF THIS SCHEME

3.1 Lodgement of Court orders with ASIC

- (a) API must lodge with ASIC, in accordance with section 411(4)(b) of the Corporations Act, an office copy of the orders approving this Scheme as soon as practicable after the Court makes those orders, and in any event by no later than 4.00 pm on the first Business Day after those orders are made.
- (b) Subject to clause 2.3, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.2 Transfer of Scheme Shares

- (a) On the Implementation Date, subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.1(b) and 4.1(c), all the Scheme Shares (together with all rights and entitlements attaching to those shares as at the Implementation Date) must be transferred to Wesfarmers Sub, without the need for any further act by any Scheme Shareholder (other than acts performed by API or its directors and officers as agent and attorney of each Scheme Shareholder), by:
 - (i) API delivering to Wesfarmers Sub the duly completed Scheme Transfers executed by API or any of its directors and officers as agent and attorney of each Scheme Shareholder as transferor; and
 - (ii) Wesfarmers Sub duly executing the Scheme Transfers as transferee and, if necessary, attending to the stamping of the Scheme Transfers and delivering them to API for registration.
- (b) Immediately following receipt of the Scheme Transfers under clause 3.2(a)(ii), but subject to the stamping of the Scheme Transfers (if necessary), API must enter, or procure the entry of, the name and address of Wesfarmers Sub in the Register as the holder of all the Scheme Shares in accordance with this Scheme.

4. SCHEME CONSIDERATION

4.1 Provision of Scheme Consideration

- (a) Wesfarmers Sub must, by no later than the Business Day before the Implementation Date:
 - (i) deposit, or procure the deposit, in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders other than each Excluded Shareholder (less the Total Withholding Amount) into an Australian dollar denominated trust account operated by API as trustee for the Scheme Shareholders (other than each Excluded Shareholder) (**Trust Account**) (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Wesfarmers Sub's account; and
 - (ii) provide written confirmation to API of that deposit.

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- (b) On the Implementation Date, subject to funds having been deposited in the manner contemplated by clause 4.1(a)(i), API must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder (other than each Excluded Shareholder) from the Trust Account.
- (c) The obligations of API under clause 4.1(b) will be satisfied by API (in its absolute discretion, and despite any election referred to in clause 4.1(c)(i) or authority referred to in clause 4.1(c)(ii) made or given by the Scheme Shareholder):
- (i) if a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Registry to receive dividend payments from API by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to API; or
 - (iii) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.2).
- (d) To the extent that, following satisfaction of API's obligations under clause 4.1(b), there is a surplus in the amount held by API as trustee for the Scheme Shareholders in the Trust Account, that surplus must be paid by API to Wesfarmers Sub.
- (e) Wesfarmers Sub will remit the Total Withholding Amount to the Commissioner.

4.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 4.1(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of API, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of API, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

4.3 Fractional entitlements

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder (other than each Excluded Shareholder) would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent.

4.4 Unclaimed monies

- (a) API may cancel a cheque issued under this clause 4 if the cheque:
 - (i) is returned to API; or



(ii) has not been presented for payment within six months after the date on which the cheque was sent.

- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to API (or the Registry) (which request may not be made until the date which is 30 Business Days after the Implementation Date), API must reissue a cheque that was previously cancelled under this clause 4.4.
- (c) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).
- (d) Any interest or other benefit accruing from the unclaimed Scheme Consideration will be to the benefit of Wesfarmers Sub.

4.5 Orders of a court or Government Agency

If written notice is given to API (or the Registry) or Wesfarmers Sub of an order or direction made by a court of competent jurisdiction or by another a Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a Scheme Shareholder (other than each Excluded Shareholder), which would otherwise be payable or required to be issued to that Scheme Shareholder by API in accordance with this clause 4, then API shall be entitled to procure that payment is made in accordance with that order or direction; or
- (b) prevents API from providing consideration to any particular Scheme Shareholder (other than each Excluded Shareholder) in accordance with this clause 4, or the payment of such consideration is otherwise prohibited by applicable law, API will be entitled to retain an amount, in Australian dollars, equal to the amount which would otherwise be payable to that Scheme Shareholder until such time as payment in accordance with this clause 4 is permitted by that (or another) order or direction or otherwise by law,

and the payment or retention by API (or the Registry) will constitute the full discharge of API's obligations under this clause 4 with respect to the amount so paid or retained (in the case of 4.5(b), until it is no longer required to be retained).

5. DEALINGS IN API SHARES

5.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in API Shares or other alterations to the Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Register as the holder of the relevant API Shares before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received before the Scheme Record Date at the place where the Register is kept,

and API must not accept for registration, nor recognise for any purpose (except a transfer to Wesfarmers Sub pursuant to this Scheme and any subsequent transfer by Wesfarmers Sub or its successors in title), any transfer or transmission application or other request

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received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

5.2 Register

- (a) API must register all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 5.1(b) before the Scheme Record Date, provided that, for the avoidance of doubt, nothing in this clause 5.2 requires API to register a transfer that would result in an API Shareholder holding a parcel of API Shares that is less than a 'marketable parcel' (as defined in the ASX Operating Rules).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that Scheme Shareholder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and API shall be entitled to disregard any such disposal or dealing.
- (c) For the purpose of determining entitlements to the Scheme Consideration, API must maintain the Register in accordance with the provisions of this clause 5.2 until the Scheme Consideration has been provided to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for API Shares (other than statements of holding in favour of Wesfarmers Sub or any Excluded Shareholders) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Register (other than entries on the Register in respect of Wesfarmers Sub or any Excluded Shareholders) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (e) As soon as practicable after the Scheme Record Date, and in any event by 5.00 pm on the first Business Day after the Scheme Record Date, API will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the Register as at the Scheme Record Date are available to Wesfarmers Sub in the form Wesfarmers Sub reasonably requires.

5.3 Quotation of API Shares

- (a) API must apply to ASX to suspend trading on ASX in API Shares with effect from close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Wesfarmers Sub, API must apply:
 - (i) for termination of the official quotation of API Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

6. GENERAL PROVISIONS

6.1 API giving effect to this Scheme

API must do anything (including execute any document) that is necessary to give effect to the Scheme and the transactions contemplated by it. Without limiting API's power under this Scheme, API has power to do all things that it considers necessary to give effect to this Scheme and the Scheme Implementation Deed.

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6.2 Scheme Shareholders' agreements, consents and warranties

- (a) Each Scheme Shareholder:
- (i) irrevocably agrees to the transfer of its API Shares, together with all rights and entitlements attaching to those Scheme Shares, to Wesfarmers Sub in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to its API Shares constituted by or resulting from this Scheme;
 - (iii) agrees to, on the direction of Wesfarmers Sub, destroy any statements of holding or share certificates relating to its API Shares;
 - (iv) who holds its API Shares in a CHES Holding agrees to the conversion of those API Shares to an Issuer Sponsored Holding and irrevocably authorises API to do anything necessary, expedient or incidental (whether required by the ASX Settlement Rules or otherwise) to effect or facilitate such conversion; and
 - (v) acknowledges and agrees that this Scheme binds API and all API Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).
- (b) Each Scheme Shareholder is taken to have warranted to API and Wesfarmers Sub on the Implementation Date, and appointed and authorised API as its agent and attorney to warrant to Wesfarmers Sub on the Implementation Date, that:
- (i) all of its Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the PPSA) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that it has full power and capacity to transfer its Scheme Shares to Wesfarmers Sub together with any rights and entitlements attaching to those Scheme Shares; and
 - (ii) it has full power and capacity to sell and to transfer its Scheme Shares (including any rights and entitlements attaching to those shares) to Wesfarmers Sub under this Scheme.
- (c) API undertakes that it will provide such warranty in clause 6.2(b) to Wesfarmers Sub as agent and attorney of each Scheme Shareholder.

6.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Wesfarmers Sub will, at the time of transfer of them to Wesfarmers Sub, vest in Wesfarmers Sub free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the PPSA) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder (other than each Excluded Shareholder) in the manner contemplated by clauses 4.1(b) and 4.1(c), Wesfarmers Sub will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by API of Wesfarmers Sub in the Register as the holder of the Scheme Shares.

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6.4 Appointment of API as attorney of Scheme Shareholders

Each Scheme Shareholder without the need for any further act, irrevocably appoints API and each of its directors and officers, jointly and severally, on and from the Effective Date, as the Scheme Shareholder's agent and attorney:

- (a) to execute any document or do any other act necessary, expedient or incidental to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing and delivering any Scheme Transfer; and
- (b) to enforce the Deed Poll against Wesfarmers and Wesfarmers Sub (and API undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Wesfarmers and Wesfarmers Sub on behalf of and as agent and attorney of each Scheme Shareholder),

and API accepts such appointment. API may as agent and attorney of each Scheme Shareholder sub-delegate any of its functions, authorities or powers under this clause 6.4 to all or any of its directors and officers (jointly, severally, or jointly and severally).

6.5 Appointment of Wesfarmers Sub as attorney in respect of Scheme Shares

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clauses 4.1(b) and 4.1(c) until Wesfarmers Sub is registered as the holder of all Scheme Shares, each Scheme Shareholder:

- (a) irrevocably appoints Wesfarmers Sub as its agent and attorney (and irrevocably appoints Wesfarmers Sub as its agent and attorney to appoint any of the directors and officers nominated by Wesfarmers Sub as its agent and attorney) to:
 - (i) appoint the chair of the board of directors of API and, where applicable, corporate representative to attend API Shareholders' meetings;
 - (ii) exercise the votes attaching to the API Shares registered in the name of the Scheme Shareholder; and
 - (iii) sign any API Shareholders' resolution;
- (b) must not attend or vote at any API Shareholders' meetings or sign any API Shareholders' resolution (whether in person, by proxy or by corporate representative) other than pursuant to clause 6.5(a)(iii); and
- (c) must take all other action in the capacity of a registered holder of Scheme Shares as Wesfarmers Sub reasonably directs.

6.6 Binding effect of Scheme

This Scheme binds API and all API Shareholders from time to time, including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme (and, to the extent of any inconsistency, this Scheme overrides API's constituent documents).

6.7 Alteration or condition to Scheme

If the Court proposes to approve this Scheme subject to any alteration or condition:

- (a) API may, by its counsel, but subject to the prior approval of Wesfarmers Sub (which may not be unreasonably withheld or delayed), consent on behalf of all persons concerned to those alterations or conditions; and

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- (b) each Scheme Shareholder agrees to any such alterations or conditions which API has consented to.

6.8 No liability when acting in good faith

Each Scheme Shareholder agrees that neither API, Wesfarmers, Wesfarmers Sub nor any director, officer or employee of any of those companies shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

6.9 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to API, it will be deemed to be received on the date (if any) on which it is actually received at the registered of API or the Registry and on no other date.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by an API Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

6.10 Costs and stamp duty

- (a) Subject to clause 6.10(b), API will pay all the costs of this Scheme.
- (b) Wesfarmers Sub will pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll.
- (c) Wesfarmers Sub will indemnify each Scheme Shareholder against liability arising from a failure to comply with clause 6.10(b).

6.11 Governing law

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of Victoria, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Victoria, Australia, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document. Each party irrevocably waives any right it has to object to any legal process being brought in those courts including any claim that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.