

**Constitution of the
Evans & Partners Global Disruption Fund**

Consolidated to 7 June 2017

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Constitution of the Evans & Partners Global Disruption Fund

Dated:

7 June 2017

This Deed Poll is declared by **Walsh & Company Investments Limited** (ACN 152 367 649) of Level 15, 100 Pacific Highway, North Sydney NSW 2060 (**Responsible Entity**) to be the Constitution of the **Evans & Partners Global Disruption Fund**.

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

Accounting Principles means the accounting standards and generally accepted accounting principles in Australia.

AMIT means a trust which is an attribution managed investment trust under section 276-10 of the Tax Act.

AMIT Income Year means a year of income for the purposes of the Tax Act that the Trust is an AMIT.

AMIT Regime means the regime for the taxation of AMITs.

AMMA Statement has the meaning given to that phrase in section 276-460 of the Tax Act.

Applications Account means an account in which the Responsible Entity or, if permitted, its agent holds money on trust for applicants for Units in accordance with section 1017E of the Corporations Act or otherwise.

Application Price means the Unit price calculated in accordance with Clause 5.

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Relief means an exemption or declaration granted by ASIC which gives relief from certain provisions of the Corporations Act including any class order relief available to the Responsible Entity, the Fund or Members.

Assets means all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued.

ASX means ASX Limited or the market operated by it as the context requires.

Auditor means the auditor from time to time appointed by the Responsible Entity to audit the Trust.

Business Day means a day other than Saturday or a Sunday on which banks are open for general banking business in Sydney and if the Trust is Listed, has the meaning given to that term in the Listing Rules.

Class means a class of Units.

Complaint means an expression of dissatisfaction made to the Responsible Entity, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

Compliance Committee Member means a member of a compliance committee established by the Responsible Entity in connection with the Trust.

Corporations Act means the *Corporations Act 2001* (Cth), and a reference to the Corporations Act or a provision of it includes a reference to the Corporations Act or that provision as modified by any applicable ASIC Relief.

Costs include costs, charges, fees, expenses, commissions, Liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.

CS Facility has the same meaning as clearing and settlement facility in the Corporations Act.

CS Facility Operator means the operator of the CS Facility.

Custodian means a person holding or appointed to hold Assets as custodian for the Responsible Entity.

Determined Member Component has the meaning given to that phrase in section 276-205 of the Tax Act.

Determined Trust Component has the meaning given to that phrase in section 276-255 of the Tax Act.

Distributable Income for a period is the amount determined by the Responsible Entity under Clause 12.3.

Distribution Calculation Date means the last day of each Financial Year and such other day as the Responsible Entity designates.

Distribution Period means:

- (a) for the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

Escrow Period has the same meaning as in the Listing Rules.

Financial Instrument has the meaning given in Clause 4.3.

Financial Year means:

- (a) for the first financial year, the period from the date the Trust commences to the next Financial Year Termination Date;
- (b) for the last financial year, the period from the day after the preceding Financial Year Termination Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Financial Year Termination Date to the next occurring Financial Year Termination Date,

but the application of this definition for the purposes of calculating distributions from the Trust and preparing the income tax return for the Trust does not affect the Responsible Entity's determination as to the financial year of the Trust for the purposes of preparing accounts and lodging returns required for registered schemes under the Corporations Act.

Financial Year Termination Date means:

- (a) 30 June, or, if the Trust is granted a substituted accounting period by the Commissioner of Taxation for the purposes of the Tax Act, the last date of that substituted accounting period; and

- (b) if applicable, the day on which the Trust becomes a “subsidiary member” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act); and
- (c) if applicable, the day on which the Trust ceases to be a “subsidiary member” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act).

GST means a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Holder means a Member, Option Holder or Holder of a Financial Instrument as the context requires.

Holder of a Financial Instrument means the person Registered in the register of Financial Instrument holders and includes persons jointly Registered or, if no such register is kept, the holder of a Financial Instrument.

Income Component has the meaning give in Clause 8.10(a).

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 12.6.

Indicative Buy-Back Price means the average market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last five (5) days on which sales in Units were recorded before the relevant Business Day.

Liabilities means all present liabilities of the Trust including:

- (a) any provision taken into account in determining the liabilities of the Trust;
- (b) proceeds of redemption of Units which have not yet been paid; and
- (c) any amounts required to be distributed to Members under Clause 12 which has not yet been distributed (which may, in the case of Income Distributions, be the Responsible Entity’s reasonable estimate of the amount during the intervening period between the end of a Distribution Period and the determination of the amount of the Income Distribution for the Distribution Period),

but not liabilities:

- (d) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (e) to Members, arising by virtue of the right of Members to request redemption of their Units (where the Units have not yet been redeemed) or to participate in the distribution of the Assets on winding up of the Trust.

Licensee means a holder of an Australian financial service licence issued under Part 7.6 of the Corporations Act.

Liquid has the same meaning as in the Corporations Act.

Listed means admitted to the official list of a Prescribed Financial Market whether or not quotation of the Units is deferred, suspended or subjected to a trading halt.

Listing Rules means the listing rules of the Prescribed Financial Market on which the Units are Listed.

Market Price, in respect of a Unit, on a particular day is:

- (a) the weighted average of the VWAP for the Unit for each of the five most recent Trading Days in which the Units were traded within the period of 20 Trading Days immediately before the

relevant Business Day (whether or not a sale was recorded on any particular day), adjusted to take into account any ex-entitlement dates that occurred during this period;

- (b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market, provided that the bookrunner has provided written certification that the bookbuild was conducted in accordance with ordinary commercial practice; or
- (c) if:
 - (i) in the case of paragraph (a), Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day or there have not been at least five Trading Days on which the Units were traded in the 20 Trading Day period; or
 - (ii) in the case of paragraphs (a) or (b), in the Responsible Entity's opinion, a determination under paragraph (a) or (b) of this definition (as relevant) would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit determined by an adviser who:

- (iii) is independent of the Responsible Entity; and
- (iv) has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the Market Price of a Unit is being made,

to be the fair market price of the Unit, having regard to:

- (v) the nature of the proposed offer of Units for which purpose the Market Price of a Unit is being calculated;
- (vi) the circumstances in which the proposed offer of Units will be made; and
- (vii) the interests of Members generally, including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

Market Value of an Asset means:

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, its face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Responsible Entity, unless:
 - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
 - (ii) the Responsible Entity reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by a Valuer at the expense of the Trust;
- (c) in the case of an Asset that is an interest in a fund that is not listed or quoted for dealing on any financial market, the redemption price of the interest as last quoted by the manager, trustee or responsible entity of the fund plus any income entitlements accrued at that date as last advised by the manager, trustee or responsible entity. Where the fund is operated by the Responsible Entity or a related body corporate of the Responsible Entity, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the Constitution governing the fund;

- (d) in the case of any other Asset, the value of the Asset determined in accordance with relevant accounting standards or, if the Responsible Entity is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer at the expense of the Trust.

Member means the person Registered as the holder of a Unit (including persons jointly Registered) that has not been redeemed, and includes a person to whom Units are taken to have been issued and who is entitled to be recorded in the Register as the holder of those Units under clause 6.5.

Member Component has the meaning given to that phrase in section 276-210 of the Tax Act.

Member Objection Choice means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under sub-section 276-205(5) of the Tax Act.

Net Asset Value means the value of the Assets calculated in accordance with Clause 10 less the Liabilities.

Net Class Value at any time, that portion of the Net Asset Value that is properly attributable to a particular Class.

Officially Quoted means quoted on the official list of a Prescribed Financial Market including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

Operating Rules means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated securities as amended from time to time (whether in respect of the Trust or generally).

Option means an option granted under this Constitution to subscribe for unissued Units.

Option Holder means the person Registered in the register of option holders and includes persons jointly Registered or, if no such register is kept, the holder of an Option.

Over has the meaning given to that term in section 276-345 of the Tax Act.

Prescribed Financial Market has the same meaning as in the Corporations Act.

Record Date means in relation to a Distribution Period:

- (a) if the Distribution Period ends on the last day of a Financial Year, the last day of the Financial Year; and
- (b) in all other circumstances, the date determined by the Responsible Entity as the record date for that Distribution Period.

Redemption Amount in respect of a Member whose Units are being redeemed in accordance with clause 8 means the Redemption Price multiplied by the number of Units redeemed by the Member, as adjusted in accordance with Clause 8.10.

Redemption Date means the date when Units are redeemed or taken to be redeemed under clause 8.9.

Redemption Payment has the meaning given in Clause 8.10(a).

Redemption Price means the Unit price calculated in accordance with Clause 7.1.

Register means the register of Members kept by the Responsible Entity under the Corporations Act.

Registered means recorded in the Register.

Registered Scheme means a trust which is registered with ASIC as a managed investment scheme under the Corporations Act.

Registrar means the body responsible for keeping the Register.

Related Bodies Corporate has the meaning given in the Corporations Act.

Resolution means:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this Constitution or any applicable law provides otherwise, the “required majority” is a simple majority of votes validly cast.

Responsible Entity means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the Responsible Entity of the Trust, with the first Responsible Entity being Walsh & Company Investments Limited.

Restricted Securities has the same meaning as in the Listing Rules.

Retail Members means those Members who are “retail clients” as defined in Section 761G of the Corporations Act.

Security means a Unit, an Option or a Financial Instrument, as the context requires.

Special Resolution means a Resolution passed by a majority of 75% of votes cast by Members entitled to vote, or if the context requires, Members of a Class.

Tax means all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Responsible Entity by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Responsible Entity on account of GST, together with interest and penalties.

Tax Act means the *Income Tax Assessment Act 1936* (**1936 Tax Act**) or the *Income Tax Assessment Act 1997* (**1997 Tax Act**) or both the 1936 Tax Act and the 1997 Tax Act, as appropriate.

Trading Day has the same meaning as in the Listing Rules.

Transaction Costs means the Responsible Entity's estimate of the total costs reasonably incurred or reasonably expected to be incurred in the actual or intended acquisition of Assets or any real or personal property intended to become an Asset for the purposes of determining an Application Price and the total costs reasonably incurred or reasonably expected to be incurred in the actual or intended disposal of the Assets for the purposes of determining a Redemption Price, provided that, subject to the Corporations Act, the Responsible Entity may in connection with any application for Units deem these costs to be a lesser sum or zero.

Transmission Event means:

- (a) for a Member who is an individual:
 - (i) that Member's death;
 - (ii) that Member's bankruptcy; or
 - (iii) that Member becoming of unsound mind or a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health; and
- (b) for a Member who is a body corporate, the dissolution of that Member or the succession by another body corporate to the assets and liabilities of the Member.

Trust means the trust constituted under or governed by this Constitution.

Trust Component has the meaning given to that phrase in section 276-260 of the Tax Act.

Under has the meaning given to that term in section 276-345 of the Tax Act.

Unit means an undivided share in the beneficial interest in the Trust as provided in this Constitution.

User Pays Fees means any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) anything a Member asks the Responsible Entity to do or omit to do,

which the Responsible Entity considers should be borne by that Member.

Wholesale Members means those Members who are "wholesale clients" as defined in Section 761G of the Corporations Act.

Valuation Time means a time at which the Responsible Entity calculates Net Asset Value.

Valuer means an independent qualified valuer appointed by the Responsible Entity.

VWAP in respect of a Unit for a Trading Day, means the volume weighted average of the Unit prices for all sales of Units recorded on ASX for that Trading Day. The Responsible Entity may include, or may substitute, in VWAP calculations trading on another other financial market on which trading in Units is permitted. The Responsible Entity may exclude sales that occur otherwise than in the ordinary course of trading on ASX or other financial market (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after-hours adjust phase, overseas sales, sales pursuant to the exercise of options over Units, and overnight crossings) and any other sales which the Issuers reasonably consider may not be fairly reflective of natural supply and demand.

1.2. Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act, the Listing Rules or the Operating Rules are used with their defined meaning;
- (b) the singular includes the plural and vice versa;
- (c) amend includes delete or replace;
- (d) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution;

- (e) a reference to any provision being subject to the Corporations Act only operates if the Corporations Act applies to affect that provision;
- (f) the word “law” includes common law, principles of equity and legislation and a reference to legislation includes regulations modified by applicable instruments under them and any variation or replacement of any of them;
- (g) words importing a gender include any gender;
- (h) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (i) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (j) a reference to anything (including, without limitation, any right) includes a part of that thing;
- (k) the word “present” in the context of a person being present at a meeting includes participating using technology approved by the Responsible Entity for the purposes of the meeting.
- (l) a reference to a Part, Clause, Party, Annexure, Exhibit or Schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any Annexure, Exhibit or Schedule;
- (m) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (n) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (o) a reference to a party to a document includes that party’s successors and permitted assigns;
- (p) a reference to an agreement other than this Constitution includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (q) a reference to an asset includes all property of any nature, including, without limitation, a business, and all rights, revenues and benefits;
- (r) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind; and
- (s) amounts of money are expressed in Australian dollars unless otherwise expressly stated.

1.3. Inclusive expressions

Specifying anything in this Constitution after the words **include** or **for example** or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.4. Constitution legally binding

This Constitution binds the Responsible Entity, each present and future Member or other Holder and any person claiming through any of them in accordance with its terms as if they were a party to this Constitution.

1.5. Corporations Act prevails to the extent of inconsistency

Despite anything in this Constitution, while the Trust is a Registered Scheme, to the extent that a clause of this Constitution is inconsistent with the provisions of the Corporations Act applicable to

registered managed investment schemes, that provision is of no effect to the extent of the inconsistency, but not otherwise¹.

1.6. Other Documents

A document does not become part of this Constitution by reason only of that document referring to this Constitution or vice versa, or any electronic link between them.

2. Name of Trust

2.1. Name of Trust

The Trust is called Evans & Partners Global Disruption Fund or by such other name as the Responsible Entity determines from time to time.

2.2. Change of Responsible Entity

If a Responsible Entity retires or is removed, its successor as Responsible Entity must, unless otherwise approved by the former Responsible Entity, change the name of the Trust to a name that does not imply an association with the former Responsible Entity or its business.

3. Assets held on trust

3.1. Declaration of trust

- (a) The Responsible Entity declares that it will hold the Assets on trust for the Members and act in the interests of the Members on and subject to the terms of this Constitution.²
- (b) While the Trust is a Registered Scheme, any Assets held by the Responsible Entity as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires. Subject to the law, the Responsible Entity may have Assets held by a Custodian.

4. Units and Options

4.1. Nature of Units

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Subject to the rights conferred on particular Classes, each Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- (c) The Responsible Entity may issue Units of a single Class or different Classes, with different rights, obligations and restrictions as specified in their terms of issue. All Units in a Class rank equally (irrespective of the Application Price paid to the Responsible Entity for those Units). A separate Class does not constitute a separate trust.
- (d) The Responsible Entity has a discretion to issue Units with any preferred, deferred or other special rights, obligations or restrictions whether in relation to distributions, voting, return of capital, withdrawal, payment of calls or otherwise that the Responsible Entity determines.
- (e) The Responsible Entity may convert any Units from one Class to another Class or reclassify Units from one Class to another. Without limiting Clause 12.7, a redesignation must not result in any defeasance of a Member's existing entitlement to income or capital of the Trust. If the fees under clause 21 applicable to the new Class into which the Units are to be redesignated are higher than the fees for the old Class, the Responsible Entity may not exercise this power

¹ ASIC RG 134.214

² See section 601FC(2).

without first giving the Member 30 days' notice of the proposed change and details of the higher fees.

- (f) The rights attaching to Units in a Class cannot be cancelled, varied or adversely affected without a Special Resolution of Members or a Special Resolution of Members of the Class affected.
- (g) The Responsible Entity must enter on the Register the class or terms of issue of Units held by a Member.
- (h) Subject to the Corporations Act, a Holder may not:
 - (i) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Responsible Entity;
 - (ii) claim or exercise any right in respect of any asset of the Trust or lodge any caveat or other notice affecting any asset of the Trust; or
 - (iii) require that any asset of the Trust be transferred to them.
- (i) Members may not give any directions to the Responsible Entity (whether at a meeting convened under Sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Responsible Entity to do or omit to do anything which may result in:
 - (i) the Trust ceasing to comply with the Corporations Act or the Listing Rules (if applicable), or the Responsible Entity acting inconsistently with this Constitution; or
 - (ii) the exercise of any discretion expressly conferred on the Responsible Entity by this Constitution or the determination of any matter which under this Constitution requires the agreement of the Responsible Entity.

4.2. Options

- (a) The Responsible Entity may create and issue Options on such terms and conditions as the Responsible Entity determines.
- (b) Subject to this Constitution, the Corporations Act, ASIC Relief and, while the Trust is Listed, the Listing Rules, the Responsible Entity may determine that Options will be issued:
 - (i) for consideration or no consideration;
 - (ii) in the case of an offer which complies with any applicable ASIC Relief and, while the Trust is Listed, the Listing Rules on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Responsible Entity, and otherwise as determined under Clauses 5.1(b); and
 - (iii) conferring on the Option Holder such other entitlement under this Constitution as the Responsible Entity determines,

and otherwise on terms and conditions and with such entitlements as determined by the Responsible Entity.

- (c) Subject to the conditions of any applicable ASIC Relief and while the Trust is Listed, the Listing Rules, if the Responsible Entity is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Responsible Entity is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia.
- (d) On exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of the Units as the terms and conditions of issue of the Option contemplate, provided that Option Holder has given notice to the Responsible Entity in accordance with the terms upon which the Option was granted together with payment in full of the exercise price.

- (e) An Option lapses on the earliest of:
 - (i) the date stipulated in the terms of issue of the Option; or
 - (ii) the termination of the Trust.
- (f) Upon the termination of the Trust, an Option Holder is entitled to repayment of the Application Price (if any) of any Option which has not been exercised, unless the terms of issue of the Option provide otherwise.
- (g) Subject to Clause 4.2(f), an Option does not confer on an Option Holder any interest in the Trust or any right to participate in any distribution of the income or capital of the Trust.

4.3. Financial Instruments

- (a) Subject to the Corporations Act:
 - (i) the Responsible Entity may, in addition to Units and Options, issue any other interest, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) **(Financial Instruments)**; and
 - (ii) Financial Instruments may be issued;
 - (A) for \$100 per Financial Instrument or such other amount as the Responsible Entity determines; and
 - (B) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversion or otherwise) as the Responsible Entity determines.
- (b) Subject to the terms of issue of the Financial Instrument and the Corporations Act:
 - (i) a Financial Instrument does not confer any interest in, or any rights to participate in the income or capital of, the Trust; and
 - (ii) a Holder of a Financial Instrument who is not a Member is not entitled to any other rights of a Member, but may, with the Responsible Entity's consent, attend any meeting of Members (but will not be entitled to receive notice of or speak or vote at the meeting).

4.4. Rights attaching to Units, Options and Financial Instruments

- (a) A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.
- (b) An Option Holder holds an Option subject to the terms and conditions attaching to that Option.
- (c) The Holder of a Financial Instrument holds that Financial Instrument subject to the rights, restrictions and obligations attaching to that Financial Instrument.

4.5. Fractions of Units

- (a) Fractions of a Unit (calculated to two decimal places) may be issued by the Responsible Entity but, while the Units are Officially Quoted, fractions of a Unit may not be issued.
- (b) If any fractions of Units are on issue at a time when the Trust is to be Listed, the Responsible Entity may cancel the fractions with effect from the date of Listing.
- (c) Where any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit or would otherwise result in fractions

of Units being on issue, that fraction may be rounded down or up to such number of decimal places as the Responsible Entity determines.

- (d) The provisions of the Constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.
- (e) Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

4.6. Consolidation and Division of Units

- (a) Units may be consolidated or divided as determined by the Responsible Entity.
- (b) The Unit structure may only be reconstructed:
 - (i) if the proportion of Units held by Members relative to each other immediately before the reconstruction is maintained, subject to rounding up or down to the nearest whole Unit under clause 4.5; and
 - (ii) in accordance with this Constitution, the Listing Rules (if applicable) and applicable law.

4.7. Joint Tenancy

Where two or more persons are Registered as the holders of a Unit or (**joint holders**) they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit as joint tenants, on the following conditions:

- (a) except where otherwise required under the Operating Rules at all times while the Trust is Listed, the Responsible Entity is not bound to register more than three persons as the joint holders of the Unit;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Responsible Entity will recognise as having any title to the Unit, but the Responsible Entity may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Responsible Entity in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, payments or other communications from the Responsible Entity, and any notice, payment or other communication given to that person is deemed to be given to all the joint holders.

4.8. Death, Legal Disability of Member

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units Registered in the Member's name.

4.9. No further liability

- (a) This Clause 4.9 is subject to any separate agreement between a Member and the Responsible Entity.
- (b) The liability of each Member in its capacity as such is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

- (c) A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets or meet the claim of any creditor of the Responsible Entity in respect of the Trust. The recourse of the Responsible Entity and any creditor of the Responsible Entity, and any person claiming through them, is limited to the Assets.
- (d) Nothing in or under this Constitution makes the Responsible Entity an agent of a Member, nor does it create any relationship other than that of beneficiary and trustee.

5. Application Price for Units

5.1. Application Price

- (a) The Application Price for a Unit issued under the first product disclosure statement prepared for the Trust is \$1.60 per Unit.
- (b) After the issue of Units under the first product disclosure statement referred to in Clause 5.1(a), the Application Price must be calculated as follows.
 - (i) in the case of a proportionate offer (including a rights issue), in accordance with Clause 5.4;
 - (ii) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with Clause 5.6;
 - (iii) in the case of reinvestment of distributions, in accordance with Clauses 5.7 and 5.8;
 - (iv) in the case of Units issued pursuant to the exercise of an Option, in accordance with Clause 4.2;
 - (v) subject to paragraphs (i) to (iv) (inclusive), in all other cases while Units are Officially Quoted, the Market Price of Units immediately before the date on which or as at which the application price is to be calculated; and
 - (vi) while Units are not Officially Quoted, in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units on issue}}$$

5.2. Time for calculation

Each of the variables in Clause 5.1(b)(vi) must be determined as at the next Valuation Time after:

- (a) the Responsible Entity receives the application for Units; or
- (b) the Responsible Entity receives the application money (even if paid or to be paid into the Applications Account) or the property against which Units are to be issued is vested in the Responsible Entity,

whichever happens later.

5.3. Rounding

Subject to the Listing Rules, the Application Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset.

5.4. Pro rata rights issues

Subject to the terms of any applicable ASIC Relief and the Listing Rules (while the Listing Rules apply), the Responsible Entity may offer Units for subscription at a price determined by the Responsible Entity to those persons who were Members on a date determined by the Responsible Entity:

- (a) provided that, subject to paragraph (b) of this Clause 5.4, all Members are offered Units in proportion to the value of the Member's Units (or, where the offer is made only to Members who hold Units in a Class, to the value of the Member's units in that Class) at the relevant date; but
- (b) the Responsible Entity may exclude a Member from the pro rata offer³ if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief⁴,

whether or not the right of entitlement is renounceable.

5.5. Terms of pro rata issues

- (a) Any offer made under Clause 5.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Responsible Entity under clause 5.4. The Responsible Entity may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Responsible Entity must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 5.4 which are not subscribed for within the period for acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person. The application price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 5.4, the underwriter may take up any Units not subscribed for by Members.

5.6. Placements and security purchase plan while Listed

While Units in a Class are Officially Quoted and not suspended from quotation, the Responsible Entity may at any time issue Units in that Class by way of a placement or under a security purchase plan:

- (a) at the Market Price of Units during the 10 Trading Days immediately before the date on which the Units are offered; or
- (b) at a price and on terms determined by the Responsible Entity, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief⁵.

5.7. Reinvestment while Listed

- (a) If reinvestment of distributions payable to a Member under Clause 12.18 applies while the Units are Officially Quoted, subject to the Listing Rules, the Responsible Entity may issue Units on the basis that the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Responsible

³ This clause assumes the Responsible Entity is able to comply with the conditions in Listing Rule 7.7.1.

⁴ See ASIC Class Order [CO 13/656] (Exemption – Equality of treatment)

⁵ See ASIC Class Orders [CO 13/655] and [CO 09/425].

Entity. If the Responsible Entity has not determined the application price by the date at which Units are to be issued upon reinvestment, the price will be the average of the VWAP for Units for each of the 10 Trading Days from and including the third Trading Day after the Record Date for the relevant Distribution Period.

- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

5.8. Reinvestment while not Listed

While Units are not Officially Quoted, the Responsible Entity may issue Units on the basis that the application price payable for each additional Unit on reinvestment of distributions payable to a Member under Clause 12.18 is the price determined by the Responsible Entity. If the Responsible Entity has not determined the application price by the date at which Units are to be issued upon reinvestment, the application price will be as calculated under clause 5.1(b)(vi) on the first Business Day after the end of the Distribution Period to which the distribution relates.

6. Application Procedure

6.1. Application Form

An applicant for Securities must complete a form approved by the Responsible Entity if the Responsible Entity so requires. The form may be transmitted electronically if approved by the Responsible Entity.

6.2. Payment

- (a) Payment in respect of an application in a form acceptable to the Responsible Entity (including by a direction from the Responsible Entity to apply any cash sum payable by the Responsible Entity to any applicant) or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a Custodian appointed by it, must:
 - (i) accompany the application;
 - (ii) be received by or made available to the Responsible Entity or Custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time or as the terms of issue of the relevant Security contemplate; or
 - (iii) comprise a reinvestment of distribution in accordance with Clauses 12.18, 12.19 and 12.20.
- (b) If the Responsible Entity accepts a transfer of property other than cash:
 - (i) the value attributed to the property must be equivalent to a price at which the Responsible Entity could properly buy the property and, if the Responsible Entity requires, the applicant must provide a recent valuation of the property⁶; and
 - (ii) any additional costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factor in the Application Price for the Units (if applicable) must be paid by the applicant either directly or by deducting the costs from the value of the property before the number of Units to be issued is calculated.

⁶ ASIC RG 134.43

6.3. Responsible Entity May Reject

The Responsible Entity may reject an application in whole or in part and, subject to the Listing Rules (at all times while the Trust is Listed), need not give any reason for the rejection.

6.4. Minimum Amounts

The Responsible Entity may set a minimum application amount and a minimum holding for the Trust and alter those amounts at any time.

6.5. Issue Date

- (a) Except in the case of a reinvestment of distribution in accordance with this Constitution, Units are taken to be issued at the time which is the earlier of:
 - (i) the time the issue of Units is recorded in the Register; and
 - (ii) the latest of the times when:
 - (A) the Responsible Entity or its agent takes steps which amount to acceptance of the application for Units; and
 - (B) the Responsible Entity or its agent receives the application money (even if paid into the Applications Account or received in the form of a cheque) or the property against which Units are to be issued is vested in the Responsible Entity; and
 - (C) in the case of Units to be issued under the first product disclosure statement prepared for the Trust, or as part of any subsequent capital raising for the Trust, a time within 10 Business Days after the close of the relevant offer as determined by the Board of the Responsible Entity.
- (b) Units which are issued on a reinvestment of distribution in accordance with this Constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (c) At the time when Units are taken to be issued under paragraph (a)(ii) or (b):
 - (i) the applicant becomes a Member in respect of the Units, which are taken to be issued even though the number of Units may not yet have been ascertained and the issue has not yet been entered in the Register; and
 - (ii) the applicant becomes entitled to be recorded in the Register as the holder of those Units as soon as it is reasonably practicable for the Responsible Entity or its agent to make the entry.

6.6. Uncleared Funds

Units issued against application money paid other than in cleared funds or in consideration of a transfer of property are void if the funds are not subsequently cleared or the property does not vest in the Responsible Entity within one month of receipt of the application.

6.7. Holding Statements

Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a holding statement may be issued to evidence the holding of Units.

7. Redemption Price of Units

7.1. Redemption Price

Subject to Clause 14.6, the redemption price for a Unit must be calculated as follows:

$$RP = \frac{NAV - TC}{U}$$

where:

RP is the Redemption Price;

NAV is the Net Asset Value;

TC is the Transaction Costs; and

U is the aggregate number of Units on issue.

7.2. Time of Calculation

Each of the variables in clause 7.1 must be determined:

- (a) while the Trust is a Registered Scheme and is not Liquid, as at the last Valuation Time before the withdrawal offer is made; or
- (b) otherwise, as at the next Valuation Time after the relevant redemption request has been, or is taken to have been, received and accepted by the Responsible Entity.

For the purposes of this calculation, if at the relevant Valuation Time Units have been issued under clause 6.5 but the Application Price of those Units has not yet been ascertained, the application money or property relating to those Units and the number of Units are to be excluded from the calculation.

7.3. Rounding

The Redemption Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset.

8. Redemption Procedures

8.1. Application of the provisions of Clause 8

Unless expressly stated otherwise, Clauses 8.2 to 8.5 inclusive only apply if the Trust is not Listed and is Liquid, and clause 8.10 only applies if the Trust is Liquid.

8.2. Requests for Redemption when the Trust is not Listed

- (a) A Member may make a request to the Responsible Entity to redeem some or all of the Units of which they are registered as the Holder by giving the Responsible Entity notice in writing of the request, specifying the number or value of the Units to be redeemed and sufficient details to identify the Member, or in any other manner approved by the Responsible Entity,⁷ provided that those Units the subject of the redemption request have been held by that Member for a minimum period of one month, unless the Responsible Entity determines to apply a shorter time or no limit.

⁷ RG 134

- (b) The Responsible Entity may create forms to assist in redemption requests. If the Responsible Entity has created forms to assist with a redemption request or an applicable law requires the use of a form, a redemption request must be made on that form.
- (c) Not Used.
- (d) The Responsible Entity is not obliged to give effect to a redemption request.
- (e) A Member may not withdraw a redemption request without the consent of the Responsible Entity.

8.3. Redemption process when the Trust is not Listed and is Liquid

- (a) Subject to clause 8.5, if the Responsible Entity decides to satisfy a redemption request in respect of a Unit:
 - (i) the redemption will take effect on the Redemption Date calculated by reference to the date of receipt of the redemption request (subject to any suspension of redemptions);
 - (ii) the Responsible Entity must pay from the Assets to the Member or former Member the Redemption Price calculated in accordance with Clause 7; and
 - (iii) the payment must be made by no more than 21 days following the Redemption Date.
- (b) The Responsible Entity need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Responsible Entity from time to time unless the redemption request relates to the balance of the Member's holding.
- (c) If the Responsible Entity increases the minimum holding amount, the Responsible Entity may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the current minimum holding amount redeem that Member's holding without the need for a redemption request.
- (d) The Responsible Entity is not obliged to pay any part of the Redemption Price out of its own funds.

8.4. Reduction of the Number of Units the subject of a Redemption Request

The Responsible Entity may reduce the number of Units the subject of a redemption request in respect of a Class on a pro rata basis where it receives redemption requests for a particular Class equal to more than 10% (or such other percentage as the Responsible Entity in its discretion may determine) of the value of that Class at the Valuation Time are to be redeemed. The unredeemed portion of the relevant redemption requests will be carried forward to the next Valuation Time and be subject to further application of this Clause 8.4.

8.5. Suspension of Redemption Requests

If the Responsible Entity considers or determines that:

- (a) it is desirable for the protection of the Trust in circumstances where the market for any relevant financial, stock, bond, note, derivative or foreign exchange is closed or trading on any such market is restricted;
- (b) any state of affairs exists as a result of which the Responsible Entity considers or determines that it is not or may not be reasonably practicable for the Responsible Entity to acquire or dispose of Assets or determine fairly the amount of the Redemption Price of a Unit (including any moratorium declared by a government of any country), the state of affairs will or may affect to a significant degree the ability of the Responsible Entity to acquire or dispose of Assets or the prices at which the Responsible Entity may acquire or dispose of Assets;

- (c) a situation (including one caused by a mechanical or electronic malfunction) exists as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Redemption Price of a Unit;
- (d) the realisation of Assets cannot be effected at prices or on terms which would be obtained if Assets were realised in an orderly fashion over a reasonable period in a stable market; or
- (e) other circumstances beyond the Responsible Entity's control mean that it is in the best interests of the Members, taking into account not only the interests of current Members, but also former Members who have not yet received the Redemption Price for their Units at the time the circumstances arise,

the Responsible Entity may suspend for the period while such circumstances apply (**Suspension Period**) the redemption of Units and the payment for the redemption of Units during the Suspension Period. The Redemption Price for Units the subject of a Redemption Request received or deemed received during the Suspension Period shall be the amount of the Redemption Price next determined at the Valuation Time after the end of the Suspension Period. A Member's redemption request lodged during the Suspension Period is deemed lodged immediately after the end of the Suspension Period.

8.6. Discretion to redeem all or part of a Redemption Request

The Responsible Entity may redeem some or all of the Units which are the subject of a redemption request. If the Trust is a Registered Scheme, the discretion conferred on the Responsible Entity by this Clause 8.6 may only be exercised while the Trust is Liquid.

8.7. Withdrawal offers

- (a) While the Trust is a Registered Scheme and is not Liquid, subject to the Listing Rules (while the Listing Rules apply), Units may only be redeemed in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act (including Part 5C.6) regulating offers of that kind. The payment in satisfaction of any acceptance of the offer must be made within 21 days of the date on which the withdrawal offer closes.⁸
- (b) No acceptance of a withdrawal offer may be satisfied while the offer is still open.
- (c) If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- (d) The Responsible Entity is not at any time obliged to make a withdrawal offer.
- (e) The Responsible Entity may cancel a withdrawal offer at any time. If it does, it may do so by sending notice that the offer is cancelled to all Members, or making the notice available by electronic means and giving notice to Members that it is available. The cancellation of a withdrawal offer by the Responsible Entity does not affect the rights of Members or former Members whose acceptance of the offer has been received by the Responsible Entity after the offer period has opened but before the date on which the offer is cancelled, to withdraw from the Trust in accordance with the terms of the withdrawal offer.

8.8. Sums Owed to the Responsible Entity

The Responsible Entity may deduct from the Redemption Price, any money due to it from the Member or former Member whose Units have been redeemed. Subject to the Listing Rules, while the Trust is Liquid or not a Registered Scheme, the Responsible Entity may redeem without a redemption request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

⁸ Section 601KD

8.9. When Units are redeemed

Units are taken to be redeemed:

- (a) where the redemption is to occur in response to a redemption request from a Member, at the time at which the Responsible Entity has:
 - (i) received, and taken steps which amount to acceptance of the redemption request in respect of the Units; and
 - (ii) calculated the Redemption Price of the Units; or
- (b) if paragraph (a) does not apply, at the time at which the Redemption Price is known and the redemption is recorded in the Register, and from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

If Units are redeemed at the time referred to in paragraph (a), the Responsible Entity must as soon as is reasonably practicable arrange for the redemption of the Units to be recorded in the Register.

8.10. Distribution to Members or former Members on a redemption

- (a) If, during a Distribution Period, the Responsible Entity proposes to redeem (in circumstances permitted under applicable provisions of the Corporations Act and the Listing Rules) Units of a Member which comprise 5% or more of the Units on issue or such other amount as may be determined by the Responsible Entity and notified to Members from time to time ("**Large Redemption Request**") then the Responsible Entity must determine at or before the end of the relevant Distribution Period:
 - (i) what amount ("**Income Component**") of the payment in satisfaction of the Large Redemption Request ("**Redemption Payment**") in respect of the Units represents a distribution of the Distributable Income for that Financial Year; and
 - (ii) whether the Income Component of the Redemption Payment will comprise a distribution of Distributable Income for the Financial Year of any particular character for tax purposes.
- (b) Where the Responsible Entity makes a determination under clause 8.10(a) in respect of a Redemption Payment to a Member or former Member, the Responsible Entity must make the determination by reference to:
 - (i) that component of the Distributable Income of the Trust for the Financial Year to date that has not been distributed (at the time the Redemption Price in respect of the Large Redemption Request is determined under clause 7) that the Responsible Entity determines is referable to:
 - (A) capital gains; or
 - (B) amounts which reflect gains (which are not capital gains) on the disposal or realisation of Assets; and
 - (ii) the increase in the component of the Distributable Income of the Trust referred to in clause 8.10(b)(i)(A) as a result of the Responsible Entity realising sufficient assets to satisfy the Large Redemption Request; and
 - (iii) the number of Units specified in the Large Redemption Request and the number of Units on issue at the time the Large Redemption Request is made.

8.11. Responsible Entity's obligations upon completion of Redemption Process

On the redemption of Units, the Responsible Entity:

- (a) must cancel the Units redeemed;
- (b) must immediately remove the name of Member or former Member from the Register in respect of the redeemed Units; and
- (c) may deliver a transaction advice to the Member or former Member.

8.12. Effect of Responsible Entity's redemption decisions

Any determination by the Responsible Entity concerning the redemption or repurchase of a Unit is binding on all interested persons, including any determination as to:

- (a) at what time a redemption request was received; or
- (b) the amount payable on redemption and when it is to be paid.

9. Transfers

9.1. Transfer

- (a) Before Units are Officially Quoted or at any time after Units have ceased to be Officially Quoted (or if permitted under the Listing Rules), all transfers of Units and, subject to their terms and conditions, Options and Financial Instruments, must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units Options or Financial Instruments under this Clause 9.1(a) without giving any reason, including if the instrument of transfer:
 - (i) is not duly stamped (if applicable);
 - (ii) is not accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
 - (iii) does not comply with any requirements prescribed by the Responsible Entity from time to time.
- (b) Subject to this Constitution and the Listing Rules, if a Unit, Option or Financial Instrument is Officially Quoted, it is transferable:
 - (i) as provided by the Operating Rules of a CS Facility if applicable; or
 - (ii) by any other method of transfer which is required or permitted by the Corporations Act, ASX or ASIC.

If a duly completed instrument of transfer:

- (iii) is used to transfer a Security in accordance with paragraph (b)(ii); and
- (iv) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Responsible Entity properly requires to show the right of the transferor to make the transfer,

the Responsible Entity must, subject to the Responsible Entity's powers, register the transferee as the Holder.

9.2. Except as provided by any applicable Operating Rules, a transfer is not effective until Registered. Transaction advice after transfer

If the Responsible Entity accepts a transfer under this Clause 9, the Responsible Entity may issue a transaction advice for:

- (a) the Units, Options or Financial Instruments which have been transferred; and
- (b) the balance of any Units, Options and Financial Instruments which were not transferred.

9.3. Restrictions on Transfer

- (a) If the Securities are Officially Quoted, and if permitted to do so by the Listing Rules, the Responsible Entity may:
 - (i) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Securities from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
 - (ii) refuse to Register a transfer of other Securities to which paragraph (i) does not apply.
- (b) The Responsible Entity must:
 - (i) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Securities from being registered on the CS Facility's sub register or registered on an issuer sponsored sub register, as the case may be; or
 - (ii) refuse to register any transfer of Securities to which paragraph (a) does not apply,

if the Corporations Act or Listing Rules require the Responsible Entity to do so or the transfer is in breach of Clause 28.1.
- (c) If, in the exercise of its rights under paragraphs (a) and (b), the Responsible Entity requests the application of a holding lock to prevent a transfer of Securities or refuses to Register a transfer of Securities, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:
 - (i) the Holder;
 - (ii) the purported transferee; and
 - (iii) the broker lodging the transfer, if any.

Failure to give notice does not, however, invalidate the decision of the Responsible Entity.

9.4. Transmission of Units

- (a) In the case of a Transmission Event in respect of a Member or holder of Options or Financial Instruments (**Holder**), the only persons who will be recognised as having any title to the Units, Options or Financial Instruments registered in the Holder's name or any benefits accruing in respect of those Units, Options or Financial Instruments:
 - (i) where the Holder is a joint holder, the survivor or survivors of the Holder;
 - (ii) where the Holder is an individual, the legal personal representative of the Holder or the person entitled to the Units, Options or Financial Instruments as a result of bankruptcy; or
 - (iii) where the Holder is a body corporate, the person entitled to the Units, Options or Financial Instruments as a result of the dissolution or succession.

- (b) Nothing in Clause 9.4(a) releases the Holder or the estate of a deceased Holder from any liability in respect of the Units, Options or Financial Instruments held whether by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit, Options or Financial Instruments as a result of a Transmission Event may, upon producing such evidence as the Responsible Entity may require to prove that person's entitlement, elect:
 - (i) to be registered as the Holder of the Unit, Option or Financial Instrument by signing and serving on the Responsible Entity a notice in writing stating that election; or
 - (ii) to have some other person nominated by that person registered as the transferee of the Unit, Option or Financial Instrument by executing a transfer to that other person in accordance with Clause 9.1.
- (d) The Responsible Entity need not register any transfer or transmission pursuant to Clause 9.4(a) unless the transferee provides an indemnity in favour of the Responsible Entity in a form determined by the Responsible Entity in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this Constitution relating to the right to transfer, and the registration of transfers of, Units, Options or Financial Instruments apply, so far as they can and with such changes as are necessary, to any transfer under Clause 9.4(c) as if the relevant Transmission Event had not occurred and the transfer was signed by the Holder of the Unit, Option or Financial Instrument.
- (f) For the purposes of this Constitution, where two or more persons are jointly entitled to any Unit, Option or Financial Instrument in consequence of a Transmission Event they will, upon being registered as the Holders of the Unit, Option or Financial Instrument be taken to hold the Unit, Option or Financial Instrument as joint tenants and Clause 4.7 will apply to them.
- (g) Despite Clause 9.4(a), the Responsible Entity may register a transfer of Units, Options or Financial Instruments signed by a Holder before a Transmission Event even though the Responsible Entity has notice of the Transmission Event.

9.5. Recognition of Member

- (a) Except as otherwise provided by law or provided in this Constitution, the Responsible Entity:
 - (i) must treat the person entered on the Register as a Member, Option Holder or Holder of a Financial Instrument as the absolute owner of all rights and interests of the Holder; and
 - (ii) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit by any person other than the Member who holds the Unit, even if the Responsible Entity has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Responsible Entity, Units, Options or Financial Instruments held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in Clause 9.5(c) limits the operation of Clause 9.5(a).
- (e) Nothing in this clause 9.5 limits the rights of former Members as provided for in this Constitution.

10. Valuation of Assets

10.1. Periodic Valuations

- (a) The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act if the Corporations Act section 601FC(1)(j) applies.
- (b) The Responsible Entity may determine Net Asset Value and any Net Class Value at any time, but must, whilst the Trust is Listed, determine Net Asset Value as at the end of each month within 14 days after the end of each month.

10.2. Valuation Methods

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time provided that the valuation methods and policies are consistent with the Accounting Principles (to the extent required by law to be applied to that valuation) and the range of ordinary commercial practice for valuing assets of the same type as the relevant category of Assets and produce a valuation that is reasonably current at the time of issue or redemption of Units.
- (b) Unless the Responsible Entity determines otherwise, and subject to the terms of any applicable ASIC Relief instrument, the value of an Asset for the purpose of calculating Net Asset Value or Net Class Value will be its Market Value.
- (c) If an option has been granted over an Asset this is to be taken into account in assessing the value of the Asset.
- (d) If the Trust is a Registered Scheme then if the Responsible Entity values an Asset at other than its Market Value, or where there is no Market Value, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Application Price or the Redemption Price that is independently verifiable and which is reasonably current⁹ at the time of issue or redemption of Units.

10.3. Currency conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Responsible Entity. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency.

11. Accounts, Audit and Reports

11.1. Accounts – Registered Scheme

While the Trust is a Registered Scheme, the provisions of Chapter 2M of the Corporations Act apply.

11.2. Accounts – Not a Registered Scheme

While the Trust is not a Registered Scheme, the Responsible Entity:

- (a) must arrange the preparation and maintenance of such accounts and reports as the Responsible Entity, reasonably exercising its discretion, considers appropriate having regard to the nature of the Trust and its Assets, with a view to ensuring that the financial position of the Trust at any time is accurately recorded; and

⁹ ASIC RG 134.111 provides guidance on the meaning of “reasonably current”.

- (b) will determine at its discretion whether or not to have the Trust's accounts audited (but will arrange for such an audit if so directed by all Members).

12. Income and Distributions to Members¹⁰

12.1. Standing principles for determining Distributable Income

The Responsible Entity may determine standing principles for calculating and distributing the Distributable Income for any Financial Year or Distribution Period and may change the principles from time to time.

12.2. Standing principles for periods where the Trust is an AMIT

For any Financial Year for the Trust that is an AMIT Income Year, unless the Responsible Entity determines otherwise under Clause 12.1, the standing principles for calculating the Distributable Income for the Financial Year and any Distribution Period will be that the Distributable Income will be the amount determined by the Responsible Entity as being the aggregate of:

- (a) the amount determined by the Responsible Entity to be the aggregate of all Trust Components for the Trust for the period that have an assessable income character, determined as if the period is a year of income for the purposes of the Tax Act and excluding any amounts of a tax offset character; and
- (b) any additional amount that the Responsible Entity considers appropriate for distribution in relation to the Trust for the relevant period, including:
 - (i) amounts referable to the discount capital gains concession; and
 - (ii) any other Trust Components that have the character of exempt income or non-assessable non-exempt income.

The standing principles made by the Responsible Entity under this clause may be changed or revoked at any time in accordance with Clause 12.1.

12.3. Determination of Distributable Income

The Responsible Entity must determine the Distributable Income for each Distribution Period. In the case of any Distribution Period which does not end at the end of a Financial Year this determination of the Distributable Income for that Distribution Period may be an estimate. The Distributable Income is to be:

- (a) if the Responsible Entity has determined standing principles under Clause 12.1 or 12.2 which are applicable to the Financial Year or Distribution Period, the amount calculated by applying those principles in respect of the Financial Year or Distribution Period; and
- (b) if there are no standing principles which are applicable to the Financial Year or Distribution Period under Clause 12.1 or 12.2, so much of the income of the Trust determined according to ordinary concepts as is available for that period for distribution after payment of, or the provision for, costs, expenses and outgoings in accordance with normal concepts and the terms of this Constitution.

¹⁰ Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

12.4. Accounting standards

The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under Clause 12.3.

12.5. Power to accumulate or defer amounts

- (a) The Responsible Entity may, in respect of a Distribution Period in a Financial Year for the Trust that is an AMIT Income Year for the Trust, determine prior to the end of that Distribution Period that all or part of the Distributable Income of the Trust for the period from the commencement of the Financial Year until the end of the Distribution Period that has not already been distributed to Members under Clauses 12.6 or 12.22(b) will:
 - (i) be accumulated; or
 - (ii) not be distributed in respect of the Distribution Period and will be distributed to Members of the Trust later in the Financial Year.
- (b) The effect of the Responsible Entity exercising its power to accumulate or carry forward an amount pursuant to Clause 12.5(a) is, in accordance with Clause 12.6, to:
 - (i) exclude the relevant amount from the Income Distributions for Members of the Trust for:
 - (A) the Distribution Period; and
 - (B) in the case of an accumulation pursuant to Clause 12.5(a)(i), all future Distribution Periods; and
 - (ii) in the case of amounts which are carried forward for distribution later in the Financial Year under Clause 12.5(a)(i), include the relevant amount in the Income Distributions for a subsequent Distribution Period in the Financial Year unless the Responsible Entity determines to distribute the relevant amount earlier under Clause 12.22(b).
- (c) For the purposes of Clause 12.15, amounts accumulated under Clause 12.5(a)(i) may be attributed to Members under the AMIT Regime.
- (d) Amounts which are:
 - (i) accumulated pursuant to Clause 12.5(a)(i); or
 - (ii) carried forward for distribution later in the Financial Year pursuant to Clause 12.5(a)(i), but only until the time at which the amount is distributed under Clauses 12.6 or 12.22(b),

continue to form part of the Assets and no Member has any particular right to or interest in those amounts.

12.6. Income Distributions

Subject to Clause 12.13, Income Distribution in respect of a Member means an amount calculated by the Responsible Entity as follows:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than 30 June in any year, an amount calculated as follows:

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

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period;
- C is the Distributable Income for the Distribution Period less:
- (i) the Income Component of any Redemption Payment made to the Member pursuant to Clause 8.10;
 - (ii) any amounts paid pursuant to Clause 12.22(b) during that Distribution Period; and
 - (iii) any amounts where the Responsible Entity has determined to accumulate or carry forward for the Distribution Period under Clause 12.5(a),

and including any amounts which the Responsible Entity has determined to carry forward for a previous Distribution Period in the Financial Year, and which the Responsible Entity determines has not previously been distributed in the Financial Year as an Income Distribution or under clause 12.22(b) and is appropriate to distribute for the Distribution Period; and

- (b) in respect of a Distribution Period ending on 30 June in any year, an amount calculated as follows:

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

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period; and
- C is any amount by which the Distributable Income for the Financial Year exceeds the aggregate of:
- (i) the Distributable Income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year;
 - (ii) the Income Component of any Redemption Payment made to the Member in the Financial Year pursuant to Clause 8.10;
 - (iii) any amounts paid pursuant to Clause 12.22(b); and
 - (iv) any amounts which the Responsible Entity has determined to accumulate for a Distribution Period in the Financial Year under clause 12.5(a).

12.7. Present entitlement

A person who at any time during the Financial Year is or has been a Member is presently entitled to:

- (a) if the Financial Year is not an AMIT Income Year, the Distributable Income of the Trust for the Financial Year; and
- (b) if the Financial Year is an AMIT Income Year, the Distributable Income of the Trust for the Financial Year excluding any amounts accumulated pursuant to Clause 12.5(a)(i);

in the proportion that the:

- (i) Income Distributions calculated in respect of the Member or former Member in respect of the Financial Year under Clause 12.6;
- (ii) any payments made to that Member or former Member in respect of that Financial Year under Clause 12.22(b); and
- (iii) the Income Component of any Redemption payment made to the Member in the Financial Year pursuant to Clause 8.10,

bear to the sum of all Income Distributions calculated under Clause 12.6, all payments under Clause 12.22(b), and all of the Income Components of any Redemption payments made to persons who are or have been Members at any time during the Financial Year.

12.8. Indefeasibility

Despite any other provision of this Constitution, a person cannot be defeased of any share of the Distributable Income to which the person is entitled under Clause 12.6 and 12.7.

12.9. Distribution of income

Subject to any deductions made under Clause 12.12 and subject to Clause 12.1, the Responsible Entity must distribute to each person the person's entitlement to Distributable Income for a Distribution Period. That distribution must occur within three months after the Distribution Calculation Date for the Distribution Period.

12.10. Separate accounts

The Responsible Entity may keep separate accounts of different categories or sources (or both) of income or gains, or deductions, losses or credits for tax purposes, and if such accounts are kept, they must be kept in accordance with the requirements of the Tax Act. The Responsible Entity may allocate income or gains from a particular category or source (or both) to particular Members provided that the allocation is not inconsistent with the entitlements of Members to Distributable Income under Clause 12.6 or 12.22(b) or the Responsible Entity's obligations to attribute amounts to Members under Clause 12.15. For a Financial Year for the Trust which is not an AMIT Income Year and if such allocation is made on any basis other than pro rata with all other Members, the Responsible Entity must notify the Member.

12.11. Position on transfer of Units

A person who is or was a Member as at a Distribution Calculation Date remains entitled to their share (if any) of the Distributable Income under Clause 12.6 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

12.12. Deductions from Distributable Income

The Responsible Entity may deduct from any entitlement of a person to a share of Distributable Income any amount which the Responsible Entity is required or authorised to deduct under Clause

13.7 and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid, distributed or reimbursed out of the Trust or reimbursing the Responsible Entity for the payment of the Tax to the person or authority entitled to it.

12.13. Fractions

If the share of Distributable Income for a Member determined under Clause 12.6 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated and the fraction of the cent becomes an Asset.

12.14. Classification of items

Without limiting any other provision of this Clause 12, the Responsible Entity must determine:

- (a) the classification of any item as being on income or capital account;
- (b) the extent to which reserves or provisions need to be made; and
- (c) whether any item of income should be recognised as it is received or as it accrues (but not yet received); and
- (d) the character for tax purposes of any Distributable Income which the Responsible Entity chooses to accumulate or carry forward for distribution pursuant to Clause 12.5(a).

12.15. Attribution under AMIT Regime – basis for attribution

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Financial Year, attribute all of the Determined Trust Components of the Trust, for the Financial Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under Clause 12.15(a) in accordance with the Tax Act and based on the principle that the amount of each Member's Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this constitution; and
- (c) Without limiting Clause 12.15(b), following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Trust, all of the Determined Trust Components of the Trust for the Financial Year that are reflected in:
 - (i) any Income Distributions that the Member or former Member has become entitled to at the end of each Distribution Period in the Financial Year under Clause 12.7;
 - (ii) any Income Components distributed to a Member or former Member under Clause 8.10;
 - (iii) any distributions of Distributable Income that the Member or former Member has become entitled to during the Financial Year; and
 - (iv) any Income Distributions that would arise for the Member or former Member at a time specified in Clause 12.5(d) ("Relevant Time") under Clause 12.6 if the Relevant Time was the end of a Distribution Period and variable "C" in the formula set out in Clause 12.6 for the Distribution Period was the amount accumulated under Clause 12.15(a).
- (d) The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed

for the Trust as an Income Distribution under Clause 12.6 or under Clause 12.22(b) are referable to Determined Trust Components of the Trust for the Financial Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under Clause 12.15(a).

12.16. Attribution under AMIT Regime – Member objections

If the Trust is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Trust to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

- (a) the Member or former Member must:
 - (i) provide the Responsible Entity with a copy of the objection notice including the basis for objection, within the time the Member is required to do so under the Tax Act for the objection to be effective;
 - (ii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Member's or former Member's objection or proposed objection;
 - (iii) indemnify the Responsible Entity against all costs and Liabilities incurred by the Responsible Entity as a result of the objection. This paragraph (iii) does not limit the Responsible Entity's other rights to indemnification under this constitution.
- (b) the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members or former Members of the Trust to be protected, including in dealings with the Commissioner of Taxation; and
- (c) the Responsible Entity may amend its attribution of Determined Trust Components to Members or former Members based on the Responsible Entity's determination of what attribution is appropriate, and take such actions as the Responsible Entity determines are necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Members or former Members.

12.17. AMIT Regime Unders/Overs

For any Financial Year that is an AMIT Income Year, the Responsible Entity may determine how any Unders or Overs that arise for the Trust are to be dealt with in accordance with the AMIT Regime. The Responsible Entity is not liable to any Member or former Member with respect to how it addresses any Unders or Overs, provided that the Responsible Entity addresses the Unders or Overs in accordance with the AMIT Regime, and irrespective of whether the choices made result in an attribution outcome for a Member or former Member that is different from the attribution outcome if the Responsible Entity had not made the choice, or had made the choice differently.

12.18. Availability of reinvestment

The Responsible Entity may decide whether to permit the Members to reinvest some or all of any distribution.

12.19. Terms of reinvestment

If the Responsible Entity decides to permit reinvestment, it must notify Members of the procedure and terms for reinvestment and any change in the procedure or terms.

12.20. Issue date

If reinvestment applies to the share of Distributable Income on any Unit held by a Member at the end of a Distribution Period or any part of that share, the Responsible Entity is taken to have received and

accepted an application to reinvest that share of Distributable Income, or part of it at the end of that Distribution Period. The new Units are issued at the time of that acceptance.

12.21. Liability

To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this Clause 12 or under the AMIT Regime in respect of an AMIT Income Year, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

12.22. Other distributions

The Responsible Entity may at any time:

- (a) distribute any amount of capital to Members pro rata according to the number of Units they hold as at a time decided by the Responsible Entity; or
- (b) distribute any amount of income to Members pro rata according to the number of Units they hold as at a time decided by the Responsible Entity.

The distribution may be in cash or by way of additional Units or a transfer of Assets under Clause 13.4. The distribution must be paid as soon as is reasonably practicable.

12.23. Member may direct

The Responsible Entity may act on a direction given by a Member in such form as the Responsible Entity requires to pay to a third party nominated in the direction all or part of the Member's entitlement to distributions of income and capital under this Clause 12 or under Clause 23 on winding up.

13. Payments

13.1. Responsible Entity discretion

Money payable by the Responsible Entity to a Member may be paid in any manner the Responsible Entity decides.

13.2. Unpresented Cheques

Cheques issued by the Responsible Entity that are not presented within six months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Holder, the money is to be held by the Responsible Entity for that Holder or paid by the Responsible Entity in accordance with the legislation relating to unclaimed moneys.

13.3. Unsuccessful Payment

Where the Responsible Entity attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful on three occasions, the money may be held by the or paid by the Responsible Entity in accordance with the legislation relating to unclaimed moneys.

13.4. Transfer of Assets

The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, in payment of a distribution of income or capital, amounts owing under a buyback or as part of the winding up of the Trust or any other amounts owing to the Member in respect of the Trust, either:

- (a) with the consent of the Member; or

- (b) if the Responsible Entity reasonably considers the transfer of Assets rather than cash is in the best interests of Members, without the consent of the Member.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions). If paragraph (a) of this clause 13.4 applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

For the purposes of this clause 13.4, the Responsible Entity will be taken to have transferred Assets to a Member or former Member where the Responsible Entity has done everything reasonably necessary on its part to convey the Assets to the Member or former Member.

13.5. No Fractions

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

13.6. Discharge of Responsible Entity

A payment to any one of joint Members will discharge the Responsible Entity in respect of the payment.

13.7. Deductions

The Responsible Entity may deduct from any amount to be paid to a person who is or has been a Member or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Responsible Entity or any other person,

which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Responsible Entity considers should be deducted.

14. Powers of the Responsible Entity

14.1. General Powers

- (a) Subject to this Constitution, the Responsible Entity has all the legal capacity and powers both inside and outside Australia in respect of the Trust that it is possible under the law to confer on a trustee and as though the Responsible Entity were an individual who is the absolute owner of the Assets acting in their personal capacity.
- (b) The Responsible Entity is not, and nothing in this Constitution entitles the Responsible Entity to act as, the agent of any Member or Members. This is so despite any directions or instructions the Member or Members may give or may be entitled to give to the Responsible Entity.

14.2. Contracting Powers

Without limiting clause 14.1, the Responsible Entity in its capacity as trustee of the Trust has power to incur all types of obligations and liabilities including:

- (a) to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities), including to issue Financial Instruments;
- (b) to grant all types of security (whether for the obligations of the Responsible Entity or another person);
- (c) to grant guarantees and indemnities; and

- (d) to enter into derivatives.

14.3. Investment Powers

Without limiting Clause 14.1, the Responsible Entity may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights. This includes the power to:

- (a) invest the whole or part of the Assets in a single type of asset, or in trusts managed or controlled by the Responsible Entity or its related body corporate, or such other investments as the Responsible Entity determines; and
- (b) lend money and on-lend or provide financial accommodation to any person.

14.4. Power of Delegation

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may, to the maximum extent permitted by law, include in the authorisation provisions to protect and assist those dealing with the agent or delegate and to limit the Responsible Entity's liability as the Responsible Entity sees fit.
- (c) The agent or delegate may be an associate of the Responsible Entity.

14.5. Exercise of Discretion

The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

14.6. Buy-back of Units

- (a) While the Trust is Listed, the Responsible Entity may buy-back Units, subject to and in accordance with the Corporations Act and any requirements of the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit following a buy-back under this Clause 14.7 the Units purchased are cancelled.
- (c) The purchase price payable for a Unit purchased under this Clause 14.6 will be determined by the Responsible Entity (or its nominee) as follows:
 - (i) any period in which a purchase may be made, the Responsible Entity (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Indicative Buy-Back Price for that day by more than 5%; and
 - (ii) the purchase must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.
- (d) The Responsible Entity may determine that part of the purchase price payable for a Unit purchased under this Clause 14.7 includes an amount which represents an Income Distribution.

14.7. Rights and powers in relation to the AMIT Regime

Without limiting clause 14.1, the Responsible Entity has, in addition to its other rights and powers provided for under this constitution and at law:

- (a) the power to make an election to determine that the Trust is an AMIT;
- (b) the power to make an AMIT Class Election; and

- (c) all of the powers and rights which are necessary for or incidental to the Trust being able to be operated in a manner permitted by the Tax Act as an AMIT, including:
 - (i) being eligible to apply the AMIT Regime;
 - (ii) complying with the requirements of the AMIT Regime;
 - (iii) being properly administered and operated under the AMIT Regime; and
 - (iv) maintaining equity between the Members as a result of the operation of the AMIT Regime.

15. Retirement of Responsible Entity

15.1. Voluntary Retirement

- (a) While the Trust is a Registered Scheme, the Responsible Entity may retire as the Responsible Entity of the Trust as permitted by law.
- (b) While the Trust is not a Registered Scheme, the Responsible Entity may retire on not less than three months' notice to Members. On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

15.2. Compulsory Retirement

- (a) While the Trust is a Registered Scheme, the Responsible Entity must retire as the Responsible Entity of the Trust when required by law.
- (b) While the Trust is not a Registered Scheme, the Responsible Entity must retire if required to do so by a Resolution passed by at least 75% of the votes cast by Members entitled to vote on the Resolution.

15.3. New Responsible Entity

If the Trust is not a Registered Scheme at the time the Responsible Entity is to retire, any proposed replacement Responsible Entity must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.

15.4. Release

When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Trust arising after the time it retires or is removed.

16. Notices to Holders

16.1. Notices to Holders

- (a) Subject to the Corporations Act, a notice or other communication required under this Constitution to be given to a Holder may be given electronically, including by way of announcements on the Prescribed Financial Market on which the Units are Listed (if applicable), or in such other manner as the Responsible Entity determines, unless a Holder specifies to receive such notices and communications in writing. In this case, notices and communications should be delivered or sent to the Holder at the Holder's physical or electronic address last advised to the Responsible Entity for delivery of notices.
- (b) A cheque payable to a Holder may be posted to the Holder's physical address or handed to the Member or a person authorised in writing by the Holder.
- (c) In the case of joint Holders, the physical or electronic address of the Holder means the physical or electronic address of the Holder first named in the Register.

- (d) Subject to the Corporations Act, a notice or other communication sent to a Holder:
- (i) by post is taken to be received on the Business Day after it is posted;
 - (ii) by fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine; and
 - (iii) by email is taken to be received 1 hour after it is sent if the sender has not received a notice of non-delivery.

A cheque is taken to be received on the Business Day after it is posted.

Proof of actual receipt is not required. The Responsible Entity may determine the time at which other forms of communication will be taken to be received.

16.2. Notices of the Responsible Entity

- (a) A notice required under this Constitution to be given to the Responsible Entity must be given in writing (which includes a fax), or in such other manner as the Responsible Entity determines.
- (b) The notice is effective only at the time of receipt.
- (c) The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Responsible Entity dispenses with this requirement.

17. Meetings of Holders

17.1. Corporations Act

The Responsible Entity may at any time convene a meeting of Members, Option Holders, or Holders of Financial Instruments and must do so if required by the Corporations Act.

17.2. Member's Request for Meeting

- (a) While the Trust is not a Registered Scheme:
 - (i) the Responsible Entity must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 50% of the votes that may be cast on the resolution; and
 - (ii) Sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in Clause 17.2(a) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme:
 - (i) subject to paragraph (ii) of this clause 17.2(b), the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members; and
 - (ii) while the Trust is Listed, in respect of a requisition by Members to hold a meeting to vote on a proposed ordinary resolution to terminate an agreement under which an investment management fee is payable to a related party under clause 21.6(m) in accordance with the terms of that agreement, section 252B of the Corporations Act is taken to be amended as it applies to the Trust by deleting the words "special or extraordinary" where appearing before the word "resolution", with the intention that the Members will have the same right to requisition the meeting for that purpose as if section 252B had applied to ordinary resolutions (but not for any other purpose).

17.3. Notice Period

- (a) While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Members, or such shorter notice as they agree.
- (b) While the Trust is a Registered Scheme, the requirements for notice of meetings of Members is governed by the Corporations Act.

17.4. Responsible Entity May Determine

Subject to the specific provisions of this Constitution relating to meetings of members and the Corporations Act (if the Corporations Act applies), the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

17.5. Quorum

The quorum for a meeting of Members is at least five Members present in person or by proxy unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

17.6. No Quorum

- (a) If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Members - dissolved; or
 - (ii) otherwise - adjourned to such place and time as the Responsible Entity decides.
- (b) At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

17.7. Chairman

- (a) Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Members.
- (b) The decision of the chairman on any matter relating to the conduct of the meeting is final.

17.8. Adjournment

The chairman has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

17.9. Resolutions Binding

- (a) A Resolution binds all Members, whether or not they were present at the meeting.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

17.10. Proxies and Voting while the Trust is a Registered Scheme

While the Trust is a Registered Scheme:

- (a) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and
- (b) the Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

17.11. While the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, the remaining Clauses 17.12 to 17.15 apply.

17.12. Voting

- (a) Voting is by a show of hands, unless a poll is duly demanded or the proposed resolution is required by law or by this Constitution to be decided by a percentage of Units, or a percentage of votes able to be cast.
- (b) Each Member present in person or by proxy has:
 - (i) on a show of hands, one vote; and
 - (ii) on a poll, one vote for each Unit they hold.
- (c) In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees. In the case of an equality of votes, the chairman has the casting vote.

17.13. Poll

A poll may be demanded before or on declaration of the result of a show of hands by either:

- (a) the chairman, or
- (b) at least two Members present in person or by proxy who together hold at least 10% of Units.

17.14. Proxies

- (a) A Member may be represented at a meeting by proxy. Proxies are governed by the provisions of the Corporations Act relating to Registered Schemes as if the Trust were a Registered Scheme.
- (b) The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

17.15. Class Meetings

The rights attaching to a Class must not be varied without the written consent of all Members holding Units of that Class or by a Special Resolution of Members holding Units of that Class. Meetings of Members holding Units of a Class are to be convened and conducted in the same manner as meetings of Members generally under this Constitution.

17.16. Minutes

The minutes of a meeting of Members or Members of a class signed by the chair of the meeting are conclusive evidence of the matters stated in them, unless the contrary is proved.

17.17. Option Holders and Holders of Financial Instruments

- (a) The provisions of this Clause 17 relating to meetings of Members also apply to meetings of Option Holders and to meetings of Holders of Financial Instruments with any necessary modification.
- (b) Option Holders and Holders of Financial Instruments who are not Members are entitled to receive notice of and attend any meeting of Members but are not, unless the Corporations Act requires otherwise, entitled to speak or vote.

18. Rights and Liabilities of Responsible Entity

18.1. Holding Units

The Responsible Entity and its associates may hold Units in the Trust, or interests in any trust or company which is an associate of any of them, in any capacity.

18.2. Other capacities

Subject to the Corporations Act, the Responsible Entity (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Trust or in another capacity), its associates or with any Member, including to engage any of its associates to provide services to the Responsible Entity;
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), its associates or with any Member or any other person; and
- (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust,

and retain for its own benefit any profits or benefits derived from any of these acts, dealings, relationships, capacities, contracts or transactions.

18.3. Responsible Entity May Rely

The Responsible Entity may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Responsible Entity, in relation to the interpretation of this Constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Responsible Entity in connection with the Trust upon which it is reasonable for the Responsible Entity to rely;

and the Responsible Entity will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

19. Limitation of Liability and Indemnity in favour of Responsible Entity

19.1. Limitation on Responsible Entity's liability

While the Trust is a Registered Scheme, the Responsible Entity is not liable in contract, tort or otherwise to Holders for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

19.2. Liability while Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, if the Responsible Entity acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Holders for any loss suffered in any way relating to the Trust.

19.3. Liability limited to Assets

Subject to the Corporations Act, the liability of the Responsible Entity to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Responsible Entity's ability to be indemnified from the Assets.

19.4. Acts or omissions of Responsible Entity and others

- (a) Without limiting any other provision of this Clause 19, but subject to the Corporations Act, the Responsible Entity is not responsible for:

- (i) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or Custodian and any of their agents or delegates;
- (ii) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
- (iii) Costs if a person fails to carry out an agreement with the Responsible Entity or an attorney, delegate or agent of the Responsible Entity,

except where the Corporations Act expressly provides otherwise.

- (b) Without limiting any other provision of this Clause 19, but subject to the Corporations Act, the Responsible Entity will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:

- (i) any provision of any present or future law or statute of Australia or any State or Territory; or
- (ii) any decree, order or judgement of any competent court;
- (iii) or any document or agreement binding on the Responsible Entity,

the Responsible Entity is prevented, forbidden or hindered from doing or performing.

- (c) No act or omission of the Responsible Entity will be considered fraud, negligence or breach of trust by it to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Trust or by any other act or omission of any other person.

19.5. Indemnity in Favour of Responsible Entity

- (a) The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing its duties or properly exercising any of its powers in the proper performance of its duties in relation to the Trust.
- (b) To the extent permitted by the Corporations Act, (if the Corporations Act applies, and otherwise without limitation), the indemnity under this Clause 19.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- (c) This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as Responsible Entity of the Trust.
- (d) Where a Liability is incurred pursuant to a proper exercise of the Responsible Entity's powers in the proper performance of its duties in relation to the Trust under this Constitution or at law, the Responsible Entity may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor or the Responsible Entity (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust may have suffered or any

diminution in the value of Assets as a consequence of any unrelated act or omission by the Responsible Entity or by any person or entity acting on behalf of the Responsible Entity.

20. Liability of Members

20.1. Liability Limited

Subject to Clauses 20.3 and 20.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

20.2. Member need not indemnify

A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets to meet the claim of any creditor of the Responsible Entity in respect of the Trust.

20.3. Tax or User Pays Fees

The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax or User Pays Fees as a result of:

- (a) that person's action or inaction; or
- (b) an act or omission requested by that person; or
- (c) any other matter arising in connection with Units or other Securities held by that person,

but, in the absence of a separate agreement with the Holder, is not otherwise entitled to be indemnified by them. Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax or User Pay Fees to which Clause 20.3 applies.

20.4. AMIT Indemnity

Without limiting Clause 12.16(a)(iii), 19.5 or 20.3 the Responsible Entity is entitled to be indemnified by a Member or former Member for:

- (a) any Tax (or estimate of it) payable by the Responsible Entity under or in connection with the AMIT Regime and which the Responsible Entity determines is properly referable to the Member or former Member; and
- (b) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member or former Member under Clause 19.5 in the circumstances contemplated in Clause 20.4(a).

20.5. Recourse

In the absence of separate agreement with a Member, the recourse of the Responsible Entity and any creditor is limited to the Assets.

20.6. Restrictions on Members

A Member:

- (a) must not interfere with any rights or powers of the Responsible Entity under this Constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.

21. Remuneration and Expenses of Responsible Entity

21.1. Fees subject to Corporations Act

While the Trust is a Registered Scheme, the fees in this clause 21 may only be paid to the Responsible Entity to the extent they are payable in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Trust.¹¹

21.2. Management Fee

- (a) The Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each month a monthly management fee (**Management Fee**) equivalent to 0.5% per annum of the gross value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee, in respect of the operation of the Trust for that prior month.
- (b) In relation to the month in which the Trust is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month.
- (c) Where the Management Fee was not paid for a particular month or part month or not in full, the Management Fee payable in a subsequent month will be the aggregate of the Management Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid, with the final payment to be prorated if such payment is for a period less than a full month.

21.3. Structuring Fee and Handling Fee

The Responsible Entity is entitled to be paid out of the Assets in respect of each offer of Units for subscription (Offer), on the day of completion of the issue of Units subscribed for pursuant to that Offer;

- (a) a structuring fee of 2.5% of the gross proceeds of the Offer; and
- (b) a handling fee of 2.5% of the gross proceeds of the Offer.

21.4. Priority of Responsible Entity's remuneration

The Responsible Entity's fees must be paid in priority to the payment of all other amounts payable from the Trust.

21.5. Waiver of Fees

- (a) The Responsible Entity may in its absolute and unfettered discretion waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution.
- (b) The Responsible Entity may do so in relation to a Class or Members generally, that is, subject to the Corporations Act, may waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution differently for different Class.
- (c) Where payment is deferred, the fee and/or levy accrues daily until paid.

21.6. Expenses

All expenses incurred by the Responsible Entity in connection with the Trust, including expenses paid to third parties or Related Bodies Corporate of the Responsible Entity, are payable or reimbursable out

¹¹ See section 601GA(2) of the Corporations Act.

of the Assets¹², but while the Trust is a Registered Scheme such reimbursement or payment is only available to the extent that the amounts are incurred in the proper performance of the Responsible Entity's duties as Responsible Entity and only to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with including but not limited to:

- (a) this Constitution, the formation of the Trust and any investment vehicle in which the Trust expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
- (b) registration of the Trust as a Registered Scheme;
- (c) the preparation, review, distribution and promotion of any product disclosure statement, offering memorandum or other disclosure document in respect of Securities or other promotion of the Trust;
- (d) the acquisition, disposal, insurance, custody (including Custodian fees) and any other dealing with Assets;
- (e) any proposed acquisition, disposal or other dealing with an investment;
- (f) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (g) without limiting paragraph (f), a fund administration fee payable to a person appointed by the Responsible Entity, which may include a related party of the Responsible Entity, of up to \$120,000 plus GST (reviewed annually), calculated and accrued daily and payable quarterly in arrears;
- (h) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (i) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (j) Tax (including any amount charged by a person making a supply both to the Responsible Entity by way of or as a reimbursement for GST), costs incurred in the implementation and application of the AMIT Regime and financial institution fees (subject to Clause 21.6(g));
- (k) financial institution fees;
- (l) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (m) without limiting paragraph (l), an investment management fee payable to a person appointed by the Responsible Entity, which may include a related party of the Responsible Entity, of up to 2% per annum of the gross value of the Assets managed by it, calculated and accrued daily, and payable within seven days of the end of each calendar month;
- (n) preparation and audit of the taxation returns and accounts of the Trust;
- (o) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (p) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this Clause 21.6(p) must be repaid;

¹² This drafting addresses section 601GA(2) - that a right to be paid fees or indemnified out of Trust property must be "specified in the Constitution".

- (q) any compliance or other committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (r) while the Trust is a Registered Scheme but there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (s) complying with any law, and any request or requirement of the ASIC, ASX or any other regulatory body;
- (t) registry fees;
- (u) fees payable to any audit committee for the Trust appointed in accordance with ASX corporate governance guidelines or otherwise;
- (v) the preparation, implementation, amendment and audit of the compliance plan;
- (w) the cost of handling Complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution Trust;
- (x) the cost of the Responsible Entity employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
- (y) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with maintaining the Register and dealings with Securities;
- (z) costs of the admission of the Trust to the Official List and compliance with the Listing Rules;
- (aa) underwriting or managing any subscription or purchase of Securities, including underwriting, offer management and brokerage fees and commission, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under such agreement;
- (bb) all damages, expenses, payments, legal and other costs and disbursements incurred by the Responsible Entity in relation to or in connection with any claim, dispute or litigation ("Claim") arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Responsible Entity; and
- (cc) accounting services and compliance with taxation laws and procedures (whether internal expenses of the Responsible Entity or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Trust.

In this clause 21, "Expenses" includes amounts paid by the Responsible Entity to related bodies corporate for services where the expenses would have been reimburseable had they been incurred by the Responsible Entity.

21.7. GST

- (a) Words and expressions defined in the GST Act have the same meaning in this Clause 21.7.
- (b) Unless otherwise explicitly stated, the consideration for any supply made under or in connection with this Constitution is exclusive of GST.

- (c) To the extent that any supply made by the Responsible Entity under or in connection with this Constitution is a taxable supply, then in addition to any consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount equal to the GST payable by the Responsible Entity in respect of the supply.
- (d) The amount by which the consideration is increased under Clause 21.7(c) is payable at the same time as the consideration for the supply.
- (e) Clause 21.7(c) does not apply to supplies in respect of which the consideration is explicitly expressed as GST inclusive in this Constitution.
- (f) In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1 + n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).
- (g) Any payment or reimbursement required to be made under this Constitution that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which the relevant entity is entitled for the acquisition to which the cost, expense or amount relates.

21.8. Sums Owed to the Responsible Entity

The Responsible Entity may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

22. Duration of the Trust

22.1. Initial Settlement

The Trust commences when an initial person nominated by the Responsible Entity subscribes for at least 10 Units at an Application Price of \$1.60 per Unit. The Responsible Entity's nominee must be issued with one (1) Unit in return for each \$1.60 of that payment.

22.2. Termination

The Trust terminates on the earliest of:

- (a) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Members; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution or by law.

22.3. Change in taxation

If at any time legislation is enacted the result of which is that the Responsible Entity is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Trust other than income not distributed to Members, the Responsible Entity may call a meeting of the Members to consider winding up the Trust and if by Special Resolution the meeting so decides, the Responsible Entity may wind up the Trust.

22.4. Restriction on issue and redemption of Units

Despite any other provisions in this Constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

23. Procedure on Termination

23.1. Realisation of Assets

Following termination, the Responsible Entity must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

23.2. Audit of Winding Up

If, at the time it is to be wound up, the Trust is a Registered Scheme, the Responsible Entity must arrange for independent audit of the final accounts of the Trust by a registered company auditor.

23.3. Distribution Following Termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in the following manner. The Responsible Entity may distribute proceeds of realisation in instalments. The Responsible Entity must first pay the Trust's income from the last Distribution Calculation Date prior to the termination of the Trust to the Members holding Units pro rata according to the respective numbers or such Units held by them. Secondly, the Responsible Entity must pay the balance to the Members pro rata according to the respective numbers of Units held by them.
- (b) The Responsible Entity may distribute an asset of the Trust to a Member *in specie*. The Responsible Entity must determine the value of the asset of the Trust to be distributed *in specie* based on a valuation completed in accordance with Clause 10.2 within one month before the date of the proposed distribution. Any costs payable on an *in specie* distribution must be paid by the Member before the distribution is made.
- (c) The Responsible Entity is entitled to:
 - (i) be paid from the proceeds of realisation of the Trust before any payment is made to the Members, all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Trust;
 - (C) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and
 - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Responsible Entity in connection with the winding up of the Trust;
 - (ii) an indemnity against the amounts referred to in Clause 23.3(c)(i) which may be satisfied out of those proceeds before any distribution under Clause 23.3(a) is made; and
 - (iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Clause 21.
- (d) The Responsible Entity may postpone the realisation of the Trust for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Responsible Entity may retain for as long as it thinks fit any part of the Trust which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this Constitution, including but not limited to under Clause 21.

Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under Clause 23.3, but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Member and the Responsible Entity is under no obligation to consider or process redemption requests received after the date of termination.

24. Amendments to this Constitution

24.1. Responsible Entity May Amend

- (a) Subject to the Corporations Act, while the Trust is a Registered Scheme, this Constitution may be amended:
 - (i) by Resolution; or
 - (ii) by deed executed by the Responsible Entity if the Responsible Entity reasonably considers the amendments will not adversely affect the rights of members.

If the Constitution is amended by Resolution, the Responsible Entity may give effect to the amendments by executing a supplemental deed.

- (b) While the Trust is not a Registered Scheme, the Responsible Entity may by deed amend this Constitution but, where the amendments adversely affect the rights of Members, may only do so with the approval of a Resolution.

24.2. Attribution Managed Investment Scheme

Without limiting the Responsible Entity's powers in Clauses 24.1 and 24.2, but subject to the Corporations Act, the Responsible Entity may make any change to this Constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Trust;
- (b) facilitate compliance with the terms of the AMIT Regime in relation to the Trust, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the Responsible Entity or Members;
- (c) facilitate the proper administration and operation of the Trust under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Members that arise under the AMIT Regime; or
- (d) comply with the conditions of any ASIC Relief issued in relation to the AMIT Regime, or facilitate operation of the Trust in reliance on such relief.

25. Regulatory provisions and paramountcy

25.1. Listing Rules

While the Trust is included in the Official List:

- (a) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act will not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);

- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is taken to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains the provision, this Constitution is taken not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is taken not to contain that provision to the extent of the inconsistency.

25.2. Corporations Act and ASIC Relief

- (a) If the Corporations Act requires that this Constitution contain certain provisions, or if ASIC Class Order [CO 13/655] or any other ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Trust and the Responsible Entity requires provisions to a certain effect to be contained in this Constitution in order for the ASIC Relief to apply ("**Required Provisions**"); or
- (b) if any part of this Constitution (a "**Required Part**") is included to comply with the requirements of the Corporations Act or ASIC ("**Regulatory Requirement**") and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this Constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.

The Members:

- (i) authorise the Responsible Entity to make the amendments referred to in this clause 25.2 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this Constitution do not include or extend to a right not to have this Constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

25.3. Application of Corporations Act, Listing Rules and Operating Rules

In this Constitution:

- (a) except as otherwise provided in a particular clause or by law, a requirement of the Corporations Act only applies while the Trust is a Registered Scheme;
- (b) a requirement of the Listing Rules only applies while the Trust is Listed; and
- (c) a requirement of the Operating Rules only applies when the Units are Officially Quoted.

25.4. ASIC Class Orders

In accordance with any relevant ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 25.2 that is covered by such relief instrument is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the Constitution to which this clause 25.4 applies are made pursuant to the power in clause 24.1 but in respect of such changes the requirements of clause 24.1 are to be read subject to this clause 25.4.

25.5. Paramountcy of provisions

Subject to the Corporations Act and the Listing Rules, clause 25.2 and provisions taken to be included or amended under it prevails over other provisions of this Constitution to the extent of any inconsistency.

26. Compliance Committee

26.1. Compliance Committee

While the Trust is a Registered Scheme and a compliance committee is acting in that capacity for the Trust, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.

26.2. Persons to whom Clauses 25.3 and 25.5 apply

Clauses 25.3 and 25.5 apply to each person who is or has been a member of the Compliance Committee (if any).

26.3. Indemnity

The Responsible Entity must from the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this Clause 25.3 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Corporations Act.

26.4. Extent of indemnity

The indemnity in Clause 25.3:

- (a) is a continuing obligation and is enforceable by a person to whom Clause 25.3 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

26.5. Insurance

The Responsible Entity may, from the Trust, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this Clause 25.5 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

26.6. Savings

Nothing in Clauses 25.3 or 25.5:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Responsible Entity to indemnify or provide insurance for any person to whom those clauses do not apply.

27. Complaints

27.1. Retail Members

The Responsible Entity, as an Australian Financial Service licensee, must comply with the dispute resolution requirements in Section 912A(2) of the Corporations Act, in respect of Retail Members and former Retail Members¹³;

27.2. Wholesale Members

While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Wholesale Member or former Wholesale Member¹⁴: submits to the Responsible Entity any Complaints in relation to the Trust, the Responsible Entity:

- (a) must, whether the Complaint is in writing, verbal, in person or otherwise, acknowledge receipt of the Complaint immediately or as soon as practicable;
- (b) must, where there is a compliance committee, refer the Complaint to the committee for its consideration;
- (c) must, where there is no compliance committee, consider the Complaint;
- (d) must act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (e) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the Complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (f) must communicate to the complainant in relation to the Complaint as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the Complaint:
 - (i) the determination of the compliance committee (or if Clause 26.2(c) applies, the Responsible Entity);
 - (ii) any remedies available to the member; and
 - (iii) information regarding any further avenue for Complaint.

28. General

28.1. Restricted Securities

- (a) Clause 27.1(b) only operates:

¹³ See ASIC RG 134.136

¹⁴ The Responsible Entity may treat retail and wholesale clients differently for this purpose – see RG 134.146 and [CO 13/656].

- (i) while the Trust is Listed and the Listing Rules require this Constitution to contain a provision to the effect of Clause 27.1(b); and
- (ii) to the extent that it is not inconsistent with the Corporations Act.
- (b) During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights in respect to those Units.
- (c) All the time while the Trust is Listed, Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or the ASX.
- (d) All the time while the Trust is Listed, the Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or the ASX.

28.2. Small Holdings

- (a) Subject to the provisions of this Clause 28.2, while the Trust is Listed the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units under this Clause 28.2 on one occasion in any 12 month period.
- (c) The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this Clause 28.2.
- (d) The Responsible Entity may not sell or redeem the relevant Units:
 - (i) before the expiry of six weeks from the date of the notice given under Clause 28.2(c); or
 - (ii) if within the six weeks allowed by Clause 28.2(d)(i), the Member advises the Responsible Entity that the Member wishes to retain the Units.
- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides.
- (g) The proceeds of the sale or redemption may not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.

28.3. Constitution Legally Binding

This Constitution binds the Responsible Entity and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

28.4. Severance

If all or part of any provision contained in this Constitution is void or invalid or would otherwise result in all or part of this Constitution being void or invalid for any reason, then such part is to be severed from this Constitution without affecting the validity or operation of any other provision of this Constitution.

28.5. Governing Law

This Constitution is governed by the law of New South Wales. The Responsible Entity and the Members submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

28.6. Other Obligations Excluded

Except as required by the Corporations Act, all obligations of the Responsible Entity which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Responsible Entity in its capacity as Responsible Entity of the Trust arising under any statute.

EXECUTED as a deed poll

SIGNED by)
Walsh & Company Investments Limited)
in accordance with section 127 of the)
Corporations Act:)
)

Director Signature

Director Signature

Print Name

Print Name

Legal Compliance List

Part 5C.3 of the Corporations Act 2001 requires the Constitution of a registered managed investment scheme to make adequate provision for the matters listed in section 601GA(1), to specify fees, expenses and liabilities payable to the Responsible Entity (section 601GA(2)), to specify the investment and borrowing powers of the Responsible Entity (section 601GA(3)), and that the Constitution be a legally enforceable document (section 601GB).

This list is included to assist ASIC in identifying the provisions in this Constitution which satisfy the requirements of the Corporations Act for Constitutions of registered managed investment schemes.

Section of Corporations Act	Constitution to Specify	Clause in Constitution
601GA(1)(a)	Consideration that is to be paid to acquire an interest in the Trust.	Clauses 5 and 6
601GA(1)(b)	Powers of the Responsible Entity in relation to making investments of, or otherwise dealing with the property of the Trust.	Clause 14
601GA(1)(c)	The method by which Complaints made by Members in relation to the Trust is to be dealt with.	Clause 27
601GA(1)(d)	Winding up the Trust.	Clause 23
601GA(2)	(a) the Responsible Entity's rights to fees; (b) the Responsible Entity's right to indemnification for liabilities and expenses.	(a) Clause 21 (b) Clause 19.5
601GA(3)	Powers to borrow or raise money for the purposes of the Trust.	Clause 14.2
601GA(4)	The rights of Members to withdraw from the Trust	Clauses 7 and 8
601GB	Legally enforceable between Members and the Responsible Entity.	Clause 28.3