

360 Capital Total Return Fund

23 June 2017

360 Capital Total Return Fund Notice of Constitution Amendments

On 13 June 2017, 360 Capital FM Limited (360 Capital) as Responsible Entity for the 360 Capital Total Return Fund (Fund or ASX: TOT) published a proposal on 360 Capital Group's website to amend the constitution of the 360 Capital Total Return Active Fund and the constitution of the 360 Capital Total Return Passive Fund (each, the "Constitution") to allow the Fund to be operated as an attribution managed investment trust under the new Attribution Managed Investment Trust (AMIT) Regime (described in more detail below).

This notice is to inform you of amendments made to the Constitution by supplemental deed on 23 June 2017 in accordance with section 601GCA(3) of the Corporations Act (as introduced by ASIC Corporations (Attribution Managed Investment Funds) Instrument 2016/489 ("ASIC Instrument")).

As the Responsible Entity did not receive any requests from unitholders to call and arrange to hold a meeting of unitholders of the Fund, 360 Capital has amended the Constitution without unitholder approval in accordance with the ASIC Instrument.

The AMIT Regime

A new tax regime applying to managed investment schemes became law on 5 May 2016 under the *Tax Laws Amendment (New Tax System for Managed Investment Funds) Act 2016* (Cth), together with additional supplemental legislation ("the **AMIT Regime**").

The Responsible Entity has amended the Constitution so that the Fund can be operated as an attribution managed investment trust under this new tax regime.

The key difference between the current tax regime and the new AMIT Regime is that under the AMIT Regime, Members are taxed on the taxable income that is allocated or "attributed" to Members by the Responsible Entity. The new AMIT Regime requires the Responsible Entity to undertake this allocation or attribution on a fair and reasonable basis. This is in contrast to the current tax regime under Division 6, which provides that a Member will be subject to tax to the extent that each Member is "presently entitled" to the income of the Fund according to trust law principles.

Reasons for the amendments made to the Constitution

The Responsible Entity believes that the new AMIT Regime will produce more equitable and fair tax outcomes for Members for the following reasons:

- a removal of the potential for double taxation that may arise for Members where there are mismatches between the amount distributed and the taxable income of the Fund. This is achieved through the provision of appropriate cost base adjustments where distributions are greater or less than the amount on which the Member is assessed for tax purposes;
- greater certainty regarding the quantum and character of any amounts distributed or otherwise passed through to Members and the tax consequences of those amounts;
- removal of ambiguity in relation to the tax treatment of tax deferred and tax free distributions;

360 Capital Total Return Fund

- the ability to reconcile errors in the taxable income allocated to members (referred to as "unders" and "overs") in the year they are discovered by the Responsible Entity rather than the present requirement to amend the returns of previous years; and
- greater certainty regarding certain aspects of the tax treatment of the Fund, such as the Fund being deemed to be a "fixed trust" for income tax purposes.

Effect of the amendments made to the Constitution

The amendments which were made to the Fund's Constitution permit the Responsible Entity to:

- elect for the Fund to operate as an AMIT;
- determine the taxable income of the Fund and allocate the taxable income to Members on a fair and reasonable basis;
- make amended allocations of taxable income to Members; and
- do all things necessary to operate the Fund as an AMIT.

The amendments also:

- provide limitations to the Responsible Entity's powers to ensure as far as possible that the Members continue to have "clearly defined rights", a necessary requirement for the Fund to be able to apply the AMIT Regime;
- confirm that the exercise of the Responsible Entity's powers under the AMIT Regime is subject to the same limitation of liabilities as provided for generally under the Constitution of the Fund;
- provide the machinery for the exercise of the rights afforded to Members under the AMIT Regime to object to any attribution. It also requires Members to indemnify the Responsible Entity against costs and liabilities incurred in that process and to acknowledge that their rights may be impacted by the exercise of other Members' objection rights; and
- provide for each Member to indemnify the Responsible Entity in relation to any tax and any other costs, expenses or liabilities incurred as a result of being liable to such tax, that may become payable by the Responsible Entity under the AMIT Regime, which the Responsible Entity reasonably determines relates to the Member or units held by the Member.

More information can be found on the ASX's website at www.asx.com.au using the Fund's ASX code "TOT", on the Fund's website www.360capital.com.au, by calling the 360 Capital investor enquiry line on 1300 082 130 or emailing investor.relations@360capital.com.au

For more information, please contact

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About 360 Capital Total Return Fund (ASX code TOT)

360 Capital Total Return Fund aims to provide total returns with a performance hurdle of 12% per annum to investors through a selective and disciplined investment philosophy, combined with access to real estate based investment opportunities available to the Fund through the 360 Capital platform. The Fund is externally managed by 360 Capital Group, a leading ASX-listed real estate investor and fund manager that operates under a transparent fee structure and is co-invested the Fund to ensure ongoing alignment of interests with Unitholders.

About 360 Capital Group (ASX: TGP)

360 Capital Group is an ASX-listed, property investment and funds management group concentrating on strategic investment and active investment management of property assets. The Group actively invests in direct property assets, property securities, real estate debt and various corporate real estate investments within Australian real estate markets on a private and public equity basis.
