


Annexure C

Company: Walsh & Company Investments Limited ACN 152 367 649

This Annexure of 51 pages referred to in Form 5101 Notification of Change to Managed Investment Scheme's Constitution

Signed:  Date: 3 May 2017
Name: ALEXANDER MACLACHLAN Director

Constitution of the New Energy Solar Fund

Consolidated to 3 May 2017

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Constitution of the New Energy Solar Fund

Dated:

3 May 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 **New Energy Solar Fund**.

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

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

Additional Tax means the amount of any additional Tax withheld, paid, payable or otherwise imposed as a consequence of the particular characteristics of a Member or a group of Members and is the amount withheld, paid, payable or otherwise imposed as a direct result of those particular characteristics to the extent that it exceeds the amount that would be withheld, paid, payable or otherwise imposed if the Member or the group of Members had the same relevant characteristics as the majority of Members.

AMIT means, in respect of a Distribution Period in a Tax Year, an attribution managed investment trust in respect of that year as that term is defined in section 276-10 of the Tax Act where the choice to be an attribution managed investment trust was made before the end of the Tax Year.

Application Price means the Unit price payable to the Responsible Entity calculated in accordance with Clauses 5 and 13.10(d) exclusive of any service fee payable by an applicant to a Licensee in connection with the issue of a Unit and, while a Unit is part of a Stapled Security, comprises that part of a Stapled Security Application Price referable to that Unit.

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 release 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, proceeds of redemption which have not yet been paid or any amount to which a Member is presently entitled.

ASX Settlement Operating Rules means the settlement rules operated by ASX Settlement Pty Limited (ACN 008 504 532).

Attached Security means a Security which is from time to time Stapled or to be Stapled to a Unit.

Attached Securityholder means the person registered as the holder of an Attached Security (including persons jointly registered).

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.

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

Cooling-Off Period means the period within which a Member has the right to return units to the Responsible Entity and to have the money they paid to acquire the Unit repaid in accordance with Section 1019B of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Corresponding Number in relation to an Attached Security means at any time the number of those Attached Securities that are Stapled to an issued Unit at that time.

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.

Distributable Income has the meaning given in Clause 13.1.

Distribution Calculation Date means the last day of each Tax Year or each Interim Distribution Period.

Distribution Period means:

- (a) for the first distribution period, the period from the establishment 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.

Entry Fee means an entry fee of 5% of the Application Price for Units (or lesser amount as the Responsible Entity may in its absolute and unfettered discretion determines in accordance with Clause 22.5).

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 final distribution of winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on a Financial Year Termination Date.

Financial Year Termination Date means 30 June or another financial year termination date nominated by the Responsible Entity for tax purposes.

Gross Asset Value means the value of the Assets of the Trust as determined by the Responsible Entity from time to time in accordance with Clause 11.

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 Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 13.2.

Indicative Buy-Back Price means:

- (a) where a Unit does not form part of a Stapled Security, 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 5 days on which sales in Units were recorded before the relevant Business Day; or
- (b) where a Unit forms part of a Stapled Security, the average market price (as that term is defined in the Listing Rules) per Stapled Security of all Stapled Securities sold on the ASX during the last 5 days on which sales in Stapled Securities were recorded before the relevant Business Day.

Interim Distribution Period means any period determined by the Responsible Entity so long as the period commences and ends during the same Tax Year (but does not end on the last day of that Tax Year).

Liabilities means all present liabilities of the Trust including any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Trust in accordance with the Accounting Principles but excludes all liabilities owed to the holders of Units in their capacity as the holders of Units.

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.

Member means the person Registered as the holder of a Unit (including persons jointly Registered).

Net Asset Value means the value of the Assets calculated in accordance with Clause 11 less the Liabilities.

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.

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.

Ordinary Unit means a Unit with the rights attached thereto as provided in this Constitution including rights to both income and capital of the Trust.

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

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.

Registration means recording in the Register.

Relevant Business Day means either:

- (a) the date Units are offered;
- (b) the last date on which applications for Units can be received by the Responsible Entity;
- (c) the date Units are allotted; or
- (d) the date Units are issued,

determined by the Responsible Entity at its sole discretion.

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.

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 has the meaning given to that term in section 92(1) of the Corporations Act.

Stapled means, in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others.

Stapled Entity means any trust, corporation, managed investment scheme or other entity the Securities of which are Stapled to Units.

Stapled Security means one Unit and each Attached Security.

Stapled Security Application Price has the meaning given in Clause 5.4(a).

Stapled Security Register means the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with Clause 10.8.

Stapling Date means the date determined by the Responsible Entity to be the first day on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities.

Stapling Provisions means Clause 10 of this Constitution.

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

Tax Year means:

- (a) for the first tax year, the period from the establishment of the Trust to the date elected by the Responsible Entity in accordance with applicable laws;
- (b) for the last tax year, the period from the first day of the tax year in which the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on the date elected by the Responsible Entity from time to time.

Terms of Issue in relation to a Unit means the terms and conditions upon which that Unit is issued.

Trading Day means at all times while the Trust is Listed those Business Days on which buying and selling occurs through the stock exchange automated trading system used by the Prescribed Financial Market on which the Units are Listed.

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.

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 the 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 Withdrawal 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.

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

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

Unstapling Date means the earliest of the date:

- (a) determined by the Responsible Entity to be the date of Unstapling pursuant to Clause 10.6;
- (b) on which the Trust or Responsible Entity becomes insolvent or commences to be wound up; and
- (c) from which Stapling becomes unlawful or it is prohibited by the Listing Rules.

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.

1.2. Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act 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) words importing a gender include any gender;
- (g) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (h) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (i) a reference to anything (including, without limitation, any right) includes a part of that thing;
- (j) 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;
- (k) 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;
- (l) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (m) a reference to a party to a document includes that party’s successors and permitted assigns;
- (n) 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;
- (o) a reference to an asset includes all property of any nature, including, without limitation, a business, and all rights, revenues and benefits;
- (p) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind; and
- (q) 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. General compliance provision

- (a) A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Constitution.
- (c) This Clause 1.4 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

1.5. Listing Rules

- (a) This Constitution is to be interpreted subject to:
 - (i) the Corporations Act;
 - (ii) the Listing Rules at all times, while the Trust is Listed; and
 - (iii) the ASX Settlement Operating Rules, at all times while the Units are CHESSE Approved Securities.
- (b) Despite anything to the contrary in this Clause 1.5, this Clause 1.5 has effect subject to Clause 1.4.
- (c) At all times while the Trust is Listed:
 - (i) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
 - (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
 - (iii) 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);
 - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
 - (v) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
 - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (d) At all times while the Trust is Listed, the Responsible Entity must comply with the obligations imposed on it under the Listing Rules and the ASX Settlement Operating Rules. This obligation does not detract from or alter the power of the Responsible Entity to cause the Trust to cease to be Listed.
- (e) Unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules has the same meaning as in that provision.
- (f) In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of Clause 1.5(c) is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act.

1.6. Additional Listing Rule requirements

At all times while the Trust is Listed:

- (a) the Responsible Entity must not remove or change a Member's right to vote except if:
 - (i) an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Constitution;
 - (ii) the Member became the holder of that Unit after the time determined under the Corporations Regulations as the "specified time" for deciding who held the Unit for the purpose of the meeting;
 - (iii) the right is removed or changed under Australian legislation or under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iv) the right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules or the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (v) the right is removed or changed under a court order;
- (b) a Member must not be divested of that Unit except in any of the following cases:
 - (i) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or (if required) is approved by the operator of the Prescribed Financial Market on which the Units are Listed as appropriate and equitable;
 - (ii) the divestment is under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iii) the divestment is under a provision in this Constitution that is permitted by the Listing Rules or (if required) the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (iv) the divestment is under a court order;
- (c) the Responsible Entity must not divest a Member of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASX Settlement Operating Rules. Without limitation to Clause 1.5, at all times that the Trust is Listed, the Responsible Entity must comply with ASX Settlement Operating Rule 8.13.

1.7. 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 the New Energy Solar Fund or by such other name as the Responsible Entity determines from time to time.

3. Assets held on trust

3.1. Assets held on Trust

- (a) The Responsible Entity must hold the Assets on trust for Members.

- (b) The Assets vest in the Responsible Entity, but 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.

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 equal undivided interest. Apart from any differences as to income entitlement arising from the time when a Unit is issued, all Units in a Class confer an equal undivided interest as the other Units in that Class irrespective of the Application Price paid to the Responsible Entity for those Units.
- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- (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.
- (f) The Responsible Entity may increase the liability of a Member to contribute to the capital of the Trust in accordance with this Constitution.
- (g) The Responsible Entity must enter on the Register the class or terms of issue of Units held by a Member.
- (h) A Member 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 a Member.
- (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 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) - 5.1(f), as applicable; 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) 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.
- (f) Subject to Clause 4.2(e), 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:
 - (i) a Financial Instrument does not confer any interest in, or any rights to participate in the income or capital of, the Trust;
 - (ii) each holder of a Financial Interest agrees not to:
 - (A) interfere with any rights or powers of the Responsible Entity under the Constitution;

- (B) purport to exercise a right in respect of an Asset of the Trust or claim any interest in an Asset of the Trust (for example, by lodging a caveat affecting an interest in the Asset of the Trust); or
- (C) require an Asset of the Trust to be transferred to them (or any other person); and
- (iii) subject to the Corporations Act, a holder of a Financial Instrument who is not a Member is not entitled to any other rights of a Member.

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 may be issued by the Responsible Entity.
- (b) 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, that fraction may be rounded down or up to such number of decimal places as the Responsible Entity determines.
- (c) 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.
- (d) 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; 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 ASX Settlement 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. Benefits and obligations of Members

Except where expressly provided in this Constitution to the contrary, all benefits and obligations in this Constitution apply for the benefit of and bind each Member to the extent provided in this Constitution.

4.10. No further liability

- (a) This Clause 4.10 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 its investment in the Trust as amended in accordance with this Constitution from time to time.
- (c) A Member is not required to indemnify the Responsible Entity or a creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Trust.
- (d) The recourse of the Responsible Entity and any creditor of the Responsible Entity is limited to the assets of the Trust.
- (e) 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.

4.11. Class rights

The rights attaching to Units in a class of Units cannot be cancelled, varied or adversely affected without a special resolution of Members and a special resolution of Members of the class affected. For the avoidance of doubt, the increase in liability of a Member to contribute to the capital of the Trust under Clause 21.2 is a variation of class rights requiring approval by Members by way of special resolution.

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:
 - (i) in respect of the issue of a Unit to an applicant who on issue of that Unit will be a Retail Member and:
 - A. pays to the Responsible Entity the sum of \$1.52 for each Unit applied for;
 - B. submits an application form to the Responsible Entity nominating a Licensee and giving clear consent to the payment or directing the Responsible Entity to pay the sum of \$0.02508 per Unit to the Licensee so nominated as a service fee out of the funds provided by that applicant to the Responsible Entity in

connection with that application and to apply the balance in subscription for each Unit,

\$1.49492 per Unit; and

- (ii) in all other cases - \$1.52 per Unit.
- (b) After the issue of Units under the first product disclosure statement referred to in clause 5.1(a) above, the Application Price is equal to:
- (i) an amount approved by Members by a "placement resolution" as that term is defined in ASIC Class Order [CO 13/655] or any other ASIC Relief; or
 - (ii) where the Units are issued on or before 31 December 2017 and are to be issued as part of a Stapled Security and the Stapled Securities are not Officially Quoted, at a Stapled Security Application Price of the greater of \$1.62 and the amount calculated in accordance with the following formula:

$$\frac{\text{NAV} + \text{Transaction Costs}}{\text{number of Units on issue}}$$

where NAV is equal to the sum of Net Asset Value and the net asset value of the Stapled Entities and for the purposes of calculating NAV, clause 5.2 does not apply and those calculations are to be determined at a date not more than one month prior to the date on which the offer to issue Stapled Securities is made.

- (c) NOT USED.
- (d) The Application Price for a Unit issued on the exercise of an Option is the amount determined in accordance with Clause 4.2(b)(ii).
- (e) Notwithstanding 5.1(a)-(d), the Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units to the extent it is permitted to do so under the provisions of ASIC Class Order [CO 13/655] or any other ASIC Relief.
- (f) Subject to compliance with the Corporations Act, the Listing Rules (as applicable), ASIC Class Order [CO 13/655] or any other applicable ASIC Relief and the statutory and fiduciary duties of the Responsible Entity, the Responsible Entity may issue Units at Application Prices that differ between applicants notwithstanding that the issues are undertaken at the same time or under the same product disclosure statement or other offer document.
- (g) Without limiting Clause 5.1(f), subject to compliance with the Corporations Act, the Listing Rules (as applicable), ASIC Class Order [CO 13/655] or any other ASIC Relief and the statutory and fiduciary duties of the Responsible Entity, the Responsible Entity may issue Units with an Application Price (**Relevant Price**) lower than that payable by other applicants under that offer (**Full Price**) where the reduction is equal to the amount of any fee (including a service fee, stamping fee or handling fee) paid by an applicant who:
 - (i) on completion of the issue of Units, will be a Retail Member;
 - (ii) pays to the Responsible Entity a sum equal to the Full Price for each Unit applied for;
 - (iii) has nominated a Licensee and provided clear consent to payment, or directed the Responsible Entity to pay a fee (including a service fee, stamping fee or handling fee) to that Licensee out of the funds provided by that applicant to the Responsible Entity in connection with that application and to apply the balance in subscription for Units.
- (h) The Responsible Entity must hold any amount it receives from an applicant for Units for payment to a Licensee in the circumstances referred to in Clauses 5.1(a)(i) and 5.1(g) separate from the Assets and must pay the sum referable to the Units issued to the applicant to the

Licensee nominated by the applicant as soon as practicable and in any event within 10 Business Days after the issue of Units.

5.2. Variables

Each of the variables in Clause 5.1(b) 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,

whichever happens later.

5.3. Rounding

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 of the Trust.

5.4. Issue of Stapled Securities and Capital Allocation Prior to Official Quotation

- (a) Notwithstanding Clause 5.1, if a Unit is to be issued as part of a Stapled Security and the Stapled Securities are not Officially Quoted, the Responsible Entity may set the Application Price for a Unit by setting the Stapled Security Application Price per Stapled Security by applying the provisions of Clause 5.1 as if, in Clause 5.1, references to "Unit" were references to "Stapled Security".
- (b) For the purposes of this Clause 5.4, the **Stapled Security Application Price** is the sum of the Application Price per Unit and the issue price of each other Security which is a component of the Stapled Security (in each case calculated on a notional basis solely for the purpose of determining the Stapled Security Application Price, and not for the purpose of issuing a Unit or Security at that price), and the Responsible Entity may, before actually issuing a Unit as part of a Stapled Security, determine what part of the issue price of the Stapled Security is to represent the Application Price of the Unit for the purposes of this Constitution. For the avoidance of doubt, the part of the issue price of the Stapled Security which is to represent the Application Price of the Unit will be the Application Price of the Unit for the issue in question, and may be different from the notional Application Price used to calculate the Stapled Security Application Price.
- (c) Unless otherwise agreed between the Responsible Entity and the other Stapled Entities (which agreement they may reach in their absolute discretion), the allocation is to be in the ratio that the Net Asset Value of the Trust and the net asset value of each other Stapled Entity immediately before the issue of the Stapled Security bears to the Stapled Entity Net Asset Value immediately before the issue of the Stapled Security.

5.5. Issues of Units or Stapled Securities and Capital Allocation after Official Quotation

In addition to any other power the Responsible Entity has to issue Units or Options under this deed and subject always to compliance with the Act:

- (a) the Responsible Entity may issue Units or Options at any time to any person by way of issue, placement, rights issue, distribution reinvestment arrangement or interest purchase plan:
 - (i) where Units form part of the Stapled Securities and the Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Application Price determined by the Responsible Entity; or
 - (ii) where the Units are not part of the Stapled Securities and Units (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Application Price determined by the Responsible Entity; and

- (b) the Responsible Entity may issue Units at any time to any person otherwise than by way of placement, rights issue, distribution reinvestment arrangement or interest purchase plan:
 - (i) where the Units form part of the Stapled Securities and the Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Application Price determined by the Responsible Entity;
 - (ii) where the Units are not part of the Stapled Securities and Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Application Price determined by the Responsible Entity.
- (c) unless otherwise agreed between the Responsible Entity and the other Stapled Entities (which agreement they may reach in their absolute discretion), the allocation of the Application Price for Stapled Securities between the Trust and each Stapled Entity is to be in the ratio that the Net Asset Value and the net asset value bears to the aggregate of the Net Asset Value and the net asset value of the Stapled Entities in all cases immediately before the issue of the Stapled Securities.

5.6. Issues of Units pursuant to a bookbuild

In addition to any other power the Responsible Entity has to issue Units or Options under this deed, and subject always to compliance with the Corporations Act, the Responsible Entity may issue Units at an Application Price determined by the Responsible Entity based on the price of Units or (where Units are part of a Stapled Security, the price of Stapled Securities) determined pursuant to a bookbuild conducted as follows:

- (a) the bookbuild is conducted by one or more bookrunners who hold appropriate qualifications and experience;
- (b) the Responsible Entity gives the bookrunner or bookrunners a written notice setting out the amount to be raised;
- (c) in determining the price, the bookrunner takes, or bookrunners take, into account the nature and size of the offer and circumstances in which the offer would be made (including any potential dilutionary effect) and whether participation in the offer would be extended to members; and
- (d) once the bookbuild has been conducted, the bookrunner confirms, or each bookrunner confirms, to (including by way of email) the Responsible Entity that the bookbuild has been conducted in accordance with ordinary commercial practice and that the price has been determined having regard to matters including, but not limited to, the nature and size of the offer and circumstances in which the offer would be made (including any potential dilutionary effect) and whether participation in the offer would be extended to members.

6. Application Procedure

6.1. Application Form

An applicant for Units 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 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 (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
 - (i) accompany the application;

- (ii) be received by or made available to the Responsible Entity within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
 - (iii) comprise a reinvestment of distribution in accordance with Clauses 13.10 and 13.11
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.
- (c) Application Monies for Units issued under a product disclosure statement must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:
 - (i) the minimum subscription, if any (to be specified in the product disclosure statement) has been reached and the Responsible Entity decides to proceed to allotment of Units; or
 - (ii) the date by which the Application Monies would need to be repaid under the Corporations Act.

Until the Responsible Entity decides to proceed to the issue of Units in accordance with this Clause 6, it holds such Application Monies upon bare trust for the applicant and the Responsible Entity must comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. Where Application Monies are repayable under section 723(3) or 724 of the Corporations Act, no interest is payable on that money.

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) 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.
- (b) Except in the case of a reinvestment of distributions in accordance with this Constitution, in all other cases Units are taken to be issued on the date the applicant's name is recorded in the Register.

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 1 month of receipt of the application.

6.7. Register

Subject to the Corporations Act, a single register may be kept in which details of the holders of Units are recorded.

6.8. 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.

6.9. Foreign Members

- (a) The Responsible Entity may determine that Foreign Members are not to be offered Units which are otherwise offered to Members in that capacity where it reasonably considers that it would:
- (i) be in the best interests of the Members; and
 - (ii) not be unfair to the Foreign Members.
- (b) If the Responsible Entity makes a determination under Clause 6.9(a) and it is practicable to do so, the Responsible Entity must sell the Foreign Interests and pay to each Foreign Member the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$

Where:

AF is the amount to be paid to that Foreign Member;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (i) the Costs of the sale;
- (ii) the amounts (if any) payable to the Responsible Entity by any nominee appointed under Clause 6.9(c) in respect of the Foreign Interest; and
- (iii) any amounts the Responsible Entity would be required by law or otherwise entitled to deduct or withhold under this Constitution;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Member would otherwise have been entitled.

- (c) The Responsible Entity may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Member the amount calculated in accordance with the formula in, Clause 6.9(b).
- (d) The Responsible Entity must take reasonable steps to maximise the amount payable to each Foreign Member under Clause 6.9(b).

7. Redemption Price of Units

7.1. Redemption Procedures

Except for a buy-back of a Unit in accordance with clause 15.7, an Ordinary Unit may only be redeemed while the Trust is not Listed and must only be redeemed at a Redemption Price calculated in accordance with the following formula:

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

where:

RP is the Redemption Price;

NAV is the Net Asset Value;

TC is the Transaction Costs; and

U is the aggregate number of Ordinary Units on issue.

7.2. Time of Calculation

Each of the variables in Clause 7.1 must be determined as at the next Valuation Time after the Responsible Entity receives the redemption request or determines that the Units are to be redeemed, whichever is the earlier (**Redemption Date**).

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.

7.4. Capital gains on redemption

- (a) Prior to the Distribution Calculation Date immediately following a redemption, the Responsible Entity may determine whether any portion of the Redemption Price paid to a Member represents income or gains of the Trust.
- (b) If a portion of the Redemption Price paid to a Member on redemption of Units represents income or gains of the Trust, the Responsible Entity must notify the Member of the extent to which the Redemption Price is composed of, and the types of income, gains and capital.
- (c) If the Responsible Entity makes a determination under clause 7.4(a), then it must record in the accounts and records of the Trust no later than two months after the end of the Financial Year:
 - (i) the details of any net capital gain that was wholly or partly distributed in accordance with that clause, including the details of each capital gain that has been taken into account in the calculation of that net capital gain; and
 - (ii) the proportion of that net capital gain that was included in the amount distributed in accordance with that clause.

8. Redemption Procedures

8.1. Application of the provisions of Clause 8

- (a) Unless expressly stated otherwise, Clause 8.2 and Clauses 8.5 to 8.14 (each inclusive) apply whether or not the Trust is a Registered Scheme and, if the Trust is a Registered Scheme, whether or not the Trust is Liquid.
- (b) In addition to Clause 8.1(a):
 - (i) Clause 8.3 only applies to a Trust that is not a Registered Scheme; and
 - (ii) Clause 8.4 only applies to a Trust that is a Registered Scheme.

8.2. Requests for Redemption

- (a) A Member may make a request to the Responsible Entity to redeem some or all of their Units provided that those Units the subject of the redemption request have been held by that Member for the minimum period of time (if any) that is specified in the Terms of Issue, which must in any event not be less than 1 month.

- (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 a withdrawal or redemption form.
- (c) The manner, and time by which, a redemption request must be given by a Member to the Responsible Entity will, be determined from time to time by the Responsible Entity.
- (d) Subject to any preferred, deferred or other special rights, obligations or restrictions required by the Terms of Issue of any Class of Unit issued from time to time, 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 a Registered Scheme

- (a) If the Responsible Entity decides to satisfy a redemption request in respect of a Unit 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). The Responsible Entity must pay from the Assets the Redemption Price calculated in accordance with Clause 7. The payment must be made by no more than 21 days following the said Redemption Date (subject to any suspension of redemptions).
- (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. Redemption process when the Trust is a Registered Scheme

- (a) While the Trust is a Registered Scheme, notwithstanding any other provision of this Constitution, neither part or all of the Units held by a Member may be redeemed except in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind. The payment must be made within the period specified in the Corporations Act if the Trust is non-Liquid, and by no more than 21 days after the Redemption Date if the Trust is Liquid.
- (b) No withdrawal request issued under 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) If the Responsible Entity receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

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

Notwithstanding anything expressed or implied to the contrary in this Constitution, the Responsible Entity may in its absolute and unfettered discretion reduce the number of Units the subject of a redemption request in respect of the 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 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 8.5.

8.6. Suspension of Redemption Requests

Notwithstanding anything expressed or implied to the contrary in this Constitution, if the Responsible Entity considers or determines that:

- (a) it is desirable for the protection of the Trust or in the interests of the Members as a whole including if any relevant financial, stock, bond, note, derivative or foreign exchange market 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) it is in the interests of the Members,

the Responsible Entity may suspend for a reasonable period determined by it (**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.

8.7. 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 8.7 may only be exercised while the Trust is Liquid.

8.8. Power to compulsorily redeem Units

Without limiting any other provision of this Constitution, the Responsible Entity can determine to redeem Units without a request in the following circumstances and, if it does so, the Redemption Price is calculated at the next Valuation Time after it so determines:

- (a) if the Member has breached its obligations to the Responsible Entity or breached a term of this Constitution;
- (b) to satisfy any amount of money due to it (as responsible entity or in any other capacity) by the Member;
- (c) to satisfy any amount of money it (as responsible entity or in any other capacity) owes someone else relating to the Member (for example, to the tax office);
- (d) if this Constitution otherwise allows (for example, where a Member does not have a minimum holding);
- (e) where the Responsible Entity reasonably believes that the law prohibits the person from being a Member;
- (f) where the Terms of Issue otherwise provide for compulsory redemption of Units;

- (g) where the Responsible Entity determines it is in the best interests of the Members; or
- (h) where the Responsible Entity determines it is appropriate or necessary for administrative or other reasons.

8.9. Redemption and Issue

- (a) The Responsible Entity may (without the consent of a Member) redeem any or all of a Member's Units in the Trust at the Redemption Price for Units calculated in accordance with Clause 7 (except that the price is not to be adjusted for Transaction Costs) at that time and apply the redemption proceeds to the payment of the Application Price for Units in the Trust in a Class determined by the Responsible Entity. Such Units will be taken to be issued contemporaneously with redemption and will be issued at the Application Price for that Class calculated in accordance with Clause 5 (except that price is not to be adjusted for Transaction Costs) immediately prior to the redemption.
- (b) The Responsible Entity may only take the action in Clause 8.9(a) where it has determined that such action is:
 - (i) in the best interests of the Members (as a whole); or
 - (ii) appropriate or necessary for administrative or other reasons.
- (c) The Units in the Class determined by the Responsible Entity must at least have the same terms as, and rank equally with, the redeemed Units.

8.10. Sums Owed to the Responsible Entity

The Responsible Entity may deduct from the Redemption Price, any money due to it from the Member.

8.11. Transfer of Assets

- (a) The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution.
- (b) These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done in accordance with Clause 11.2(a) within one month before the date of the proposed transfer).
- (c) If the Responsible Entity requires, the costs involved in the transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.
- (d) The transfer of Assets to the Member must be completed by no more than 21 days after the Redemption Date.

8.12. 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 from the Register in respect of the redeemed Units; and
- (c) may deliver a transaction advice to the Member.

8.13. 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.

8.14. Liability on Redemption

The Responsible Entity is not liable for any consequences resulting from a redemption of Units in accordance with this Clause 8.

9. Transfers

9.1. Transfer

- (a) Before the Trust is Listed or at any time after the Trust has ceased to be Listed, 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) unless the instrument of transfer:
 - (i) is duly stamped (if applicable);
 - (ii) is accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
 - (iii) complies with any requirements prescribed by the Responsible Entity from time to time.
- (b) While the Trust is Listed, all transfers of Officially Quoted Units and, subject to their terms and conditions, Officially Quoted Options and Officially Quoted Financial Instruments, must be effected in accordance with the Listing Rules.
- (c) A transferor of Units remains the Member until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units of the transfer is effected in accordance with the ASX Settlement Operating Rules.

9.2. 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. No General Restriction on Transfer

- (a) There is no restriction on the transfer of Units and, subject to their terms and conditions, Options and Financial Instruments and, subject to Clause 28.1, the Responsible Entity may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer effected under Clause 9.1(b).
- (b) Except as otherwise set out in this Clause 9, there is no restriction on any other transfer of Units, and subject to their terms and conditions, Options and Financial Instruments.
- (c) In relation to Units, Options or Financial Instruments, which are CHESS Approved Securities:
 - (i) subject to Clauses 9.3(c)(ii) and 9.3(c)(iii), the Responsible Entity must not prevent, delay or in any way interfere with the registration of a proper ASX Settlement Operating Rules transfer;
 - (ii) the Responsible Entity may apply a holding lock to specified CHESS Approved Securities where permitted to do so by the Listing Rules; and

- (iii) the Responsible Entity may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

9.4. Power to suspend registration of transfers

Subject to the Listing Rules and the ASX Settlement Operating Rules, whilst the Trust is Listed, the Responsible Entity may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as it thinks fit.

9.5. 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 9.5(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 9.5(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 9.5(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 2 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 9.5(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.

9.6. 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 other person, 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 9.6(c) limits the operation of Clause 9.6(a).

9.7. Participation in Transfer Systems

The Responsible Entity may determine that Units, Options or Financial Instruments which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Responsible Entity may, with the approval of the operator of the Prescribed Financial Market on which the Units, Options or Financial Instruments are Listed, create rules to facilitate such participation which may be additional to or may override this Clause 9.

10. Stapling Provisions

10.1. Power to Staple Securities

The Responsible Entity may, subject to the Corporations Act and, if Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to the Units and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, the Corresponding Number of Attached Securities of every kind is Stapled to each Unit.

10.2. Applications, Transfers and Distributions in Specie

- (a) For the purposes of Stapling, the Responsible Entity may:
 - (i) apply for stapling in the name of a Member;
 - (ii) make a transfer of Securities to all Members; or
 - (iii) make a transfer of securities by way of an *in specie* distribution of Securities to all Members.
- (b) If the Responsible Entity applies for securities in accordance with Clause 10.2(a)(i), it must apply for securities for all Members in the same way and Securities must be of the same type, have the same rights and be fully paid upon issue.
- (c) If the Responsible Entity effects a transfer made in accordance with Clause 10.2(a)(ii) it must effect the transfer to all Members in the same way and the Securities transferred to each Member must be of the same type, have the same rights and be fully paid.

- (d) Notwithstanding clause 8.4(a) while the Trust is Listed, if the Responsible Entity makes an *in specie* distribution under Clause 10.2(a)(iii) the Responsible Entity;
 - (i) must transfer the Securities by way of distribution between 7pm on the Distribution Calculation Date for the distribution *in specie* and 10am the following day; and
 - (ii) must effect the distribution to all Members in the same way and the Securities transferred to each Member must be of the same type, have the same rights and be fully paid.
- (e) Where Securities are to be applied for or transferred by the Responsible Entity in accordance with Clause 10.2(a), each Member authorises the Responsible Entity to act as the Member's agent to:
 - (i) apply for Securities in the name of that Member;
 - (ii) accept a transfer of Securities for that Member; and
 - (iii) agree to become a member of the relevant Stapled Entity.

10.3. Distribution for purposes of Stapling

For the purposes of creating or adding a new Attached Security to Stapled Securities, the Responsible Entity may apply the proceeds of a pro-rata distribution under Clause 13.1 in subscribing as agent and attorney of each Member for Securities which are to be Stapled to Units.

10.4. Operation of the Stapling Provisions

Clauses 10.5 to 10.13 apply only, and for so long as, a Unit is a component of a Stapled Security.

10.5. Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (c) On and from the Stapling Date and prior to the Unstapling Date the Responsible Entity and the Members must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
 - (i) the Responsible Entity must not offer any Units for subscription or sale unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
 - (ii) any offer of a Unit for subscription or sale must require each offeree to subscribe for or buy the Corresponding Number of each Attached Security;
 - (iii) the Responsible Entity must not issue or sell any Units to any person or redeem, buy back or withdraw any Units, unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time or, if a Cooling-Off Period applies to the Units, the first Business Day after expiry of that Cooling-Off Period, or redeemed, bought back or withdrawn at the same time; and
 - (iv) the Responsible Entity must not forfeit a Member's Unit unless the Attached Securities Stapled to it are also forfeited;

- (v) the Responsible Entity must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities; and
- (vi) the Responsible Entity must not register the transmission or transfer of Units pursuant to Clause 9 unless it also causes the transmission or transfer (as the case may be) or a Corresponding Number of each Attached Security.

10.6. Unstapling Date

- (a) Subject to approval by a special resolution of the Members and the members of each Stapled Entity respectively, the Responsible Entity may determine that the Stapling Provisions of this deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this Clause 10.6, this does not prevent the Responsible Entity from:
 - (i) subsequently determining that the Stapling provisions should recommence; and
 - (ii) stapling an Unstapled Unit to Attached Securities which are not Stapled.

10.7. Transfer of Stapled Securities

- (a) Until the Unstapling Date;
 - (i) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of Clause 9, the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee;
 - (ii) a transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee; and
 - (iii) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Responsible Entity as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Attached Security is Stapled to the same transferee.
- (b) Each Member irrevocably appoints the Responsible Entity as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Responsible Entity the transfer to the Responsible Entity (as trustee of the Trust) or to a person nominated by the Responsible Entity of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

10.8. Stapled Security Register

The Responsible Entity must cause to be kept and maintained a Stapled Security register which:

- (a) may incorporate or form part of the Register;
- (b) records the names of the Members, the number of Units held, the number of Attached Securities held by the Members to which each Member's Units are Stapled and any additional information required by

the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the Responsible Entity.

10.9. Members meetings

- (a) Representatives of a Stapled Entity may attend and speak at any meeting or invite any other person to attend and speak.
- (b) Meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Responsible Entity may make such rules for the conduct of such meetings as the Responsible Entity determines.

10.10. Variation of Stapling provisions

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this deed which:

- (a) directly affects the terms on which Units are stapled; or
- (b) removes any restriction on the transfer of a Stapled Unit unless that restriction also exists for all Attached Securities and is simultaneously removed for all Attached Securities.

10.11. Restricted issue of Units of different class

Whilst there is a similar restriction on the issue by Stapled Entities of any class of security that is not an Attached Security pursuant to the terms of the constitutions of the Stapled Entities without the consent of the holders of Attached Securities, notwithstanding any other provision of this deed, the Responsible Entity must not issue any Units which are of a different class from any Units already issued without an ordinary resolution being passed at a meeting of Members to that effect.

10.12. Maintenance of Listing and consistency with constitutions of Stapled Entities

The Responsible Entity must use reasonable endeavours to procure that, if Stapled Securities are and continue to be Officially Quoted as such, Units are dealt with under this deed in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

10.13. Stapling Provisions paramount

Subject to Clauses 1.4 - 1.6, this Clause 10 has effect notwithstanding any other Clause of this Constitution and any Clause of this Constitution which is inconsistent with it does not operate to the extent of any inconsistency.

11. Valuation of Assets

11.1. 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 the Gross Asset Value and the Net Asset 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.

11.2. 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 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 will be its market value which must be determined in a manner consistent with the Accounting Principles (to the extent required by law to be applied to that valuation) and ordinary commercial practices for valuing assets of the same type as the Assets.
- (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 current at the time of issue or redemption of Units.

11.3. 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.

12. Accounts, Audit and Reports

12.1. Accounts – Registered Scheme

If the Trust is a Registered Scheme, the Responsible Entity must comply with the requirements of Chapter 2M of the Corporations Act, in so far as they are relevant to the Trust.

12.2. 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
- (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).

13. Income and Distributions to Members

13.1. Distributable Income

- (a) The Responsible Entity may determine the distributable income (**Distributable Income**) for each Distribution Period or may determine the Distributable Income by way of a standing determination (subject to the determination not being in contradiction of trust or tax laws), the application of which is capable of independent verification, and may change such principles from time to time in respect of Distribution Periods ending after the change in principles.
- (b) In determining the Distributable Income the Responsible Entity may determine whether any receipt, profit, gain, cost, expense, outgoing or other amount is to be treated, for the purposes of the Trust, as being on income or capital account and may, in making that determination, reclassify amounts which are income as capital, and amounts which are capital as income.
- (c) For the avoidance of doubt:

- (i) in determining the Distributable Income, the Responsible Entity does not have to take into account the Accounting Principles; and
 - (ii) the preparation of the accounts of the Trust in accordance with current Accounting Principles is not to be regarded as a determination by the Responsible Entity of the method for calculating the Distributable Income.
- (d) Unless the Responsible Entity determines otherwise on or before the Distribution Calculation Date or the Trust is not an AMIT for the Tax Year in which the Distribution Period occurs, the Distributable Income for a Distribution Period must be:
- (i) the net income of the Trust as defined in section 95(1) of the 1936 Act, excluding any amount that is included in the net income of the Trust that will not be received by the Responsible Entity; but
 - (ii) not less than the amount which if distributed would prevent the Responsible Entity being liable to tax on the income of the Trust.

13.2. Income Distributions

- (a) The Responsible Entity may determine to make an interim distribution of Distributable Income accruing during any Interim Distribution Period (an **Interim Distribution**). The Responsible Entity must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Members on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in Clause 13.2(d).
- (b) Within 90 days of the end of the Tax Year and subject to Clause 13.2(d), the Responsible Entity must pay to the Members on the Register at the end of the last day of that Tax Year an amount equal to the Income Distribution of Distributable Income accruing to the Trust for the Tax Year less any amounts previously distributed during that Tax Year under Clause 13.2(a).
- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class and to this Clause 13.2, and if the Trust is not an AMIT in respect of a Tax Year at the end of the last Distribution Period in the Tax Year a Member on the Register on the Distribution Calculation Date is presently entitled to a distribution of the Income Distribution referable to that Distribution Calculation Date.
- (d) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Member is entitled to receive a distribution under Clause 13.2(a) or 13.2(b) in accordance with the following formula:

$$\left(\frac{(A + B) \times C}{D} \right) - E$$

where:

- A = the amount of the distributable income in respect of the relevant Tax Year or Interim Distribution Period (as the case may be);
- B = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on Issue held by any such Member;
- C = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Tax Year or Interim Distribution Period which are entitled to a full income distribution for that period plus, if the Member holds at the close of business on the last Business Day of that period Units issued during that period which have a proportionate income entitlement in accordance with Clause 13.5, the

aggregate number of such Units held by that Member multiplied by the relevant proportion;

- D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Tax Year or Interim Distribution Period plus, if Units have been issued during that period which have a proportionate income entitlement in accordance with Clause 13.5, the aggregate of the total number of such Units multiplied by the relevant proportion, in each case calculated as at the close of business on the last Business Day of that period; and
- E = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of the Member including the number or percentage of Units on Issue held by the Member.

13.3. Satisfaction of Present Entitlement

The present entitlement of a Member to Distributable Income of the Trust for a Tax Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Tax Year.

13.4. Minimum Distribution

The Responsible Entity may transfer capital to enable distribution to Members holding Ordinary Units pro rata of the minimum amount necessary to avoid the Responsible Entity as Responsible Entity of the Trust becoming assessable to pay tax under the Tax Act.

13.5. Member's Rights

For the avoidance of doubt and despite anything in this Clause 13:

- (a) The rights of a Member under this Clause 13 are subject to the rights, obligation and restrictions attaching to the Units which they hold; and
- (b) For the purposes of distribution entitlements, partly paid Units will be treated as that proportion of whole Units as the amount paid up bears to the total issue price for that Unit, rounded down to the nearest 2 decimal places, or in such other manner.

13.6. Trust taxed as a Company

If the Trust is to be taxed as if it were a company, the Responsible Entity may determine that this Clause 13.6 applies to any period (a **Distribution Period**) instead of Clauses 13.1 to 13.5. If it does so:

- (a) As soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity determines otherwise, the income in respect of the Distribution Period, income will be calculated in accordance with the Accounting Principles.
- (b) The Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) The Responsible Entity may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to Members on the Register on any date determined by the Responsible Entity (**CD Date**).
- (d) For each Distributable Amount being paid to Members under this Clause 13.6 the Responsible Entity:
 - (i) must comply with Tax Act; and

- (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) A Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

- A = the aggregate of the number of Units held by the Member as at the close of business on the CD Date for that Distributable Amount which are entitled to a full income distribution plus, if the Member holds on the CD Date for that Distributable Amount Units which have proportionate income entitlement, the aggregate number of such Units held by that Member multiplied by the relevant proportion;
- B = the aggregate of the number of Units entitled to full income distribution plus if any Units have been issued with proportionate income entitlement, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the CD Date for the Distributable Amount;
- C = the Distributable Amount.
- (f) The Distributable Amount must be paid to Members within two months after the relevant CD Date.

13.7. Withholding Tax

- (a) The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that is required by law to deduct from such amount.
- (b) Where the income of the Trust is reduced by Additional Taxes attributable to the ownership of Units by certain Members, the entitlement to Income Distributions of such Members may be adjusted by the Responsible Entity, pursuant to Clause 13.2(d), so that the entitlement to Income Distribution or Distributable Amount of all other Members is equivalent to the amount they would receive in the absence of such Additional Taxes.

13.8. Other Distributions

The Responsible Entity may at any time:

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

13.9. Separate Accounts

- (a) The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Members.
- (b) Where Clause 13.7(b) has been applied to reduce income entitlements of certain Members, those Members are to have the corresponding additional credits for tax purposes allocated to them.

13.10. Reinvestment

- (a) The Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units of the same Class.

- (b) If the Responsible Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- (c) If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.
- (d) If reinvestment applies while Units are not Officially Quoted and a Unit is not a component of a Stapled Security which is Officially Quoted, the Application Price for the Units to be issued on reinvestment will be calculated by reference to Clause 5.1(b)(i) on the first Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the distribution relates.

13.11. Position on Transfer of Units

Income in the distribution account when a transfer or transmission of Units is Registered remains credited to the transferor.

13.12. Capital Reallocation

- (a) Subject to the Corporations Act and the Listing Rules, if at any time, a Stapled Entity makes a capital payment to the Responsible Entity as a capital reallocation amount:
 - (i) each Unitholder is taken to have directed the Responsible Entity to accept that capital reallocation amount; and
 - (ii) the Responsible Entity must apply that amount as an additional capital payment in respect of each Unit which is Stapled to a Security of the Stapled Entity making the capital payment equally in respect of each Unit.
- (b) The Responsible Entity may at any time make a capital payment to a Stapled Entity as a capital reallocation amount if:
 - (i) the constitution of the Stapled Entity contains provisions to the effect of those in clause 13.12(a); and
 - (ii) the Responsible Entity is satisfied that the capital payment will be applied as an additional capital payment in respect of each Attached Security to which a Unit is Stapled equally.

14. Payments

14.1. Responsible Entity Discretion

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

14.2. Unpresented Cheques

Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be reinvested in Units at the Application Price prevailing at the next Valuation Time after the cheque is cancelled.

14.3. 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, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after failure of the third attempt.

14.4. No Fractions

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

14.5. Discharge of Responsible Entity

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

14.6. 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.

15. Powers of the Responsible Entity

15.1. General Powers

Subject to this Constitution, the Responsible Entity has all the powers in respect of the Trust that it is possible under law to confer on a Responsible Entity and as though it were the absolute owner of the Assets and acting in its personal capacity.

15.2. Contracting Powers

Without limiting Clause 15.1, the Responsible Entity in its capacity as Responsible Entity of the Trust has power to borrow or raise money and to lend or advance money (whether or not on security) and to incur all types of obligations and liabilities.

15.3. Investment Powers

Without limiting Clause 15.1, the Responsible Entity may in its capacity as Responsible Entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

15.4. Guarantees

Without limiting Clause 15.1, the Responsible Entity may if it considers it appropriate in all the circumstances to do so, guarantee or assume the obligations of any person (including an associate of the Responsible Entity) and a third party dealing with the Responsible Entity may rely on a certified extract of the minutes of a meeting of the directors of the Responsible Entity as conclusive evidence that the Responsible Entity has formed the opinion that it is appropriate in all the circumstances to exercise its powers under this Clause 15 and is thereby empowered accordingly.

15.5. 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 include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity sees fit.
- (c) The agent or delegate may be an associate of the Responsible Entity.

15.6. Exercise of Discretion

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

15.7. 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 under the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit or a Stapled Security (as applicable) following a buy-back under this clause 15.7 the Units purchased are cancelled.
- (c) Where a Unit forms part of a Stapled Security, the Responsible Entity may only buy-back and cancel Units if the Securities to which those Units are Stapled are also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable for a Unit or Stapled Security purchased under this clause 15.7 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.
- (e) The Responsible Entity may determine that part of the purchase price payable for a Unit or Stapled Security purchased under this clause 15.7 includes an amount which represents a distribution of Distributable Amount.

16. Retirement of Responsible Entity

16.1. 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.

16.2. 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.

16.3. 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.

16.4. 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.

16.5. Retirement Benefit

The Responsible Entity is entitled, subject to any approval required by law, to agree with the incoming Responsible Entity to be remunerated by, or to receive a benefit from, the incoming Responsible Entity in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming Responsible Entity as its replacement; or
- (b) its retirement as Responsible Entity,

and is not required to account to Members for such remuneration or benefit.

17. Notices to Holders

17.1. 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) A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.

17.2. 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.

18. Meetings of Holders

18.1. 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.

18.2. 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 18.2(a) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, 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.

18.3. 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.

18.4. 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.

18.5. Quorum

The quorum for a meeting of Members is at least 5 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.

18.6. 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.

18.7. 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.

18.8. Adjournment

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

18.9. 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.

18.10. 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.

18.11. While the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, the remaining Clauses 18.12 to 18.15 apply.

18.12. 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.

18.13. 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 2 Members present in person or by proxy who together hold at least 10% of Units.

18.14. 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.

18.15. 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.

18.16. 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.

18.17. Option Holders and Holders of Financial Instruments

- (a) The provisions of this Clause 18 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.

19. Rights and Liabilities of Responsible Entity

19.1. Holding Units

The Responsible Entity and its associates may hold Units in the Trust in any capacity.

19.2. Other Capacities

Subject to the Corporations Act, if the Corporations Act applies, nothing in this Constitution restricts the Responsible Entity (or its associates) from:

- (a) dealing with itself (as Responsible Entity of the Trust or in another capacity), an associate or with any Member;
- (b) being interested in any contract or transaction with itself (as Responsible Entity of the Trust or in another capacity), an associate or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

19.3. 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.

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

20.1. No limitation of other undertakings

This Clause 20 does not limit or affect any other indemnities given to the Responsible Entity in this Constitution or at law.

20.2. Limitation of liability

Except where the Corporations Act expressly provides otherwise:

- (a) the Responsible Entity and each director and officer of the Responsible Entity are not personally liable to a Member or any other person in connection with the office of the Responsible Entity or director or officer of the Responsible Entity;
- (b) the Responsible Entity will not be liable to any Member to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust;
- (c) a Member must not:
 - (i) bring proceedings against the Responsible Entity in its personal capacity; or
 - (ii) apply to have the Responsible Entity put into administration or wound up or apply to have a receiver or similar person appointed to the Responsible Entity or prove in the administration or winding up of the Responsible Entity;
- (d) the Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any Liability (actual or contingent) unless its Liability is limited in a manner satisfactory to it in its absolute discretion and the Responsible Entity must use reasonable endeavours to ensure that its Liability is limited to the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust; and
- (e) the Responsible Entity is not liable to account to any person for any payment made in good faith to any Government Agency for any Tax or any other charges in respect of the Trust or for any transaction arising under this Constitution notwithstanding that such payment need not have been made.

20.3. Acts or omissions of Responsible Entity and others

- (a) 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) 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.

20.4. 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 or exercising any of its powers or 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 20.4 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.

21. Liability of Members

21.1. Liability Limited

- (a) Subject to Clauses 21.1(c) and 21.2, 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.
- (b) 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.
- (c) 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 as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which Clause 21.5 applies.

21.2. Capital reallocation: increase in liability to contribute to capital

If, on or before a Capital Reallocation Record Date, a Stapled Entity determines to pay a Stapled Entity Capital Reallocation Amount to its Attached Securityholders then, under this Clause 21:

- (a) the liability of each Eligible Member to contribute to the capital of the Trust is increased with effect on and from the Implementation Date by the Trust Contribution Amount; and
- (b) on the Implementation Date each Unit in the Trust held by the Eligible Member on the Capital Reallocation Record Date is deemed to be subject to a call for the Trust Contribution Amount, made and payable on the Implementation Date, and each Eligible Member must pay the Trust Contribution Amount to the Responsible Entity on that date.

21.3. Payment of increased liability

If the Stapled Entity determines to pay a Stapled Entity Capital Reallocation Amount to the Responsible Entity on behalf of Eligible Members which is equal to or greater the Trust Contribution Amount, then:

- (a) the Responsible Entity must accept the Stapled Entity Capital Reallocation Amount in full discharge of each Eligible Member's liability under this Clause 21 to contribute to the capital of the Trust;
- (b) on and from the Responsible Entity's receipt of the payment, each Eligible Member has no further liability under this Clause 21 to contribute to the capital of the Trust; and
- (c) the determination by the Stapled Entity applies and this Clause 21 operates despite any prior direction given by the Eligible Member in respect of payments out of the Stapled Entity.

21.4. Recourse

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

21.5. 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.

22. Remuneration and Expenses of Responsible Entity

22.1. Management Fee

- (a) Subject to the proper performance of its duties, 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 Assets Value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee.
- (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.

22.2. Entry Fee

Subject to the proper performance of its duties (as they relate to new issues of Units), the Responsible Entity is entitled to be paid an Entry Fee in respect of an application for Units which has been accepted by the Responsible Entity.

22.3. 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.

22.4. Indemnity out of Fund

In addition to the Responsible Entity's right of remuneration under Clauses 22.1 and 22.2 and any other right of indemnity which it may have under this Constitution or at law, the Responsible Entity is

indemnified and entitled to be reimbursed out of the Trust for, or entitled to have paid from the Trust, all Costs (including, without limitation, any amounts payable to any delegate, attorney, agent or custodian) incurred at law or under this Constitution in the proper performance of its duties.

22.5. 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.

22.6. Expenses

All expenses incurred by the Responsible Entity in connection with the Trust, including expenses paid to third parties, are payable or reimbursable out of the Assets, 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) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (b) any proposed acquisition, disposal or other dealing with an investment;
- (c) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (f) Tax, including any GST paid or payable as part of expenses incurred by the Responsible Entity in the proper performance of duties as the Responsible Entity (subject to the application of Clause 22.7(g));
- (g) financial institution fees;
- (h) 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;
- (i) preparation and audit of the taxation returns and accounts of the Trust;
- (j) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (k) 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 22.6(k) must be repaid;
- (l) 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;

- (m) 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 appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (n) the preparation, implementation, amendment and audit of any compliance plan;
- (o) complying with any law, and any request or requirement of the ASIC, ASX or any other regulatory body;
- (p) Registry fees; and
- (q) Accounting services

22.7. GST

- (a) Words and expressions defined in the GST Act have the same meaning in this Clause 22.7.
- (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 22.7(c) is payable at the same time as the consideration for the supply.
- (e) Clause 22.7(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.

22.8. 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.

23. Duration of the Trust

23.1. Initial Settlement

The Trust commences when an initial person nominated by the Responsible Entity subscribes at least \$1.52 for an Ordinary Unit in the Trust. The Responsible Entity's nominee must be issued with one (1) Ordinary Unit in return for each \$1.52 of that payment.

23.2. 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.

24. Procedure on Termination

24.1. 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.

24.2. Audit of Winding Up

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

24.3. 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 Ordinary 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 11.2 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 24.3(c)(i) which may be satisfied out of those proceeds before any distribution under Clause 24.3(a) is made; and

- (iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Clause 22.
- (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 22.
- (f) 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 24.3, but during that period the Responsible Entity may not accept any applications for Units.

25. Amendments to this Constitution

25.1. Responsible Entity May Amend

- (a) While the Trust is a Registered Scheme, this Constitution may be amended, if the Corporations Act allows:
 - (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.
- (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.

25.2. Statutory Requirements

While the Trust is a Registered Scheme, and the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this Constitution contain certain provisions, then those provisions are deemed to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. Clause 25.1(a) does not apply to provisions deemed by this Clause 25.2 to be incorporated in the Constitution.

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 26.3 and 26.5 apply

Clauses 26.3 and 26.5 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 26.3 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 26.3:

- (a) is a continuing obligation and is enforceable by a person to whom Clause 26.3 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 26.5 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 26.3 or 26.5:

- (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.

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 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 27.2(c) applies, the Responsible Entity);
 - (ii) the remedies (if any) available to the member; and
 - (iii) information regarding any further avenue for complaint.

28. General

28.1. Restricted Securities

- (a) Clause 28.1(b) only operates:
 - (i) while the Trust is Listed and the Listing Rules require this Constitution to contain a provision to the effect of Clause 28.1(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 6 weeks from the date of the notice given under Clause 28.2(c); or

- (ii) if within the 6 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 Victoria. The Responsible Entity and the Members submit to the non-exclusive jurisdiction of the Courts of the State of Victoria.

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

Director

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	Constitution to Specify	Clause
601GA(1)(a)	Consideration that is to be paid to acquire an interest in the Constitution of 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 15
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 24
601GA(2)	(a) the Responsible Entity's rights to fees; (b) the Responsible Entity's right to indemnification for liabilities and expenses.	(a) Clause 22 (b) Clause 22.4
601GA(3)	Powers to borrow or raise money for the purposes of the Trust.	Clause 15.2
601GA(4)	The rights of Member's to withdraw from the Trust	Clauses 7 and 8
601GB	Legally enforceable between Members and the Responsible Entity.	Clause 28.3