



**DAIRY FARMERS MILK CO-OPERATIVE LIMITED**  
(ARBN 108 690 384)

**2011 SHARE ACQUISITION PROGRAM**  
**DISCLOSURE STATEMENT**

# DAIRY FARMERS MILK CO-OPERATIVE LIMITED

ARBN 108 690 384

## 2011 SHARE ACQUISITION PROGRAM DISCLOSURE STATEMENT

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### APPROVAL

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This Disclosure Statement has been approved by the Registrar of Co-operatives on 7 October 2011 for the purposes of Section 155(3) of the *Co-operatives Act 1992* (NSW).

### DISCLAIMER

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No responsibility as to the contents of this Disclosure Statement is taken by the Registrar of Co-operatives, nor does the Registrar's approval of this document indicate support for the Program.

### DEFINITIONS

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Some of the expressions used in this Disclosure Statement are expressions which have been defined in the Conditions of the 2011 Share Acquisition Program. Members reading this Disclosure Statement should refer to the definitions contained in Clause 1 of the Conditions, which form part of this Disclosure Statement.

## SECTION A

### 1. WHY IS YOUR BOARD RECOMMENDING THE PROGRAM?

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In July 2009, Dairy Farmers Milk Co-operative Limited (the “**Co-operative**”) by scheme of arrangement reduced its share capital so that it retained approximately \$21m, split between retained earnings (approximately \$11.1m) and share capital (approximately \$9.7m).

The Co-operative’s “back-to-back” pricing arrangements with Lion (formerly National Foods Limited) results in the agreed milk price being passed directly back to the Co-operative’s members without the Co-operative “clipping the ticket”. The Co-operative funds its operations from the “aggregation fee” received from Lion pursuant to the Milk Supply Agreement with Lion and from the Co-operative’s investments.

Over the last 2 years, the Co-operative’s capital base has declined at an average rate of \$500,000 or 500,000 shares per annum. The Co-operative’s current shareholding totals approximately \$8.8m however the Co-operative is forecasting forfeitures of \$900,000 for the financial year ending 30 June 2012 (ie share capital at 30 June 2012 will be approximately \$7.9m).

The Rules currently provide for a minimum shareholding per farm of 2,000 shares in the Co-operative. The Board believes the minimum of 2,000 shares is too low and well below the average shareholding in the Co-operative. For example, out of the 690 farms which supply milk to the Co-operative, 129 farms (or 24%) hold the minimum shareholding of 2,000 shares and 521 farms (or 76%) hold more than the minimum shareholding.

The Board has recommended to members the minimum shareholding of 2,000 shares be increased to 5,000 shares. The Board also believes members’ shareholding should have some alignment to the volume of milk supplied to the Co-operative. The increase in the minimum shareholding and a requirement to take up shares based on milk supply will narrow the current disparity between members’ shareholdings and introduce a “fairness of ownership” in the Co-operative.

Your Board believes a strong balance sheet of retained earnings and share capital is important to the ongoing success of the Co-operative. The Co-operative must have adequate funding to undertake its obligations under the Milk Supply Agreement with Lion. A decreasing capital base puts increased financial and operation pressure on the Co-operative, due to reduced funds available from its investments, to effectively represent our members.

The Share Acquisition Program will over time partially replace forfeited shares, assist in aligning member investment in the Co-operative with milk supply and narrow the disparity between members’ shareholdings.

### 2. PURPOSE OF THE SHARE ACQUISITION PROGRAM

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The purpose of the Program is to assist in the alignment of member investment in the Co-operative with milk supply and to narrow the disparity between members’ shareholdings by requiring each Participating Member to increase the member’s investment in the Co-operative

having regard to the new minimum shareholding requirement and the amount of milk supplied by the member.

The funds raised by the Program will be used for working capital and to partially replace forfeited shares. Funds which are not immediately required to fund the repurchase or forfeiture of members' shares will be invested in securities or placed on interest bearing deposit in accordance with the Co-operative's investment strategy.

### **3. SHARE TRANSFER POLICY**

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Subject to the implementation of the Program, the Board will adopt a new share transfer policy.

Under the Rules, shares may be sold or transferred to active members with the consent of the Board (see Rule 35(3)(c)). The Board intends to withhold its consent to transfers other than:

- (a) transfers between members who have the same registration number by reason of their association with the same dairy farm or dairy farms; or
- (b) transfers between a member wishing to exit the dairy industry and persons who will be associated with the exiting member's farm where the dairy farm will continue to supply the Co-operative.

If a member wishes to exit the dairy industry but the farm will continue to supply the Co-operative, any new member associated with the farm must acquire, by transfer or subscription, sufficient number of shares so that the shareholding in respect of that farm, held by the members who will continue to supply the Co-operative, is the lesser of:

- (a) one (1) share for every one hundred and fifty (150) litres of the farm's Contracted Volume; or
- (b) the same number of shares then held in respect of the farm immediately prior to the exiting member exiting the dairy industry or 5,000 whichever is the greater.

The change in policy (together with the implementation of the Program) is to assist with the maintenance of the Co-operative's capital base and to establish and maintain parity between members' capital and milk supply.

### **4. TO WHICH MEMBERS DOES THE PROGRAM APPLY?**

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The Program applies to each farmer member from the Commencement Date (ie 1 January 2012).

As well as applying to farmer members as at the Commencement Date, the Program will apply to all future farmer members (who become members after the Commencement Date).

The Program does not apply to members or new members who are or become milk receipt depots or milk processors (as defined in the Rules).

Members or new members who are or become milk receipt depots may subscribe for shares in the Co-operative at any time under the Co-operative's share policies from time to time.

## 5. FUNDING THE PROGRAM

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The Program will be funded by deducting \$0.0025 cents per litre of milk supplied by a Participating Member until the Board is satisfied the Participating Member has reached its Program Contribution Cap and the Participating Member's Program Contribution Cap is unlikely to materially change in the future.

A Participating Member is an individual farmer member or a group of farmer members who all share the same farm registration number by reason of their association with a particular farm or farms. Members of the one farm are treated as a single member for the purpose of the Program.

## 6. HOW MANY SHARES ARE TO BE ISSUED?

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The total number of shares to be issued under the Program is fifteen million (15,000,000) shares of \$1.00 each. The Program is expected to raise approximately \$1 million during its first 12 months of operation.

## 7. PROGRAM CONTRIBUTION CAP

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Under the Program each Participating Member will have to take up the number of shares necessary to enable the Participating Member to reach or get as close as possible to the Participating Member's Program Contribution Cap.

In general terms, a Participating Member's Program Contribution Cap is the greater of:

- (a) 5,000; or
- (b) the lesser of:
  - (i) the Participating Member's Contracted Volume from time to time divided by 150; or
  - (ii) 30,000.

A Participating Member's Contracted Volume is the annual defined volume of milk specified in or determined pursuant to the Participating Member's milk supply contract or, if there is no annual defined volume, the amount determined by the Board.

If a Participating Member's Contracted Volumes increases over time so will the Participating Member's Program Contribution Cap. If a Participating Member's shareholding exceeds 5,000, and the Participating Member's Program Contribution Cap changes due to changes in the Participating Member's Contracted Volume, the Participating Member's Program Contribution Cap, for the purposes of this Program, will only change if the new Program Contribution Cap exceeds the Previous Program Contribution Cap by 10% or more.

Contracted Volumes for a farm (not individual member supply) have been treated as the basis for calculating a Participating Member's Program Contribution Cap. Members of the one farm are treated as a single member for the purpose of calculating Program Contribution Caps.

#### **8. WHO IS TO ACQUIRE SHARES?**

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All farmer members who have not reached their Program Contribution Cap are to acquire shares under the Program until they reach their Program Contribution Cap.

#### **9. WHEN ARE SHARES ALLOTTED?**

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The number of shares will be calculated and issued annually, during any Review Period (ie the period ending on the Annual General Meeting and beginning not more than 6 weeks before the Annual General Meeting or at such other lesser intervals as the Board may from time to time determine). The Board currently intends shares to be allotted to members who have not reached their Program Contribution Cap prior to the Annual General Meeting in each Financial Year.

#### **10. RIGHTS ATTACHING TO SHARES ISSUED UNDER THE PROGRAM**

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The new shares will be ordinary shares ranking equally with the existing ordinary shares.

#### **11. EFFECT OF REACHING PROGRAM CONTRIBUTION CAP**

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If a Participating Member reaches the Participating Member's Program Contribution Cap, the Participating Member will no longer be required to make further contributions to the Co-operative and deductions from the Participating Member's milk payments will cease for so long as the Board is satisfied the Participating Member's Program Contribution Cap has been reached and is unlikely to materially change in the future. A Participating Member's Program Contribution Cap may change over time due to changes in the Participating Member's Contracted Volumes. If a Participating Member's shareholding exceeds 5,000 and the Participating Member's Program Contribution Cap changes due to changes in the Participating Member's Contracted Volume, the Participating Member's Program Contribution Cap, for the purposes of this Program, will only change if the new Program Contribution Cap exceeds the Previous Program Contribution Cap by 10% or more.

#### **12. WHAT HAPPENS IF I AM OVER THE PROGRAM CONTRIBUTION CAP?**

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In the event the Participating Member's shareholding exceeds the Program Contribution Cap, the Co-operative is under no obligation to repurchase the excess shares. The Co-operative's current policy is not to repurchase member's shares.

If a Participating Member's shareholding from time to time exceeds a Participating Member's Program Contribution Cap, the Participating Member will continue to hold the excess shares. Under the Co-operatives' Share Transfer Policy (see paragraph 3 above), members will not be permitted to transfer their shares except in limited circumstances.

The Co-operative has discontinued its previous policy of acquiring some or all of a member's shareholding once they turn 65 years of age. The Co-operative has also discontinued its previous policy of acquiring a member's shareholding due to hardship.

### **13. WHEN DOES THE PROGRAM TAKE EFFECT?**

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The Program shall commence on the Commencement Date (ie 1 January 2012). A member must make payments pursuant to this Program in respect of milk supplied, on and from the Commencement Date.

Before the Program becomes effective, members must pass the Special Resolution approving the Program and that resolution must then be registered by the Registrar of Co-operatives.

The Registrar of Co-operatives has approved this Disclosure Statement (under Section 155(3) of the Act). No responsibility as to the contents of this Disclosure Statement is taken by the Registrar of Co-operatives, nor does the Registrar's approval of this document indicate support for the Program.

### **14. HOW LONG WILL THE PROGRAM REMAIN CURRENT?**

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Unless the Board resolves to terminate the Program early, the Program will terminate when fifteen million (15,000,000) shares of \$1.00 each have been issued under the Program or the Co-operative becomes insolvent.

### **15. BASIS UPON WHICH MEMBERS WILL MAKE CONTRIBUTIONS**

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Under the Program each Participating Member will have to take up the number of shares necessary to enable the member to reach or get as close as possible to the Participating Member's Program Contribution Cap.

Contracted Volumes for a farm (not individual member supply) have been treated as the basis for calculating a Participating Member's Program Contribution Cap. Members of the one farm are treated as a single member for the purpose of calculating Program Contribution Caps.

### **16. MULTIPLE SHAREHOLDERS REPRESENTING THE SAME FARM**

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Members (including share farmer members) who have been given the same registration number by the Co-operative by reason of their association with the same farm or farms (the Participating Group), should consider giving a notice to the Co-operative varying the division of the share entitlements of the members of the Participating Group.

Unless such a notice is given to the Co-operative, the Co-operative will divide the shares to be taken up equally between each member of the Participating Group. A notice may be given at any time but any notice given less than six (6) weeks prior to the Annual General Meeting of the Co-operative in any Financial Year will only have effect after that Annual General Meeting.

**17. TAX IMPLICATIONS**

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The Co-operative has been advised by its tax advisers, Grant Thornton, that all contributions payable under this Program are to be treated as part of each farmer member's gross income for tax purposes to the extent such contributions are funded from amounts otherwise payable to farmer members for their milk. Members should seek their own tax advice.

**18. RESIGNATION AS A MEMBER**

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Pursuant to section 155(3)(c) of the Act, a member may inform the Board by notice on or before Tuesday, 22 November 2011 that the member resigns on the passing of the Special Resolution approving the Program.



## SECTION B

### CONDITIONS OF 2011 SHARE ACQUISITION PROGRAM

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#### 1. Definitions and interpretation

1.1 For the purposes of this Program, except where the context otherwise requires:

“**ADV**” means, in respect of any Financial Year:

- (a) the annual defined volume of milk for the Financial Year specified in, or determined pursuant to, the Participating Member’s milk supply contract (**Annual Defined Volume**); or
- (b) if there is no Annual Defined Volume, the amount determined by the Board;

“**Board**” means the Board of Directors of the Co-operative from time to time;

“**Contracted Volume**” means, in respect of any Financial Year, the Participating Member’s ADV for the Financial Year;

“**Commencement Date**” means 1 January 2012;

“**Co-operative**” means Dairy Farmers Milk Co-operative Limited (ARBN 108 690 384);

“**Co-operatives Act**” or “**Act**” means the *Co-operatives Act 1992* (NSW);

“**Financial Year**” means each period of 12 months ending 30th June;

“**Insolvency Event**” means the happening of any of these events:

- (a) the Co-operative is or states that the Co-operative is unable to pay its debts as and when they become due and payable; or
- (b) the Co-operative is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation; or
- (c) a liquidator or provisional liquidator of the Co-operative is appointed; or
- (d) except to reconstruct or amalgamate while solvent, the Co-operative enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (e) the Co-operative resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent; or
- (f) a receiver or receiver and manager is appointed to the Co-operative or any part of the property of the Co-operative; or

- (g) a person is appointed under legislation to manage any part of the affairs of the Co-operative; or
- (h) a “controller” (as that term is defined in Section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed in respect of all or any part of the assets, property or revenues of the body corporate; or
- (i) the Co-operative becomes an “externally-administered body corporate” (as that term is defined in Section 9 of the *Corporations Act 2001* (Cth)); or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

**“Milk Payments”** means payments to be made to a member in respect of milk supplied to the Recipient Entity by the member;

**“milk supplied to the Recipient Entity by the member”** means, in respect of a Participating Member:

- (a) milk purchased by or supplied to the Co-operative from the Participating Member; or
- (b) milk purchased by or supplied to the milk supply entity from the Participating Member; or
- (c) milk supplied by the Participating Member to a milk processor, wholesaler or retailer in respect of which the Co-operative or milk supply entity (as the case may be) has collectively bargained some or all of the terms or conditions of that supply;

**“milk supply entity”** has the same meaning as in Rule 13.5.4(b) (if any);

**“Participating Group”** means members (including share farmer members) who have been given the same registration number by the Co-operative by reason of their association with the same farm or farms;

**“Participating Group Shareholder”** means each member of a Participating Group;

**“Participating Member”** means:

- (a) a member, not being a Participating Group Shareholder, for so long as he or she is an active member of the Co-operative pursuant to Rules 13.2.1(a), 13.2.1(b), 13.2.1(d), 13.2.1(e), 13.2.3(a) (if any) or 13.2.3(b) (if any) of the Rules; or
- (b) a Participating Group, for so long as one of the Participating Group Shareholders is an active member of the Co-operative pursuant to Rules 13.2.1(a), 13.2.1(b), 13.2.1(d), 13.2.1(e), 13.2.3(a) (if any) or 13.2.3(b) (if any) of the Rules;

**“Participating Member’s milk supply contract”** means the milk supply contract from time to time between the Participating Member and the Recipient Entity;

**“Previous Program Contribution Cap”** means, in respect of a Participating Member, the Program Contribution Cap for the Financial Year in respect of which the Participating Member last made a monetary contribution under the Program;

**“Program Contribution Cap”** means, at any particular time (the **test day**), the greater of the following amounts:

- (a) the lesser of:
  - (i) the amount calculated in accordance with the following formula:

$$A = \frac{B}{C}$$

Where:

A is the number of shares (rounded up to the nearest whole number);

B is the Participating Member’s Contracted Volume for the Financial Year ending immediately prior to the test day;

C is 150;

- (ii) 30,000; or
- (b) 5,000;

**“Recipient Entity”** means:

- (a) the Co-operative; or
- (b) milk supply entity; or
- (c) milk processor, wholesaler or retailer provided the Co-operative or milk supply entity has collectively bargained some or all of the terms or conditions on which milk is supplied to the milk processor, wholesaler or retailer (as the case may be);

**“Register Closing Date”** means a date nominated by the Board being a date not more than six (6) weeks before the Annual General Meeting in any Financial Year;

**“Review Period”** means the period between the Register Closing Date and the Annual General Meeting in each Financial Year and such other periods as the Board may determine from time to time;

**“Rules”** means the Rules of the Co-operative as amended from time to time;

**“Share Acquisition Program”** or **“Program”** means the program set out in these conditions that members acquire shares in the Co-operative;

**“Share Transfer Policy”** means the policy from time to time adopted by the Board in respect of the transfer of shares in the Co-operative;

**“Special Resolution”** means the Special Resolution passed by the members to approve this Program.

- 1.2 For the purposes of this Program, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa and a gender includes other genders;
  - (b) other grammatical forms of a defined word or expression have a corresponding meaning;
  - (c) a reference to a clause is a reference to a clause of the Conditions of this Program;
  - (d) a reference to a year (other than a Financial Year) or a month means a calendar year or calendar month respectively;
  - (e) a reference to a person includes that person's executors, administrators, successors and permitted assigns and substitutes;
  - (f) a reference to a person includes a natural person, partnership, firm, body corporate, trust, joint venture, association, governmental or local authority or agency or other entity;
  - (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
  - (i) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally.

1.3 Headings are for ease of reference only and do not affect interpretation.

## **2. Commencement Date**

The Program shall commence on the Commencement Date. A Participating Member must make payments to the Co-operative pursuant to this Program in respect of milk supplied to the Recipient Entity by the member, on and from the Commencement Date.

## **3. Program Contribution Cap**

- 3.1 Each Participating Member must from time to time take up or subscribe for the number of shares necessary to increase such Participating Member's shareholding to the Participating Member's Program Contribution Cap at that time.
- 3.2 The number of shares to be taken by each Participating Member will be calculated during each Review Period and notified to such member during that period. New shares will rank equally in all respects with existing shares of the Co-operative.
- 3.3 In the case of a Participating Group, the shares to be taken under clause 3.1 will be divided equally between each of the Participating Group Shareholders or in the proportions specified in the last notice signed by every Participating Group Shareholder and given to the Co-operative (**PGS Notice**).

- 3.4 A PGS Notice may be given by a Participating Group at any time but any notice given less than six (6) weeks prior to the Annual General Meeting of the Co-operative in any Financial Year will only have effect after that Annual General Meeting.
- 3.5 Despite any other provision of this Program:
- (a) Participating Group Shareholders will be treated as a single member for the purpose of this Program including the calculation of the Program Contribution Cap;
  - (b) a Participating Member shall not be required to take up or subscribe for shares under the Program to the extent it would cause the Participating Member's shareholding to exceed 30,000;
  - (c) if a Participating Member's shareholding exceeds 5,000 and the Participating Member's Program Contribution Cap changes due to changes in the Participating Member's Contracted Volume, the Participating Member's Program Contribution Cap, for the purposes of this Program, will only change if the new Program Contribution Cap exceeds the Previous Program Contribution Cap by 10% or more;
  - (d) the maximum number of shares a Participating Member is required to take up or subscribe for under the Program (calculated at \$1.00 per share) shall not exceed the amount deducted or payable pursuant to clause 4.2.

#### **4. Payment**

- 4.1 The amount to be paid for the shares is \$1.00 per share.
- 4.2 In respect of each Financial Year, an amount of \$0.0025 cents (or such lesser amount as is determined in accordance with clause 4.3) per litre of the milk supplied to the Recipient Entity by the member during that Financial Year:
- (a) will be deducted from Milk Payments to the Participating Member relating to that Financial Year, and if those payments are inapplicable or insufficient;
  - (b) will be deducted from any other moneys payable to the Participating Member by the Recipient Entity relating to that Financial Year at the time those moneys are due, and if those moneys are insufficient;
  - (c) will be payable directly by the Participating Member to the Co-operative at the end of that Financial Year.
- 4.3 The amount of \$0.0025 cents per litre may, at the option of the Board at any time be reduced or suspended in respect of some or all of the Participating Members on such terms and subject to such conditions as the Board may determine.
- 4.4 No amount is deductible or payable under clause 4.2 for so long as the Board is satisfied the Participating Member has reached its Program Contribution Cap at that time and the Participating Member's Program Contribution Cap is unlikely to materially change in the future.

**5. Termination**

5.1 The Program will terminate on the first to occur of the following:

- (a) the total number of shares taken up or subscribed for pursuant to the Program equals fifteen million (15,000,000) ; or
- (b) the termination date (if any) determined by the Board; or
- (c) an Insolvency Event occurs in respect of the Co-operative.

5.2 Any moneys standing to the credit of a Participating Member on the termination of the Program shall be repaid to the Participating Member.

**6. Timing**

6.1 The number of shares shall be calculated and issued annually during any Review Period in each Financial Year or at such other lesser intervals as the Board may from time to time determine.

6.2 Contributions in excess of the amount required to take up or subscribe for shares in any Financial Year may be retained by the Co-operative and applied towards amounts payable in respect subsequent Financial Years.

6.3 Each Participating Member will be deemed to have lodged an application (in or to the effect of the form required by the Rules) for the number of shares due to such Participating Member on the date immediately preceding the date on which those shares are issued.

**7. Repurchase**

In the event a Participating Member's shareholding exceeds the Participating Member's Program Contribution Cap:

- (a) the Co-operative is under no obligation to repurchase the excess shares; and
- (b) subject to the Co-operative's Share Transfer Policy, the Participating Member may not transfer the excess shares.

**8. Deduction and set off**

Each Participating Member irrevocably authorises the Recipient Entity to deduct or set off from any moneys payable by the Recipient Entity to the Participating Member, any amounts payable to the Co-operative by the Participating Member pursuant to the Program and to pay those amounts to the Co-operative.

**9. Total Number of Shares**

The total number of shares to be taken up or subscribed for under this Program is fifteen million (15,000,000).


**10. Further Assurances**

Each Participating Member agrees to do everything necessary to give effect to this Program and the transactions contemplated by it.

**11. Changes**

The Program may be amended by special resolution of the members.

**Dated:** 4th October 2011

**Signed:**   
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**I H Zandstra**  
**Chairman**

  
.....  
**J J Bastian**  
**Director**

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