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# Constitution

## Lowell Resources Fund

[ARSN 093 363 896]

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Responsible Entity:

Cremorne Capital Limited [ACN 006 844 588]

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# **Constitution of the Lowell Resources Fund**

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## **Table Of Contents**

<b>1 Name of Trust</b>	<b>1</b>
<b>2 Assets held on trust</b>	<b>1</b>
<b>3 Units</b>	<b>1</b>
<b>4 Application Price for Units</b>	<b>6</b>
<b>5 Application procedure</b>	<b>7</b>
<b>6 Redemption Price of Units</b>	<b>9</b>
<b>7 Redemption procedures</b>	<b>9</b>
<b>8 Valuation of assets and Net Asset Value</b>	<b>12</b>
<b>9 Income and distributions to Members</b>	<b>13</b>
<b>10 Payments</b>	<b>17</b>
<b>11 Powers of the Responsible Entity</b>	<b>17</b>
<b>12 Retirement of Responsible Entity</b>	<b>19</b>
<b>13 Notices to Members</b>	<b>19</b>
<b>14 Notices to the Responsible Entity</b>	<b>20</b>
<b>15 Meetings of Members</b>	<b>20</b>
<b>16 Rights and liabilities of Responsible Entity</b>	<b>21</b>
<b>17 Limitation of liability and indemnity in favour of Responsible Entity</b>	<b>23</b>
<b>18 Liability of Members</b>	<b>23</b>
<b>19 Remuneration and expenses of Responsible Entity</b>	<b>24</b>
<b>20 Duration of the Trust</b>	<b>28</b>
<b>21 Procedure on termination</b>	<b>28</b>
<b>22 Modification of this constitution</b>	<b>29</b>
<b>23 Inspection of Constitution</b>	<b>30</b>
<b>24 Compliance committee</b>	<b>30</b>
<b>25 Complaints</b>	<b>30</b>

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<b>26</b>	<b>Listing Rules</b>	<b>31</b>
<b>27</b>	<b>Restricted Securities</b>	<b>31</b>
<b>28</b>	<b>Small holdings</b>	<b>32</b>
<b>29</b>	<b>Interpretation</b>	<b>32</b>
	Schedule 1 - Entitlements to income and capital	<b>38</b>
	Schedule 2 - Mortgage Facility	<b>42</b>
	Schedule 3 - Right to limit foreign owners	<b>45</b>
	Schedule 4 - Substantial Unitholdings	<b>48</b>
	Schedule 5 - Performance Incentive Fee	<b>49</b>
	Schedule 6 - Incorporation of provisions of ASIC Corporations Instrument 2015/847	<b>51</b>

## 1 Name of Trust

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### Name

- 1.1 The Trust is called the **Lowell Resources Fund** or by such other name as the Responsible Entity determines from time to time<sup>1</sup>.

### Change of name

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

## 2 Assets held on trust

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### Holding of assets

- 2.1 The Assets must be held on trust for Members<sup>2</sup>.

### Separately held

- 2.2 The Assets 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 (2001) (Commonwealth) so requires<sup>3</sup>.

## 3 Units

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### Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Except as provided in this constitution in respect of:
- (a) Units ranking for entitlement to Net Income;
  - (b) Units ranking for distribution of income; and
  - (c) amounts distributed to Members on termination of the Trust;
- and subject to the rights conferred on particular classes of Units, each Unit confers an equal undivided interest and a Fractional Unit confers a proportion of that equal interest.
- 3.3 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.
- 3.4 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.

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<sup>1</sup> See Corporations Regulation 5C.1.02

<sup>2</sup> See section 601FC(2) of the Corporations Act

<sup>3</sup> See section 601FC(1)(i)

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**Additional Units**

- 3.5 The Responsible Entity may:
- (a) create additional Units; and
  - (b) grant rights (options) to be issued additional Units.

**Classes of Units**

- 3.6 The Responsible Entity may issue classes of Units.
- 3.7 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.
- 3.8 The Responsible Entity may convert Units from one class to another class or reclassify Units from one class to another class.

**Class rights**

- 3.9 The rights attaching to Units in a class cannot be cancelled, varied or adversely affected without a special resolution of Members and a special resolution of Members of the class affected.

**Consolidation and division of Units**

- 3.10 Units may be consolidated or divided as determined by the Responsible Entity or as authorised by a Resolution of Members. A consolidation or division must not result in any change to the proportionate interest of Members in the Trust.

**Transfer of Units**

- 3.11 The following transfer provisions apply while the Trust is not Listed:
- (a) Subject to this constitution, Members may transfer Units;
  - (b) Transfers must be in a form approved by the Responsible Entity and be presented for Registration duly stamped;
  - (c) A transfer is not effective until Registered;
  - (d) The Responsible Entity may refuse to record any transfer in the Register without giving any reason for the refusal. Any instrument of transfer which the Responsible Entity refuses to record shall (except in the case of suspected fraud) be returned to the person presenting it if a demand is made within 12 months of the Responsible Entity refusing to register;
  - (e) The Responsible Entity may register a transfer notwithstanding that the Responsible Entity at the time of registration has notice of the transferor Member's death; and
  - (f) The Responsible Entity may refuse to record a transfer in the Register if it would result in either the transferor or transferee holding less than the then current minimum holding amount.

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3.12 The following transfer provisions apply while the Trust is Listed:

- (a) All transfers of Units must be effected in accordance with the Listing Rules;
- (b) Except as provided by the ASX Settlement Operating Rules, a transfer is not effective until registered by the Responsible Entity;
- (c) Subject to clause 3.7(d)(iii) and 3.9, the Responsible Entity must not do anything which may prevent, delay, hinder or otherwise interfere in any way with the registration of a transfer of Units effected under clause 3.7(a);
- (d) In relation to units which are CHESSE Approved Securities:
  - (i) subject to clauses 3.7(d)(ii) and 3.7(d)(iii), the Responsible Entity must not prevent, delay, hinder or otherwise interfere in any way with the registration of a proper ASX Settlement transfer; and
  - (ii) where permitted by the Listing Rules, the Responsible Entity may refuse to register a transfer, and must refuse to register a transfer where required by the Listing Rules.

**Joint tenancy and effective receipts**

- 3.13 Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees and any person Registered jointly may give an effective receipt on behalf of their joint holders. The Responsible Entity is not required to Register more than 3 people as joint holders of a Unit.

**Death, legal disability of Member**

- 3.14 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 holding as a joint tenant) or the legal personal representative (in any other case) will be recognised as having any claim to Units Registered in the Member's name.

**Confirmation**

- 3.15 On Registration under this constitution the Responsible Entity must issue a written confirmation within 2 months.

**Recognition of third party interests**

- 3.16 The Responsible Entity is not required to recognise the interests of any third party to a Unit. If it does so, the provisions of **schedule 2** shall apply (subject to and only to the extent consistent with the Listing Rules or an approval given by ASX while the Trust is Listed).

**Pro rata rights issues**

- 3.17 Subject to the Corporations Act including expressly the applicable provisions contained in Schedule 6 (and, while the Trust is Listed, the Listing Rules), the Responsible Entity may offer Units for subscription at a price determined by the Responsible Entity to persons who are

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determined by the Responsible Entity to Members on a date determined by the Responsible Entity provided that:

- (a) subject to clause 4.4(b), all Members are offered Units in proportion to the value of the Member's Units or, where the offer is made only to Members who hold units in a class, to the value of the Member's units in that class, at that date; and
- (b) the Responsible Entity may exclude a Member from the pro rata offer if it is not a contravention of the Corporations Act or the Listing Rules,

whether or not the right of entitlement is renounceable.

- 3.18 If the Responsible Entity in making an offer of Units to Members which is otherwise in compliance with clause 4.4, the Responsible Entity is not required to offer units to persons whose address on the register of Members is outside Australia or New Zealand (or to a Member who holds units on behalf of a person whose address is outside of Australia or New Zealand) as permitted by the Listing Rules.
- 3.19 Any offer made under clause 4.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Responsible Entity under clause 4.4. Entitlements under a pro rata offer may be adjusted by the Responsible Entity in accordance with the Listing Rules and any fractional entitlement is to be rounded up.
- 3.20 Members may renounce their entitlement under a pro rata issue, unless the issue is expressed as a non-renounceable issue.
- 3.21 In the event that Units forming part of a pro rata rights issue are not subscribed for with the period of acceptance, the Responsible Entity may offer those Units for subscription to any person. The issue price payable of any offer under this clause 4.8 must not be less than the issue price of the original offer under clause 4.4.
- 3.22 If a pro rata issue under clause 4.4 is underwritten by an underwriter, the underwriter may take up any Units not subscribed for by Members.

## **Placements**

- 3.23 The Responsible Entity may issue Units at any time by way of a placement, the terms and price of such an issue to be determined by the Responsible Entity in accordance with the applicable Listing Rules and the applicable provisions contained in Schedule 6.

## **Reinvestment**

- 3.24 The Responsible Entity is to determine the issue price for each additional Unit issued or transferred upon reinvestment, subject to the Listing Rules and the applicable provisions contained in Section 6.
- 3.25 If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the

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nearest whole Unit and any remaining amounts become assets of the Trust.

### **Minimum Holding**

- 3.26 Upon reasonable notice to the Member, the Responsible Entity may set or change a minimum Unit holding. While the Trust is Listed, this clause 4.12 only applies to the extent the setting or changing of a minimum Unit holding is consistent with the Listing Rules or an approval given by ASX.

### **Suspension of issue**

- 3.27 Subject to the Listing Rules, the Responsible Entity may delay the issue of any Units to be issued by it for 90 days or such other period it considers reasonable if:
- (a) circumstances beyond the control of the Responsible Entity, in the Responsible Entity's view, impede upon its ability to properly or fairly calculate price, for so long as those circumstances subsist;
  - (b) an emergency or similar state of affairs occurs which makes it impractical for the Responsible Entity to issue Units or which may prejudice the remaining Members;
  - (c) there is a closure or material restriction on trading on any exchange on which Assets may be traded;
  - (d) a moratorium has been declared;
  - (e) the acquisition of Assets cannot be effected at prices which would be obtained if Assets were acquired in an orderly fashion over a reasonable period in a stable market; or
  - (f) the Responsible Entity considers that it is in the interests of the Members to delay the issue of Units.
- 3.28 The Responsible Entity must inform Members of the reason for and anticipated length of the delay.

### **Underwriting of issue**

- 3.29 Subject to the Corporations Act (including expressly the applicable provisions contained in Schedule 6) and the Listing Rules, the Responsible Entity may cause for a subscription of Units to be underwritten on such terms as the Responsible Entity and the underwriter agree.

In the event that an issue of Units is underwritten, the underwriter of that issue may take up any Units not subscribed for in that issue.



## 4 Application Price for Units<sup>4</sup>

### Application Price

4.1 The Application Price of a Unit when the Trust is not Listed is:

- (a) Subject to clause 19.1, a Unit must only be issued at an Application Price calculated as:

$$\frac{\text{Current Value} + \text{Transaction Costs}}{\text{Number of Units on issue}}$$

- (b) Each of the variables in clause 4.1(a) must be determined as at the next Valuation Time after:

- (i) the Responsible Entity receives the completed application for Units; or
- (ii) the Responsible Entity receives the application money, or the property against which Units are to be issued is vested in the Responsible Entity,

whichever happens later;

- (c) The Responsible Entity may determine that an application for Units or application money or property received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day; and
- (d) the exercise price of a right (option) to be issued an additional Unit shall be such amount as is determined by the Responsible Entity which is equal to or greater than the Application Price that would apply under this clause 4.1 as if the Additional Unit the subject of the option were to have been issued at the time the option is issued.

4.2 The Application Price of a Unit while the Trust is Listed is:

- (a) Equal to the weighted average market price of Units during the last 5 business days on which Units were traded on ASX prior to the date on which the issue price is to be calculated;
- (b) In the case of a pro rata offer (including a rights issue), in accordance with clause 3.17;
- (c) In the case of a placement while the Trust is Listed and not suspended from quotation, in accordance with clause 3.23;
- (d) In the case of reinvestment of income while the Trust is Listed, in accordance with clauses 3.24 to 3.25; and

Subject to the Listing Rules:

- (e) the Application Price may be rounded as the Responsible Entity determines; and

<sup>4</sup> Required to be included by Section 601GA(1)(a)

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- (f) the exercise price of a right (option) to be issued an additional Unit shall be such amount as is determined by the Responsible Entity which is equal to or greater than the Application Price that would apply under this clause 4.2 as if the Additional Unit the subject of the option were to have been issued at the time the option is issued.
  - 4.3 Where required and as appropriate, the Responsible Entity is to take the provisions of Schedule 6 into consideration when determining the application price for Units under this **Clause 4**.
  - 4.4 The Responsible Entity is entitled to avail itself of the applicable discretions provided in Schedule 6 when applying the formulas outlined in this **Clause 4**.

## 5 Application procedure

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### Application form

- 5.1 An applicant for Units must complete a form approved by the Responsible Entity if the Responsible Entity so requires (or if the law or ASIC requires).

### Responsible Entity to determine

- 5.2 The Responsible Entity determines the other procedures for becoming a Member and may change them from time to time. Such procedures to not need to be the same for all potential Members.

### Forms of payment

- 5.3 Payment in respect of an application in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
  - (a) accompany the application;
  - (b) 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
  - (c) comprise a reinvestment of distribution in accordance with **clause 9.8**.

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 by the applicant.

### Responsible Entity may reject

- 5.4 The Responsible Entity may reject an application in whole or in part without giving any reason for the rejection.

**Less than whole Units**

- 5.5 Where an application or redemption would result in the issue of less than a whole Unit to a Member, the Responsible Entity in its absolute discretion may:
- (a) if the Trust is not Listed, issue a Fractional Unit;
  - (b) contribute its own funds to round up the number of Units issued in respect of the application to a whole number;
  - (c) round the Unit up or down; or
  - (d) hold the residual amount free of interest and apply it to the next application or redemption made by the Member or pay the amount to the Member when moneys are next paid by the Responsible Entity under this constitution.

**Minimum amounts**

- 5.6 The Responsible Entity may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time. While the Trust is Listed, this clause 5.5 only applies to the extent the setting or changing of a minimum application amount or minimum holding (as applicable) is consistent with the Listing Rules or an approval given by ASX.

**Issue date**

- 5.7 Units are taken to be issued when:
- (a) the Responsible Entity accepts the completed application; or
  - (b) the Responsible Entity receives the application money, or the property against which Units are to be issued is vested in the Responsible Entity,
- whichever happens later.

**Application fee**

- 5.8 When calculating the number of Units to be issued, the application fee must first be deducted from the value of the application money or property.

**Uncleared funds**

- 5.9 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, or such other period as the Responsible Entity determines.

**Cooling off**

- 5.10 Nothing in this constitution prevents the Responsible Entity from complying with any requirement to return application money to any Member in accordance with the cooling off rights contemplated by the Corporations Act.

## 6 Redemption Price of Units<sup>5</sup>

### Redemption Price

- 6.1 When the Trust is not Listed, a Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{(\text{Current Value} - \text{Transaction Costs})}{\text{number of Units on issue}}$$

PROVIDED THAT in relation to Units issued prior to the date that the Second Supplemental Deed Poll took effect, the Responsible Entity must make a determination as to which of Parts A or B of Schedule 1 is to apply, and the manner of that application, such that the right of the effected Member, or Former Member (where a redemption request was made in the relevant period), to receive their proper entitlements in respect of those Units is reasonably considered by the Responsible Entity to not be adversely affected.

- 6.2 Each of the variables in **clause 6.1** must be determined:
- (a) while the Trust is Liquid, as at the next Valuation Time after the Responsible Entity receives the completed redemption request; or
  - (b) while the Trust is not Liquid, at the time the withdrawal offer closes.
- 6.3 The Responsible Entity may determine that a redemption request received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.
- 6.4 The Redemption Price may be rounded as the Responsible Entity determines.
- 6.5 While the Trust is Listed this **Clause 6** applies only to the extent redemption or withdrawal is permitted by the Listing Rules.
- 6.6 Where required and as appropriate, the Responsible Entity is to take the provisions of Schedule 6 into consideration when determining the redemption price for Units under this **Clause 6**.
- 6.7 The Responsible Entity is entitled to avail itself of the applicable discretions provided in Schedule 6 when applying the formula outlined in this **Clause 6**.

## 7 Redemption procedures<sup>6</sup>

### Limited application of redemption provisions when Listed

- 7.1 While the Trust is Listed:

<sup>5</sup> Required to be included by Section 601GA(4)

<sup>6</sup> These procedures must be fair to all Members: Section 601GA(4)

- (a) **Clauses 7.2 to 7.20** do not require or oblige the Responsible Entity to redeem Units or to allow or give effect to a redemption or withdrawal request;
- (b) **Clauses 7.2 to 7.20** must be read down to the extent required to ensure the Responsible Entity is not required or obliged to redeem Units or to allow or give effect to a redemption or withdrawal request; and
- (c) if it is not possible to read down a clause which would otherwise require or oblige the Responsible Entity to redeem Units or to allow or give effect to a redemption or withdrawal request, the clause is not binding on the Responsible Entity.

### **Request for redemption**

- 7.2 A Member may make a request for the redemption of some or all of their Units in any manner approved by the Responsible Entity and, while the Trust is Liquid and not Listed, the Responsible Entity must give effect to that request at the time and in the manner set out in this **clause 7**.
- 7.3 A Member may not withdraw a redemption request unless the Responsible Entity agrees.

### **When Trust is Liquid<sup>7</sup>**

- 7.4 **Clauses 7.5 to 7.11** apply only while the Trust is Liquid<sup>8</sup>.
- 7.5 If the Trust is not Listed, the Responsible Entity must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with **clause 6**. The payment must be made within 30 days of receipt of the request or such longer period as allowed by **clause 7.6**.
- 7.6 If the Responsible Entity has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.
- 7.7 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.
- 7.8 The Responsible Entity is not obliged to pay any part of the Redemption Price out of its own funds.
- 7.9 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Responsible Entity may

<sup>7</sup> Required to be included by Section 601GA(4)(b)(4), (5) and (6)

<sup>8</sup> For definition of a liquid scheme see Section 601KA

treat the redemption request as relating to the balance of the Member's holding.

- 7.10 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 then current minimum holding amount redeem that Member's holding without the need for a redemption request. While the Trust is Listed, this clause 7.10 only applies to the extent the setting or changing of a minimum Unit holding is consistent with the Listing Rules or an approval given by ASX.

### **Discretionary redemption**

- 7.11 If the Responsible Entity is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request<sup>9</sup>.

### **When Trust is not Liquid<sup>10</sup>**

- 7.12 While the Trust is not Liquid<sup>11</sup>, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Listing Rules and of the Corporations Act regulating offers of that kind<sup>12</sup>. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- 7.13 The Responsible Entity is not at any time obliged to make a withdrawal offer.
- 7.14 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.
- 7.15 Any withdrawal must be made in accordance with the provisions of Part 5C.6 of the Corporations Act and, if the Trust is Listed, the Listing Rules.

### **Clauses applicable whether or not the Trust is Liquid**

- 7.16 **Clauses 7.17 to 7.18** apply whether or not the Trust is Liquid.

### **Sums owed to Responsible Entity**

- 7.17 The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member.

### **Transfer of Assets**

- 7.18 The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant

<sup>9</sup> Subject to section 601FC(1)(d)

<sup>10</sup> Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

<sup>11</sup> For definition of a liquid scheme see Section 601KA(1)

<sup>12</sup> Refer sections 601KB to 601KE

to a withdrawal offer or in payment of a distribution. 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 within 1 month before the date of the proposed transfer). If the Responsible Entity requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

## **Order**

- 7.19 Unless the Responsible Entity decides otherwise, the first Units issued to a Member are the first redeemed.

## **Redemption of all fractions of Units**

- 7.20 To facilitate the Trust being Listed and its Units being officially quoted, the Responsible Entity can determine to redeem all fractions of Units. All redeemed fractions of Units are to become Assets.

## **Buy back of Units**

- 7.21 Subject to the Corporations Act, any relevant ASIC exemption, including but not limited to an ASIC class order or legislative instrument, (and, while the Trust is Listed, the Listing Rules), the Responsible Entity may effect a buy-back of Units by purchasing Units in any manner permitted by law, including (while the Trust is Listed) by purchasing Units on market as if the Trust was a company with any adaptations that the operator of the market on which the Units are Listed or ASIC considers appropriate.

# **8 Valuation of assets and Net Asset Value**

## **Periodic valuations**

- 8.1 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.<sup>13</sup>
- 8.2 The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.

## **Valuation methods**

- 8.3 The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value<sup>14</sup>. Where 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 allowing for the calculation to be independently verifiable.

<sup>13</sup> See section 601FC(j) for Responsible Entity's obligations concerning valuation

<sup>14</sup> ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

## 9 Income and distributions to Members

### Determination by the Responsible Entity

- 9.1 The Responsible Entity must make a determination that either Part of Schedule 1 is to apply for one or more Distribution Periods.
- 9.1A To assist the Responsible Entity to make the determination required of it under clause 9.1, the following principles must be applied:
  - 9.1A.1 If because of Legislation in operation on or from the Effective Date the application of a particular Part under Schedule 1 is reasonably likely to impact more adversely on the interests of Members (and Former Members referred to in clause 6.1) than the application of the other Part, then the Responsible Entity must take the necessary course of action under clause 9.1 to ensure that the Part which least adversely impacts upon Members' (and Former Members', referred to in clause 6.1) interests is applied for the relevant Distribution Period or Financial Year (as the case requires).
  - 9.1A.2 Subject to sub-clause 9.1A.1, the Responsible Entity must:
    - (a) determine at the commencement of the Financial Year commencing after the Second Supplemental Deed Poll took effect and each subsequent Financial Year which Part of Schedule 1 will be applied for that Financial Year; and
    - (b) then apply that Part for each Distribution Period in that Financial Year.
  - 9.1A.3 In this clause 9.1A:
    - (a) "**Effective Date**" means whichever is the earlier of:
      - (i) the date Legislation enacted after the date the Second Supplemental Deed Poll took effect; or
      - (ii) the date such Legislation is treated as having taken effect; and
    - (b) "**Legislation**" means an enactment affecting the regulation or taxation of the Trust, the Responsible Entity, the Members (and Former Members referred to in clause 6.1) (in each case solely in their capacity as such), or any matter or thing incidental to any or all of them.

### AMIT and non-AMIT distributable Income

- 9.2 In each financial year for which the Trust is not an AMIT for the full financial year, the income of the Trust is determined in accordance with the applicable Part of Schedule 1.
- 9.3 In each financial year for which the Trust is an AMIT for the full financial year, distributable income is determined by the Responsible Entity in accordance with accounting standards and accounting



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principles generally application to unit trusts such as the Trust in Australia.

- 9.4 The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

### **Entitlement**

- 9.5 The entitlements of Members and Former Members to the income of the Trust are determined in accordance with the applicable Part of Schedule 1.
- 9.6 The entitlements of Members and Former Members to the income of the Trust are satisfied in accordance with the applicable Part of Schedule 1.

### **Separate accounts**

- 9.6 The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes.

### **Other distributions**

- 9.7 The Responsible Entity may at any time distribute any amount of capital or income (including, without limitation of or to either, any Assets) to Members pro rata according to the number of Units held as at a time decided by the Responsible Entity. The distribution may be in cash, by way of additional Units or by way of distributing Assets in specie or any combination of some or all of cash, additional Units or Assets.
- 9.8 If a difficulty arises or may arise in making a transfer or distribution in specie of a specific Asset or specific Assets, or giving effect to any transfer or distribution in specie, the directors of the Responsible Entity may deal with the difficulty as they consider expedient, including (without limitation by):
- (a) fixing the value of all or any part of the specific Asset(s) for the purposes of the distribution;
  - (b) determining that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of all the Members; and
  - (c) vesting any of the specific Asset(s) in trustees as the directors consider expedient.
- 9.9 If making a transfer or distribution in specie of a specific Asset or specific Asset(s) to a particular Member or particular Members is or would be illegal or, in the opinion of the directors of the Responsible Entity, impracticable, the directors of the Responsible Entity may fix the value of all or any part of the specific Asset(s) for the purposes of the distribution and determine that cash will be paid to that Member or those Members on the basis of the fixed value in lieu of transferring or distributing the specific Asset(s) to that Member or those Members. Payment or allocation to the account of that Member or those Members will fully discharge any obligation to the Member(s) as if and to the

same extent as if the specific Asset(s) had been transferred to the Member(s).

- 9.10 The directors of the Responsible Entity may authorise any person to make, on behalf of each Member entitled to any Asset as a result of a distribution in specie an agreement with a company or another person which provides, as appropriate, for the distribution or issue to them of shares or other securities credited as fully paid up or for payment by the Responsible Entity (from Assets or otherwise) on the Member's behalf of the amounts or any part of the amounts remaining unpaid on shares or other securities by applying their respective proportions of an amount determined to be paid in cash.
- 9.11 If the Responsible Entity distributes Assets in specie to Members each Member is deemed to have appointed the Responsible Entity (and/or any director or secretary of the Responsible Entity for the time being) as the Member's agent to give any consent, to enter any agreement, to execute any document or to do anything necessary or desirable to give effect to the distribution, including agreeing to become a member of a body corporate (which such consent, agreement, execution or other thing shall be effective and binding on all Members concerned).

#### **Reinvestment**

- 9.12 The Responsible Entity may decide whether or not to permit or require the Members to reinvest some or all of any distribution to acquire Units.
- 9.13 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.
- 9.14 If reinvestment applies the Responsible Entity is deemed to have received and accepted an application to reinvest distributions immediately before the first Valuation Time in the next Distribution Period.
- 9.15 After the number of Units has been calculated in accordance with **clause 4** and issued to the Member, the amount of any credit balance in the Member's name in the reinvestment account will be dealt with in accordance with **clause 5.4**.

#### **Position on transfer of Units**

- 9.16 Income allocated in accordance with the applicable Part of Schedule 1, but not distributed when a transfer or transmission of Units is Registered, remains credited to the transferor.

#### **Application of AMIT Laws**

- 9.17 Clauses 9.19 to 9.25 do not apply in a financial year for which the Trust is not an AMIT and the AMIT Laws do not apply.

#### **AMIT election**

- 9.18 The Responsible Entity may elect the Trust to be an AMIT in accordance with the Tax Act in respect of a financial year for such election to apply to that financial year and all subsequent financial years, but the election is irrevocable once made.

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- 9.19 The rights to income and capital of Members are clearly defined in this constitution, and the Responsible Entity must ensure such rights remain clearly defined in every financial year for which the election in clause 9.18 remains effective.

#### **AMIT attribution of income**

- 9.20 The Responsible Entity must for each financial year determine the trust components of the Trust's income in accordance with the AMIT laws by:
- (a) subject to any adjustment under clause 9.21, determining the Trust's assessable income of different tax characters including but not limited to interest, unfranked dividends, franked dividends, franking credits, capital gains and other assessable income;
  - (b) determining the trust's tax deductions of different tax characters; and
  - (c) allocating the tax deductions amongst different tax characters of assessable income to determine the net amounts of different trust components on a reasonable basis.
- 9.21 If the Responsible Entity in a particular financial year (the discovery year) becomes aware of an under-determination or an over-determination of any trust component in an earlier financial year, as contemplated under the AMIT Laws, then it must:
- (a) compare the amount actually determined for that earlier financial year with what the amount would have been if it were worked out on the basis of an objective application of the law to what the Responsible Entity should have known in the discovery year, to determine the under-determination or over-determination amount of that earlier financial year; and
  - (b) include the under-determination or over-determination amount of that earlier financial year in the discovery year by adjusting the trust component of the relevant tax character as determined in clause 9.20 for the discovery year.
- 9.22 For each financial year, the Responsible Entity must attribute the different trust components determined under clause 9.20, including any adjustment under clause 9.21 where relevant, to the Members of the Trust and determine the member components for that financial year.
- 9.23 An amount of member components attributed to one Member need not be the same as an amount attributed to another, but any attribution must be done on a fair and reasonable basis, considering factors including but not limited to attributing based on the different tax characters of income from investments made for different classes of units, and attributing any gains realised to a particular Member in response to the Unit redemption request by that Member.
- 9.24 Based on the member components determined in clause 9.22, the Responsible Entity shall provide an annual statement to each Member in accordance with the AMIT Laws and the Tax Act (as required)

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showing the determined member components as relevant to that Member.

- 9.25 If a Member challenges the Responsible Entity's determinations of determined member components as the AMIT Laws contemplate, then the Responsible Entity must manage such challenge in a way consistent with the AMIT Laws.

## 10 Payments

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### Method of payment

- 10.1 Money payable by the Responsible Entity to a Member may be paid in any manner the Responsible Entity decides.
- 10.2 Cheques issued by the Responsible Entity that are not presented within 6 months and electronic transfer of funds to a Member which are unsuccessful on three occasions may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after the cheque is cancelled.
- 10.3 Where the Responsible Entity attempts to make a payment by electronic transfer of funds to a Member and the transfer is unsuccessful on three occasions, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after failure of the 3rd attempt.

### Rounding

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

### Joint Members

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

### Deductions

- 10.6 The Responsible Entity may deduct a Taxation Amount from any amount to be paid to a Member, or received from a Member under the Tax Act, including tax withheld in a financial year under the AMIT Laws in respect of member components attributed to a Member in that financial year or an earlier financial year in accordance with clauses 9.21 to 9.26.

### Posting of cheques

- 10.7 A cheque payable to a Member or to another person as directed by the Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member<sup>15</sup>.

## 11 Powers of the Responsible Entity

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### General powers

- 11.1 Subject to this constitution and to the proper performance by the Responsible Entity of its duties under the constitution at law, and

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<sup>15</sup> See Clause 16.3(c)

under the Listing Rules, the Responsible Entity has all the powers in respect of the Trust that it is possible under the law and any applicable regulations to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity, including, without limitation, the power to do all things it considers necessary or reasonable to enable the Trust to become Listed.

### **Contracting powers<sup>16</sup>**

- 11.2 Without limiting **clause 11.1**, but subject to the proper performance by the Responsible Entity of its duties under the constitution and at law the Responsible Entity in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on security) and to incur all types of obligations and liabilities.

### **Investment powers**

- 11.3 Without limiting **clause 11.1**, the Responsible Entity may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.<sup>17</sup>

### **Power of amendment**

- 11.4 Schedule 6 to this constitution is based on the Instrument. Without limiting **clause 11.1** or **Clause 22**, if ASIC amends (including by way of replacement) the Instrument, the Responsible Entity can amend Schedule 6 and make consequential changes to any part of this constitution in accordance with ASIC's amendment, without any amendment made by ASIC being deemed to be automatically included in this constitution or any Schedule thereof. Any changes made to this constitution in accordance with this **clause 11.4** as a result of amendments made to the Instrument by ASIC are deemed not to be materially adverse.

### **Power of delegation<sup>18</sup>**

- 11.5 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 as custodian, 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.
- 11.6 The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.
- 11.7 The agent or delegate may be an associate of the Responsible Entity.<sup>19</sup>

### **Exercise of discretion**

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

<sup>16</sup> Required to be included by Section 601GA(3)

<sup>17</sup> Subject to Section 601FC(4)

<sup>18</sup> See also Section 601FB.

<sup>19</sup> Subject to Part 5C.7

## 12 Retirement of Responsible Entity

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### Voluntary retirement

- 12.1 The Responsible Entity may retire as the responsible entity of the Trust as permitted by law<sup>20</sup>.

### Compulsory retirement

- 12.2 The Responsible Entity must retire as the responsible entity of the Trust when required by law<sup>21</sup>.

### New responsible entity

- 12.3 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.

### Release

- 12.4 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.<sup>22</sup>

## 13 Notices to Members

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### Written

- 13.1 Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Responsible Entity determines (including any electronic means of communication), and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Responsible Entity for delivery of notices.

### Joint holders

- 13.2 In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

### Deemed time of receipt

- 13.3 A notice, cheque or other communication sent by post is taken to be received on the 2nd Business Day after it is posted and a fax is taken to be received upon receipt by the transmitter of confirmation of transmission. Proof of actual receipt is not required. Subject to the law<sup>23</sup>, the Responsible Entity may determine<sup>24</sup> the time at which other forms of communication will be taken to be received.
- 13.4 Every person who becomes entitled to any Units shall be bound by every notice which, prior to his name and address being entered in the Register in respect of such Units, has been duly given to the person from whom he derives title to those Units.

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<sup>20</sup> See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

<sup>21</sup> See Section 601FM and 601FA.

<sup>22</sup> See section 601FR for the Responsible Entity's obligation to transfer records, etc. Section 601FS restricts this release.

<sup>23</sup> See Section 601FC(1)(d)

<sup>24</sup> See Section 252G(4)

## 14 Notices to the Responsible Entity

### Written

- 14.1 A notice required under this constitution to be given to the Responsible Entity must be given in writing (which includes a fax and any electronic format), or in such other manner as the Responsible Entity determines.

### Effective Time

- 14.2 The notice is effective only at the time of receipt.

### Signature

- 14.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member<sup>25</sup> unless the Responsible Entity dispenses with this requirement.

## 15 Meetings of Members

### Corporations Act

- 15.1 The Responsible Entity may at any time convene a meeting of Members, and must do so if required by the Corporations Act.<sup>26</sup>

### Responsible Entity may determine

- 15.2 Subject to this **clause 15** and the Corporations Act<sup>27</sup>, 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.

### Direct voting

- 15.3 The Responsible Entity may determine that, for any general meeting or class meeting, a Member who is entitled to attend and vote at that meeting may submit a direct vote, and in connection therewith:
- (a) the Responsible Entity may determine the Member's rights attaching to a "direct vote" for the purposes of any general meeting or class meeting;
  - (b) a "direct vote" includes a vote delivered to the Responsible Entity by post, facsimile, electronic notification or any other means approved by the Responsible Entity; and
  - (c) the Responsible Entity may specify the form, method and timing of giving a "direct vote" in respect of any general meeting or class meeting, and any other requirements, in order for a direct vote to be valid at that meeting.

### Quorum

- 15.4 The quorum for a meeting of Members is at least 5 Members present in person or by proxy together holding at least 10% of all Units, unless

<sup>25</sup> See Clause 16.3(c)

<sup>26</sup> Refer Part 2G.4

<sup>27</sup> Refer Part 2G.4

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the Trust has only 1 Member who may vote on a Resolution, in which case that 1 Member constitutes a quorum.

### **No quorum**

15.5 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to such place and time as the Responsible Entity decides.

At any adjourned meeting, if a quorum is not present within 15 minutes after the scheduled time for the meeting, those Members present in person or by proxy constitute a quorum.

### **Joint holder**

15.6 In the case of joint holders of Units any one of the joint holders may vote except on a poll, in which case the vote of the person whose name first appears in the Register shall be counted to the exclusion of the remaining joint holder.

### **Chairman**

15.7 Subject to the Corporations Act<sup>28</sup> the Responsible Entity may appoint a person to chair a meeting of Members.

15.8 The decision of the chairman on any matter relating to the conduct of the meeting is final, and a declaration by the chairman that a resolution has been carried or lost is conclusive evidence of that fact.

### **Adjournment**

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

### **Resolutions binding**

15.10 A Resolution binds all Members, whether or not they were present at the meeting.

15.11 No objection may be made to any vote cast unless the objection is made at the meeting.

### **Non-receipt**

15.12 If a Member does not receive a notice (including if notice was accidentally omitted to be given to them) the meeting is not invalidated.

## **16 Rights and liabilities of Responsible Entity**

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### **Holding Units**

16.1 The Responsible Entity and its associates may hold Units in the Trust in any capacity<sup>29</sup>.

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<sup>28</sup> Refer Part 2G.4 and Section 601FC(1)

<sup>29</sup> See Section 601FG, Section 253E and Part 5C.7



## Other capacities

- 16.2 Subject to the Corporations Act<sup>30</sup>, nothing in this constitution restricts the Responsible Entity (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), an associate or with any Member;
  - (b) being interested in any contract or transaction with itself (as trustee 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, provided that the Responsible Entity (or its associates) must act in a fiduciary relationship of utmost good faith to Members.

## Responsible Entity may rely

- 16.3 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, stockbrokers, 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.

- 16.4 If the Responsible Entity is required by ASIC or by law to lodge approved deposits, securities or bonds for the additional protection of Members, it shall do so from its own resources, provided that if the Responsible Entity elects not to comply with such a requirement, it may elect to terminate the Trust in accordance with **clause 22**.

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<sup>30</sup> Refer Part 5C.7

## 17 Limitation of liability and indemnity in favour of Responsible Entity

### Limitation on Responsible Entity's liability

- 17.1 If the Responsible Entity acts in good faith and without negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 17.2 The liability of the Responsible Entity to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Responsible Entity's ability to be indemnified from the Assets.
- 17.3 Without limiting **clause 17.1**, the Responsible Entity shall not be liable:
  - (a) to any person in respect of any omission or failure to act where the Responsible Entity is forbidden or hindered or prevented from acting by operation of law or by decree or judgement of any court;
  - (b) to account to any Member or otherwise for any payments made by the Responsible Entity in good faith to any duly empowered fiscal authority of Australia or any State or Territory for taxes or other charges or with respect to any transaction under this constitution, notwithstanding that such payment ought not or need not have been made.

### Indemnity in favour of Responsible Entity

- 17.4 The Responsible Entity is entitled to be indemnified out of the Assets for any liability (including any tax liability) incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust<sup>31</sup>.
- 17.5 To the extent permitted by the Corporations Act<sup>32</sup>, the indemnity under **clause 17.4** includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- 17.6 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as trustee of the Trust.

## 18 Liability of Members

### Liability limited

- 18.1 Subject to **clauses 18.3 and 18.5**, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 18.2 A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets or meet the claim of any creditor of the Responsible Entity in respect of the Trust.

<sup>31</sup> See Section 601GA(2)

<sup>32</sup> See Sections 601FB(2) and 601GA(2)

**Liability for tax**

- 18.3 To the extent that it is not deducted under **clause 10.6**, the Responsible Entity is entitled to be indemnified by a Member or a person who was at any time a Member in respect of a Taxation Amount. The Responsible Entity may after giving 21 days notice to a Member, redeem sufficient Units registered in the Member's name to satisfy a Taxation Amount plus interest.
- 18.4 Joint Members are jointly and severally liable in respect of all payments including payments of Taxation Amounts to which **clause 18.3** applies.

**Recourse**

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

**Restrictions on Members**

- 18.6 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.

## **19 Remuneration and expenses of Responsible Entity**

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**Application fee**

- 19.1 The Responsible Entity is entitled in respect of each application for Units in the Trust which it accepts to a fee of 6% of the application money.

**Fees:**

- 19.2 The Responsible Entity is entitled to:
- (a) a management fee, payable monthly, which is the greater of:
    - (i) the amount, calculated daily, according to the following formula:

$$\frac{T \times A}{B} - \frac{E \times C}{B}$$

Where:

T is Total Gross Investments on that day;

A is 2.1%;

B is 365;

C is:

- (a) 0 (zero) if Total Gross Investments on that day are less than or equal to \$50,000,000; or
- (b) 0.5% if Total Gross Investments on that day are greater than \$50,000,000; and

E is T minus \$50,000,000;

or

- (ii) \$25,000 plus the amount, calculated daily, according to the following formula:

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

Where:

T is Total Gross Investments on that day;

A is 0.6%; and

B is 365.

The management fee shall accrue from day to day.

- (b) a performance incentive fee determined in accordance with Schedule 5.

### **Direct Debit Fee**

- 19.3 The Responsible Entity may charge a fee in respect of applications made under a facility for the direct debit from a Member's bank account.

### **Waiver of fees**

- 19.4 The Responsible Entity may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee continues to accrue daily until paid.

### **Expenses**

- 19.5 The Responsible Entity shall pay out of the Trust or be reimbursed out of the Trust for:
  - (a) all costs, expenses, commissions, fees, brokerage, taxes (including any income tax), insurance premiums, and other charges or outgoings payable in accordance with this constitution in respect of the investments of the Trust properly incurred by the Responsible Entity on behalf of the Trust;
  - (b) all costs and disbursements incurred by the Responsible Entity in the acquisition sale or other dealing by the Responsible Entity with any of the assets or investments of the Trust;
  - (c) all costs and disbursements incurred by the Responsible Entity payable in respect of seeking admission and/or the admission

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- of the Trust to the official list of ASX (including costs of or associated with the preparation, lodgement, issue and distribution of any product disclosure statement) and all subsequent compliance with the Listing Rules or any other regulation as a result of the Trust being Listed;
- (d) all amounts required to repay the principal and pay any interest and costs in respect of borrowings effected by the Responsible Entity in relation to the Trust pursuant to **clause 11.2**;
  - (e) all disbursements incurred by it in connection with the administration of the Trust, the performance of its duties (or the performance of those duties by delegates), and the provision of services by contractors, managers and advisors under or in connection with or for the purposes of this constitution, the operation or marketing of the Trust, or any licence, authorisation or approval required by law including by reason of being or to be the Responsible Entity of the Trust or the Trust being a registered managed investment scheme, other than remuneration payable to the employees of the Responsible Entity (other than payments to Compliance Committee Members or the company secretary of the Responsible Entity directly related to the Trust) and the costs, charges and expenses incurred in the internal administration of the business of the Responsible Entity;
  - (f) the reasonable fees and expenses of the auditor of the Trust;
  - (g) the reasonable and proper fees, charges and moneys payable to any approved valuers, solicitors, barristers, accountants, stockbrokers, surveyors, contractors, qualified advisers and other person necessary usual or desirable for the purpose of enabling the Responsible Entity to perform its duties and obligations under this constitution;
  - (h) the reasonable and proper fees charges and moneys payable to a custodian, provided that the custodian shall be responsible for paying the fees of any sub-custodian and such fees shall not be paid from the Trust;
  - (i) all reasonable costs and expenses incurred in or in connection with any amendments modifications or additions to the provisions of this constitution including any costs or expenses reasonably and properly incurred by the Responsible Entity in or in connection with its approval and execution of any deed supplemental to this constitution or obtaining any approvals which may be required by law or otherwise in respect of any such supplemental deed and any costs or expenses reasonably and properly incurred by the Responsible Entity in convening any meeting of Members for the purpose of obtaining their approval in respect of any such amendments modifications or additions;
  - (j) any costs or expenses reasonably and properly incurred or paid by the Responsible Entity in or in connection with any rearrangement of the capital structure of the Trust;

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- (k) stamp duty on all cheques issued on behalf of the Trust;
  - (l) postage in connection with forwarding notices, distribution statements, accounts, confirmations and distribution cheques to Members;
  - (m) an amount not exceeding costs of the printing of stationery, envelopes, notices, accounts, distribution statements and cheques in connection with the Trust;
  - (n) the cost of the preparation, lodgement, issue and distribution of any product disclosure statement or any reports or returns pursuant to the Corporations Act or any other law;
  - (o) all financial institutions duty, bank account debits tax, goods and services tax and all other duties and taxes imposed by any State Territory or Commonwealth government present or future payable by the Responsible Entity in respect of the receipt by or on behalf of the Responsible Entity of any amount payable to the Responsible Entity in respect of the Trust or by way of application moneys or in respect of any amount debited or credited to any account of the Responsible Entity in respect of the Trust of application moneys;
  - (p) the cost of the preparation printing registration and distribution of any prospectus up to a maximum amount equal to 0.125% of the Net Asset Value on the last day of the Financial Year and on the last day of the first half of the Financial Year in which such cost is incurred;
  - (q) the Responsible Entity shall make provision for meeting outgoings to be paid pursuant to **clauses 19.5(j) to (o)**;
  - (r) any insurance premiums<sup>33</sup> payable in respect of the members of the compliance committee established by the Responsible Entity in connection with the Trust and the costs of any independent advice sought by the compliance committee;
  - (s) the preparation, implementation, amendment and audit of the compliance plan;
  - (t) where any mortgage investment is negotiated, purchased or sold by or in conjunction with any person, firm or company being a licensed finance broker, whether or not such broker is related to or associated with the Responsible Entity, fees not exceeding fees payable under the scale authorised by the relevant legislation, or if there is no legislative provision with regard to fees, or authorised scale, then such scale as maybe nominated by the Responsible Entity and properly payable to such broker, shall be paid out of the Trust as an expense of the Trust, in addition to any remuneration payable to the Responsible Entity, or if such fees are payable by the other party to the transaction, shall be paid notwithstanding any such relationship to or association with the Responsible Entity; and

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<sup>33</sup> See Section 601JG

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- (u) the Responsible Entity shall set aside out of the Gross Income of the Trust such sums (not exceeding the maximum amount which the Responsible Entity may for the time being be permitted to retain out such Gross Income and set aside for the credit of such reserve without incurring any liability payment of income tax or additional income tax on the income of the Trust or on the amounts retained under the provisions of the Tax Act), as are determined by the Responsible Entity to the credit of a reserve or reserves for the purposes of meeting any costs and expenses incurred in repairing, maintaining or replacing any investment for the time being comprised in the Trust, or for the purpose of making an allowance for the depreciation of any such investment in any case in which any such cost or expense or depreciation allowance would be deductible from the income of the Trust and taxable under the provisions of the Tax Act, and the Responsible Entity may invest the sums so set aside in further investments.

## 20 Duration of the Trust

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### Initial settlement

- 20.1 The Trust is established under an umbrella trust deed dated 21 January 1986.

### Termination

- 20.2 The Trust terminates on the earliest of:
- (a) 20 January 2066;
  - (b) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Members;
  - (c) 2 months after a special Resolution of Members being passed resolving to wind up the Trust; and
  - (d) the date on which the Trust terminates in accordance with another provision of this constitution or by law<sup>34</sup>.

## 21 Procedure on termination

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### Realisation of Assets

- 21.1 Following termination:
- (a) no Units may be issued, redeemed or transferred; and
  - (b) the Responsible Entity must realise the Assets within 180 days if practical and in any event as soon as possible after that.

### Audit of winding up

- 21.2 If and to the extent that ASIC policy so requires, the Responsible Entity must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

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<sup>34</sup> See Part 5C.9 on winding up

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**Distribution following termination**

- 21.3 Upon the termination of the Trust the Responsible Entity may with the sanction of a special Resolution of Members and subject to the right of indemnity in **clause 21.4**, distribute the whole or any part or parts of the Trust to the Members in specie and may for that purpose set such value as the Responsible Entity considers fair upon any property to be so distributed.
- 21.4 The Responsible Entity is entitled to pay or be reimbursed for all costs, charges, expenses, liabilities (whether actual or contingent), claims and demands incurred made or apprehended by the Responsible Entity in connection with the Trust or arising out of the winding up of the Trust including the fees of any agents, solicitors, bankers, accountants or other persons (including the Responsible Entity) whom the Responsible Entity may employ in connection with the winding up of the Trust, and is entitled to be indemnified out of the Trust and saved harmless against any of those costs and charges, expenses, claims and demands.
- 21.5 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 to Members in proportion to their respective holdings according to the number of Units held at the time of termination. The Responsible Entity may distribute proceeds of realisation in instalments.
- 21.6 Each distribution shall only be made against delivery to the Responsible Entity of such form of receipt and discharge as the Responsible Entity reasonably requires.
- 21.7 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 21.5**.

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**22 Modification of this constitution**


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**Responsible Entity may modify**

- 22.1 Subject to the Corporations Act<sup>35</sup> and to **clause 22.3**, the Responsible Entity may by deed modify this constitution.

**Deemed provisions**

- 22.2 If 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 22.1** does not apply to provisions deemed by this **clause 22.2** to be incorporated in the constitution.
- 22.3 Notwithstanding **clause 22.1** or any other provision of this constitution, no amendment may be made to this **clause 22.3** and no

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<sup>35</sup> See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC



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other amendment may be made to this constitution which would result in the Responsible Entity acquiring a beneficial interest in the income of the Trust or in any part of such income within the meaning of section 102(1) of the Income Tax Assessment Act 1936.

## **23 Inspection of Constitution**

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A copy of this constitution together with all amendments shall be made available for inspection by Members at all times during business hours on a Business Day at the Responsible Entity's Office.

## **24 Compliance committee**

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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<sup>36</sup>.

## **25 Complaints**

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- 25.1 If and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Responsible Entity a written complaint alleging that the Member has been adversely affected by the Responsible Entity's conduct in its management or administration of the Trust, the Responsible Entity:
- (a) must acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
  - (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
  - (c) 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;
  - (d) 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
  - (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint:

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<sup>36</sup> See section 601JF

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- (i) the determination in relation to the complaint;
  - (ii) the remedies (if any) available to the Member; and
  - (iii) information regarding any further avenue for complaint.

25.2 If any of the matters set out in **clause 25.1** cease to be required by the Corporations Act or ASIC policy, the Responsible Entity will ensure that it has in place an adequate system to deal with Member complaints.

## 26 Listing Rules

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26.1 While the Trust is Listed:

- (a) Notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) Nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) If the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision.
- (e) 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
- (f) 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.

26.2 A change in the text of this constitution because of the operation of clause 26.1 is not a modification of, or the repeal and replacement of, the constitution for the purposes of sections 601GC(1) and (2) of the Corporations Act.

## 27 Restricted Securities

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27.1 Units which are Restricted Securities cannot be disposed of during any applicable escrow period except as permitted by the Listing Rules or ASX.

27.2 The Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Units which are Restricted Securities during any applicable escrow period except as permitted by the Listing Rules or ASX.

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- 27.3 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 to any voting rights, in respect of those Units.

## 28 Small holdings

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- 28.1 Subject to this clause 28, the Responsible Entity may, from time to time and in its discretion, 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.
- 28.2 The Responsible Entity may only sell or redeem Units under this clause 25 once in any 12 month period.
- 28.3 The Responsible Entity must notify the Member in writing of its intention to sell or redeem the Units under this clause 28.
- 28.4 The Responsible Entity must not sell or redeem the relevant Units:
- (a) Before the expiry of 6 weeks from the date of the notice referred to in clause 28.3; or
  - (b) If, within the 6 week notice period referred to in clause 28.4(a), the Member advises the Responsible Entity that the Member wishes to retain the Units.
- 28.5 The power to sell lapses following the announcement of a takeover, however the procedure may be started again after the close of the offers made under the takeover.
- 28.6 The Responsible Entity or the purchaser of the Units must pay the costs of the sale of the Units, as the Responsible Entity decides.
- 28.7 The proceeds of any sale of Units under this clause 28 will not be sent to the Member 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.

## 29 Interpretation

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### Definitions

- 29.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

**AMIT:** a managed investment trust that is an attribution managed investment trust in accordance with the AMIT Laws.

**AMIT Laws:** those provisions of the Tax Act governing attribution managed investment trusts, and include any Australian Taxation Office tax rulings or published guidelines relating to those laws.

**Application Price:** the Unit price calculated in accordance with clause 4.

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

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

**ASX:** ASX Limited.

**ASX Settlement:** ASX Settlement Pty Limited.

**ASX Settlement Operating Rules:** the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the Units are CHESS Approved Securities, each as amended or replaced from time to time.

**Business Day:** a day other than a Saturday or a Sunday on which banks are open for general banking business in the principal place of business of the Responsible Entity.

**CHESS:** the clearing house electronic sub-register system as defined in the ASX Settlement Operating Rules.

**CHESS Approved Securities:** securities approved under the ASX Settlement Operating Rules to participate in CHESS.

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

**Current Value:** Net asset value according to generally accepted accounting principles.

**Distribution Calculation Date:** the last day of each Financial Year and such other days (if any) as the Responsible Entity designates.

**Distribution Period:**

- (a) for the final Distribution Period, the period from the day after the preceding Distribution Calculation Date to the date of the final distribution in accordance with **clause 21** following termination of the Trust; and
- (b) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to, and including, the next occurring Distribution Calculation Date<sup>37</sup>.

**Financial Year:**

- (a) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and

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<sup>37</sup> The definition does not refer to the first Distribution Period of the Trust as it was an existing fund at the times this definition was adopted

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- (b) in all other circumstances, the 12 month period ending on 30 June in each year.

**Former Member:** in respect of a Distribution Period means a person who was Registered as the holder of a Unit at any time during the period but who is not Registered at the end of the Distribution Period.

**Fractional Unit:** a Unit in respect of which there is contributed by the applicant an amount which is less than the full Application Price of a Unit other than a Fractional Unit.

**Instrument:** the ASIC Corporations (Managed investment product consideration) Instrument 2015/847.

**Liabilities:** 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.

**Liquid:** has the same meaning as in the Corporations Act<sup>38</sup>.

**Listed:** admitted to the official list of ASX.

**Listing Rules:** the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver of ASX.

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

**Net Asset Value:** the value of the Assets calculated in accordance with **clause 8** less the Liabilities.

**Net Income:** has the meaning given to it in **schedule 1**.

**Number of Units in Issue:** the number of Units for the time being created and issued but not cancelled, after all Fractional Units are consolidated as far as possible into whole Units.

**Office:** the registered office in Australia of the Responsible Entity.

**Redemption Price:** the Unit price calculated in accordance with **clause 6**.

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

**Registered:** recorded in the Register.

**Registration:** recording in the Register.

**Resolution:**

- (a) a resolution passed at a meeting of Members in the Trust:

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<sup>38</sup> Refer Part 5C.6

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- (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<sup>39</sup>.

**Responsible Entity:** the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

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

**Second Supplemental Deed Poll:** the Deed Poll of the Trust dated 5 December 2000 and lodged with ASIC on 6 December 2000.

**Tax:** all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties.

**Tax Act:** the Income Tax Assessment Act 1936 (“**1936 Act**”), the Taxation Administration Act 1953 (“**1953 Act**”) or the Income Tax Assessment Act 1997 (“**1997 Act**”), as appropriate.

**Taxation Amount:** for a Member or a person who was at any time a Member (“**Relevant Person**”), an amount of Tax which is payable or which is anticipated to become payable by the Responsible Entity on its own account or out of the Fund and which is referable to the Relevant Person. A Taxation Amount includes an amount of Tax imposed on account of or in respect of:

- (a) the Relevant Person;
- (b) an amount paid or payable to the Relevant Person;
- (c) a Unit held by the Relevant Person.

**Total Gross Investments:** the value of all the investments and other Assets (including cash) forming part of the Trust (before subtraction of fees and other liabilities).

**Transaction Costs:**

- (a) when calculating the Application Price of a Unit, the Responsible Entity’s estimate of the total cost of acquiring the Assets; and

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<sup>39</sup> Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)), winding up by Members, and choosing a new responsible entity.

- (b) when calculating the Redemption Price of a Unit, the Responsible Entity's estimate of the total cost of selling the Assets,

provided that subject to the Corporations Act<sup>40</sup> the Responsible Entity may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

**Trust:** the trust constituted under or governed by this constitution.

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution.

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

## Interpretation

- 29.2 Unless the contrary intention appears, in this constitution:
- (a) terms defined in the Corporations Act are used with their defined meaning;
  - (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements, and while the Trust is Listed (and to the extent relevant, when seeking admission to the official list of ASX) includes a reference to the Listing Rules;
  - (c) the singular includes the plural and vice versa;
  - (d) the words "includes" or "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
  - (e) amend includes delete or replace;
  - (f) person includes a firm, a body corporate, an unincorporated association or an authority;
  - (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution. Any of the above may be amended without the need for a deed pursuant to **clause 22**; and
  - (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

## Other documents

- 29.3 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.

<sup>40</sup> See section 601FC(1)(d)

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**Constitution legally binding<sup>41</sup>**

- 29.4 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.

**Governing law**

- 29.5 This constitution is governed by the law of Victoria.

**Other obligations excluded**

- 29.6 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 trustee of the Trust arising under any statute.

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<sup>41</sup> Refer Section 601GB



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## Schedule 1 - Entitlements to income and capital

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### PART A

**Definitions**      The following words have these meanings in this Part A of Schedule 1:

**Distributable Income:** for a Distribution Period, the Income after deducting the Notional Income.

**Distributable Income Entitlement:** the amount calculated in respect of Units held by a Member under paragraph 4 of this Part A.

**Income:** for a Distribution Period, the sum of:

- (i) the amount which the Responsible Entity determines to be the “net income” of the Trust under section 95(1) of the Tax Act for the Distribution Period calculated as if the Distribution Period were a year of income;
- (ii) any additional part of the Trust that the Responsible Entity decides is appropriate for distribution in the Distribution Period; and
- (iii) the balance of the Income from the preceding Distribution Period deemed by paragraph 5 of this Part A to be the Income of the Trust for the Distribution Period.

**Notional Income:** for a Distribution Period, the sum of:

- (a) an amount equal to the amount of “foreign tax” as defined in the Tax Act, which has been paid or is to be deemed paid under the Tax Act in relation to the foreign income, as so defined, for that Distribution Period; and
- (b) the amount which in relation to the Distribution Period is included in the assessable income under section 160AQT of the Tax Act.

- Paragraphs**
- 1. This Part A applies only for a Distribution Period in which the Responsible Entity makes a determination that this Part A is to apply.
  - 2. A Member at the end of a Distribution Period is presently entitled to both the Distributable Income and the Notional Income for the Distribution Period in the proportion that the Distributable Income Entitlement of the Member for the Distribution Period bears to the sum of all Distributable Income Entitlements for all members for the Distribution Period.
  - 3. As soon as practicable after the end of a Distribution Period, the Responsible Entity shall determine for the Distribution Period the Income, the Notional Income, the Distributable Income and the Distributable Income Entitlement of Members.

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4. The Distributable Income Entitlement of a Member for a Distribution Period is an amount calculated to the nearest whole cent in accordance with the following formula:
- $$\frac{A \times C}{B}$$
- where
- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units on issue at the end of the Distribution Period; and
- C is the Distributable Income for the Distribution Period.
5. If the Responsible Entity considers that it is not practical to distribute some or all of the Income received in a Distribution Period, it may be treated as having been received in the next Distribution Period, unless this would result in it being treated as having been received in the next Financial Year.
6. The present entitlement of a Member to Income (including Notional Income) for a Distribution Period is satisfied by the distribution to the Member of the Distributable Income Entitlement of the Member for the Distribution Period.
7. The Responsible Entity must allocate, or cause to be allocated, and distributed to each Member the Distributable Income Entitlement of the Member for a Distribution Period within 60 days of the end of the Distribution Period.”

## PART B

### Definitions

**Distribution Amount:** so much of the excess of the Income for the Distribution Period reduced by the aggregate of the Redemption Income Amounts for Units redeemed in the Distribution Period that the Responsible Entity determines in accordance with paragraph 2 of this Part B to be appropriate for distribution.

**Income Entitlement:** for a Member: the amount, if any, calculated under paragraph 6 of this Part B in respect of Units held by the Member at the end of a Distribution Period.

**Income:** for the Trust for a Distribution Period an amount which the Responsible Entity determines to be the profit for the Distribution Period in accordance with generally accepted accounting principles.

**Redeemer:** a Member who redeemed Units during the Distribution Period, or a person who was a Member at any time in the Distribution Period but who has at the end of the Distribution Period redeemed units held by them and ceased to be a Member.

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**Redemption Income Amount:** for a Unit held by a Redeemer, that part of the Income of the Trust for a Distribution Period that the Responsible Entity determines in accordance with generally accepted accounting principles is to be included in the Redemption Price for a Unit redeemed in the Distribution Period.

- Paragraphs**
1. This Part B applies only for a Distribution Period in which the Responsible Entity makes a determination that this Part B is to apply.
  2. As soon as practicable after the end of a Distribution Period, the Responsible Entity shall determine for the Distribution Period:
    - (a) for the Trust:
      - (i) the Income;
      - (ii) if there is to be a Distribution Amount; and
      - (iii) if there is to be a Distribution Amount, the amount of the Distribution Amount,
    - (b) for a Member, the Income Entitlement; and
    - (c) for a Unit held by a Redeemer, the Redemption Income Amount.
  3. The Responsible Entity may determine the extent to which the Distribution Amount comprises profits, retained profits, capital, returned capital, or income of a particular character.
  4. The Responsible Entity may determine the extent to which the Redemption Income Amount comprises profits, income or capital of a particular character or type.
  5. At the end of a Distribution Period:
    - (a) a Member is entitled to a distribution of the Member's Income Entitlement, if any; and
    - (b) a Redeemer is entitled to the Redemption Income Amounts in respect of Units redeemed by the Redeemer in the Distribution Period, if any.
  6. The Income Entitlement of a Member for the Distribution Period is an amount calculated to the nearest whole cent in accordance with the following formula:

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

where:

A is the number of Units held by the Member at the end of the Distribution Period; and

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B is the number of Units on issue at the end of the Distribution Period;

C is the Distribution Amount for the Distribution Period.

7. The Responsible Entity must allocate or cause to be allocated and distributed to each Member the Income Entitlement of the Member for a Distribution Period within two months of the end of the Distribution Period.
8. The amount paid to a Redeemer on redemption of a Unit will satisfy the entitlement of the Redeemer to the Redemption Income Amount.

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## Schedule 2      Mortgage Facility

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### Definitions

For the purposes of this schedule:

**Mortgagor** means each Member which has mortgaged its interest in respect of some or all of their Units;

**Mortgagee** means each person in favour of whom a Mortgagor has Mortgaged its interest in respect of some or all of their Units;

**Mortgage** means each instrument setting out the terms of the mortgage between a Mortgagor and Mortgagee;

**Mortgaged units** means a Member's Units in respect of which a Mortgagee's interest has been recorded in the Register; and

**Secured Moneys** means all debts and monetary liabilities of the Mortgagor to the Mortgagee which are secured under the Mortgage.

### Facility of recording Mortgages

- 2.1      The Responsible Entity may offer Members the facility of entering a person on the Register as the Mortgagee of some or all of a Member's Units on such conditions relating to the use and administration of the facility as the Responsible Entity may determine and the Member may agree to from time to time.

### Recording of Mortgagee interests

- 2.2      The Responsible Entity may at the request of a Member record the Mortgagee's interest in respect of some or all of the Member's Units in the Register. Unless the Responsible Entity otherwise agrees, there must not be entered more than 1 Mortgagee for each Member unless they are joint Mortgagees.

### Notice to Mortgagee

- 2.3      On recording the name of a person in the Register as a Mortgagee in respect of a Member's Units, the Responsible Entity must notify the Mortgagee.

### Removal of Mortgagee interest

- 2.4      The Responsible Entity may remove the record of a Mortgagee's interest from the Register at the written request of a Mortgagee or on receipt of evidence satisfactory to the Responsible Entity that the Mortgagee no longer has an interest in any of those Units.

### Consent to dealings

- 2.5      The Responsible Entity may decline to recognise or carry out any dealing with Mortgaged Units unless it is satisfied that the Mortgagee has consented to the dealing or it is otherwise permitted under this **schedule 2**.

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### **Mortgage over future Assets**

- 2.6 The Mortgagee may be recorded as the Mortgagee of all or part of a Member's Units, including any Units to which the Member becomes entitled after the Mortgagee is entered in the Register.

### **Redemption**

- 2.7 Subject to this constitution, all redemption proceeds relating to Mortgaged Units must be paid or transferred to the Mortgagee unless the Member with the written consent of the Mortgagee directs that the redemption proceeds be paid or the transfer be made to the Member or another person nominated by the Member.

### **Distribution on termination**

- 2.8 The proceeds of the realisation of the Assets on termination of the Trust under **clause 21.1** relating to Mortgaged Units must be paid to the Mortgagee.

### **Payment to Mortgagee**

- 2.9 The Responsible Entity must pay any amounts certified in any form satisfactory to the Responsible Entity by the Mortgagee as owed by a Member to the Mortgagee.
- 2.10 Payment to a Mortgagee of such amounts is a full and final discharge of the obligations of the Responsible Entity to the relevant Member and Mortgagee in relation to that amount.

### **Information to Mortgagee**

- 2.11 The Responsible Entity may give a Mortgagee information about a Member's Mortgaged Units.
- 2.12 Any notice to the Mortgagee shall be in accordance with **clause 13** as if reference to **Member** is to **Mortgagee**.

### **Constitution binding on Mortgagee**

- 2.13 The terms of this constitution bind a Mortgagee. Under no circumstances has a Mortgagee any greater rights under this constitution than those of a Member. Under no circumstances is a Mortgagee personally liable for any of the liabilities of a Member to the Responsible Entity under this constitution.

### **Limitation of liability**

- 2.14 Subject to the Corporations Act, the Responsible Entity has no liability in respect of any act or refusal to act which is believed by the Responsible Entity to be justified under this **schedule 2**. Under no circumstances is the Responsible Entity to be taken to have notice of or be under an obligation to enquire into the terms of any mortgage, charge or other security interest affecting a Member's Units.
- 2.15 Unless required by law, the Responsible Entity is not obliged to recognise any claim or interest in a Member's Units by a person other than:
- (a) the Member; and

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- (b) the Mortgagee whose interest has been recorded under this **schedule 2**.

2.16 Subject to the Corporations Act, the Responsible Entity is not liable for anything done or omitted to be done in reliance on any notice, direction, certificate or other document reasonably believed by the Responsible Entity to be genuine.

### **Rights of the Mortgagee**

2.17 On a Mortgagee certifying to the Responsible Entity that a Mortgage has become enforceable:

- (a) the Mortgagee is entitled to exercise all the rights, powers, authorities, discretions and remedies of the Mortgagor under this constitution to the exclusion of the Mortgagor;
- (b) the Responsible Entity must deal with the Mortgaged Units in accordance with the directions of the Mortgagee, or any receiver or attorney of the Mortgagee (in each case being directions given in accordance with the applicable provisions of this constitution dealing with the rights of the Mortgagor to give directions to the Responsible Entity) to the exclusion of any directions of the Mortgagor;
- (c) the rights of the Responsible Entity to recover any fees payable to the Responsible Entity under this constitution are postponed to, and rank in point of priority after, the rights of the Mortgagee to recover the Secured Moneys have been paid or repaid in full; and
- (d) any fees received by the Responsible Entity in contravention of **paragraph 2.17(c)** must be held by the Responsible Entity on trust for the Mortgagee and paid by the Responsible Entity to the Mortgagee to or towards payment of the Secured Moneys and to the extent so paid to the Mortgagee will be deemed to have not been received by the Responsible Entity for the purposes of determining the amount of fees still payable to the Responsible Entity.

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## Schedule 3      Right to limit foreign owners

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### Interpretation

3.1 For the purposes of this schedule:

**Australian person** means:

- (a) an individual who is a resident of Australia (other than a trustee of a trust);
- (b) an individual, wherever residing, who is an Australian citizen and the centre of whose economic interests is not located outside Australia;
- (c) a corporation incorporated under the law of the Commonwealth of Australia or of any State or Territory of Australia other than a corporation which is a foreign person as defined in Section 5 of the Foreign Acquisitions and Takeovers Act; or
- (d) the trustee of a trust
  - (i) governed by the laws of Australia or any State or Territory of Australia created *inter vivos* or by will by any testator individual who at the time of creation of the trust or at the time of his death was a person as described in paragraph (a) or (b); or
  - (ii) created by a corporation which is a corporation as described in paragraph (c), provided that the trustee or a majority of the trustees-
    - (A) is/are residents of Australia or the trustee (which includes an executor or administrator) is the trustee of an estate of a deceased Australian person as defined by paragraph (a) or (b) at the time of his death; and
    - (B) is/are not associates.

**associate** means an associate of a foreign person:

- (a) as defined in Section 6 of the Foreign Acquisitions and Takeovers Act;
- (b) who would be such an associate in the case of shares in a company; or
- (c) as otherwise determined by the Responsible Entity.

**Foreign Person** means any person who is not an Australian person.

**The Foreign Acquisitions and Takeovers Act** means the Foreign Acquisitions and Takeovers Act, 1975 of the Commonwealth of Australia as at the date of execution of this Trust Deed Constitution.



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**Restriction on foreign members**

- 3.2 Subject to **paragraph 3.4**, a Foreign Person shall not be eligible to be registered as a Member with respect to any Units or, where a Foreign Person is already a Member, any further Units if as a result of the registration:
- (a) that person (either alone or together with its associates) would hold interests in not less than 15%; or
  - (b) any 2 or more Foreign Persons either alone or together with their respective associates would hold interests in not less than 40%
- of the total number of Units in the Trust, and
- (c) there would or may be, in the Responsible Entity's opinion, a contravention of any guidelines or instructions issued by or on behalf of the Government of the Commonwealth of Australia in respect of ownership of assets by person not being Australia persons.

**Waiver**

- 3.3 The Responsible Entity may expressly waive the requirements either generally or in any particular case or in relation to any number of Units in that Trust Fund on such terms and conditions (if any) as it deems fit from time to time;
- 3.4 Subject to **paragraph 3.4** a Foreign Person shall not without the express consent of the Responsible Entity be eligible to remain a Member of the Trust if he (either alone or together with his associates) would hold interests in not less than 15% of the total number of Units in the Trust.
- 3.5 The Responsible Entity may decline to issue Units or register any transfer or transmission of a Unit if in the Responsible Entity's opinion, the issue or registration may breach **paragraph 3.2**.

**Disposal**

- 3.6 If the Responsible Entity is satisfied that:
- (a) a person not eligible to become a Member has become a Member;
  - (b) a Member has ceased to be eligible to remain a Member; or
  - (c) a person has become a Member in circumstances where such acquisition may, in the opinion of the Responsible Entity, result, (having regard to the relevant interests of his associates) in a breach of, or in any action being taken by the Treasurer under the Foreign Takeovers Act or any Act or Parliament, amending, modifying or re-enacting the same, dealing with the same or similar subject matters;

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the Responsible Entity may, by notice in writing to the Member, require him to dispose of all or such part of the Units as shall be specified in the notice, within the time specified in the notice.

- 3.7 If the requirements of a notice given under **paragraph 3.6** are not complied with by the Member within the time specified and if the Member is still not eligible to be a Member the Responsible Entity may:
- (a) cause the number of Units held by the Member which are specified in the notice or any lesser number thereof, to be sold or redeemed in such other manner as the Responsible Entity may determine;
  - (b) appoint a person to execute on behalf of the Member the transfer of the Units and to receive the purchase money on his behalf.

The purchase money less the expenses of sale or the Redemption Price shall be paid to the Member whose Units were sold or repurchased.

- 3.8 Any person seeking to become a Member shall if required by the Responsible Entity, deliver to the Responsible Entity a written statement on oath or otherwise verified as the Responsible Entity may require, made by the person, stating whether the person is an Australian person and such further facts as the Responsible Entity may require to satisfy itself of his eligibility to become a Member. The Responsible Entity, before or at any time after issuing any Units, or approving or rejecting any transfer or transmission of Units, or at any other time and from time to time, may, by notice in writing require to give to the Responsible Entity the information or evidence specified and as the Responsible Entity may consider likely to assist in determining whether or not such person is eligible to become or to remain a Member.
- 3.9 Nothing in this schedule shall render the Responsible Entity liable or responsible by reason of any ineligible person becoming or remaining a Member of the Trust or failing to become or ceasing to remain a Member of the Trust.
- 3.10 For the purposes of this schedule a person has an interest in a Unit in the same circumstances as he has or would have an interest in a share pursuant to the provisions of Section 11 of The Foreign Acquisitions and Takeovers Act.

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## **Schedule 4      Substantial Unitholdings**

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### **Substantial Unitholders**

- 4.1      A person has a substantial Unitholding in the Trust if they (alone or with their associates, if any) have a relevant interest in more than 20% of the total number of voting Units on issue (“**Substantial Unitholder**”).

### **Information concerning substantial unitholdings**

- 4.5.      Any person seeking to become a Member, shall if required by the Responsible Entity, deliver to the Responsible Entity a written statement on oath or otherwise verified as the Responsible Entity may require, made by such person or, where the person is a corporation, made by an officer thereof, stating whether the person or his associates or both is or are currently entitled to or has a relevant interest any Units and full particulars of such entitlement (if any) and the circumstances by reason of which he has that entitlement (if any) and such other information or evidence as is therein specified and as the Responsible Entity may consider likely to assist in determining whether or not such Person or any other Person is or is likely to become a Substantial Unitholder. The Responsible Entity, before or at any time after issuing any Units, or approving or rejecting any transfer or transmission of Units, or at any other time and from time to time, may, by notice in writing to a Member require him to furnish to the Responsible Entity full particulars of the Units to which the Member is currently entitled or in which he or his associates or both has or have an entitlement or relevant interest and the circumstances by reason of which he or they has or have that entitlement or relevant interest and such other information or evidence as is therein specified and as the Responsible Entity may consider likely to assist in determining whether or not such Member or any other person is or is likely to become a Substantial Unitholder.
- 4.6      For the purposes of this schedule (only) the Responsible Entity and any corporation related to the Responsible Entity shall be deemed not to have a relevant interest in any Units and not to be entitled to any Units.

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## Schedule 5      Performance Incentive Fee

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### Interpretation

**5.1** For the purposes of this Schedule:

**Base Price** means:

- (a) in respect of the first Performance Period for the Relevant Unit:
  - (i) the End Price at the end of the immediately preceding Financial Half Year End Date; or
  - (ii) if the Relevant Unit is issued during the Performance Period, the application price for that Unit;
- (b) in respect of each subsequent Performance Period, the higher of:
  - (i) the previous Base Price plus the Pre-Incentive Increase for the immediately preceding Performance Period; or
  - (ii) the End Price for the immediately preceding Performance Period less any Performance Incentive Fee paid in respect of that Period.

**End Price** means the NAV Per Unit as at the end of a Performance Period

**Financial Half Year End Date** means 30 June and 31 December in each year

**NAV Per Unit** means, as at a particular date, the Net Asset Value (disregarding as Liabilities any liability relating to the Performance Incentive Fee) divided by the number of Units on issue as at that date.

**Performance Period** means the period:

- (a) commencing:
  - (i) initially, on 1 July, 2006 or (if the Relevant Unit is issued after that date) the date of issue of the Relevant Unit; and
  - (ii) subsequently, on the day immediately following the last day of the prior Performance Period: and
- (b) ending on the earlier of:
  - (i) the next Financial Half Year End Date; or
  - (ii) the end of the day on which the Relevant Unit is redeemed or the final distribution is made in respect of the Relevant Unit.

**Relevant Distributions** means the sum of all distributions of capital or income either –

- (a) made in relation to a Relevant Unit during the relevant Performance Period (except those taken into account, under paragraph (b) below, as reducing the End Price for the prior Performance Period) or

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- (b) taken into account as reducing the End Price for that Performance Period despite not being actually made in relation to a Relevant Unit during the relevant Performance Period.

**Pre-Incentive Increase** means an increase of 10% p.a. on the Base Price (and pro-rata for part of a year).

**Entitlement to fee**

**5.2** Subject to the terms of this Schedule 5, for each Unit (a “**Relevant Unit**”) that was in issue at any time during a Performance Period, the Responsible Entity is entitled to, and is to be paid, a performance incentive fee (“**the Performance Incentive Fee**”) out of the Assets.

**5.3** The Performance Incentive Fee for a Performance Period is determined as 17.5% of the amount by which the sum of End Price for the Performance Period plus Relevant Distributions exceeds the sum of the Base Price plus the Pre-Incentive Increase.

**Accrual and Payment**

**5.4** The Performance Incentive Fee –

- (a) accrues as at the end of each Performance Period; and
- (b) is to be paid as soon as possible after the end of the relevant Performance Period.

**No repayment if Pre-Incentive Increase not achieved**

**5.5** If the End Price for any Performance Period plus Relevant Distributions does not exceed the sum of the Base Price plus the Pre-Incentive Increase –

- (a) no Incentive Performance Fee is payable;
- (b) no deduction or withholding is to be made from any other amount accrued or to accrue due to the Responsible Entity (including any Performance Incentive Fee to which the Responsible Entity becomes entitled in respect of any subsequent Performance Period) solely because of that fact;
- (c) the Responsible Entity has no liability to make any payment or other contribution to make up any deficiency between the sum of the End Price plus Relevant Contributions and sum of the Base Price plus the Pre-Incentive Increase;
- (d) the Responsible Entity is not required to repay any amount in respect of any Performance Incentive Fee paid to it, or to which it has become entitled, in respect of any previous Performance Period.

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## **Schedule 6      Incorporation of provisions of ASIC Corporations Instrument 2015/847**

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### **Incorporation**

- 6.1      This Schedule is based on the ASIC Corporations (Managed investment product consideration) Instrument 2015/847, first registered on 5 May 2017, and the provisions of this Schedule have been adapted from that Instrument for inclusion in and consistency with this constitution. Any reference to a clause or sub-clause in this Schedule is a reference to a clause or sub-clause of this Schedule, unless otherwise stated.

### **Constitutional provisions about the amount of consideration for the acquisition of interests**

- 6.2(1)      The Responsible Entity may set the acquisition price of interests in any of the circumstances set out in clauses 6.2(2) to 6.2(9).

#### *Placements*

- 6.2(2)      The Responsible Entity may set the amount of the consideration to acquire interests where all of the following apply:
- (a)      the interests are in a class of interests that are quoted on:
    - (i)      the financial market operated by ASX Limited; or
    - (ii)     an approved foreign market;and the quotation of interests in that class is not suspended;
  - (b)      interests are not issued to:
    - (i)      the Responsible Entity; or
    - (ii)     an associate of the Responsible Entity unless the issue is covered by clauses 6.2(12) or 6.2(13);
  - (c)      either:
    - (i)      the issue, together with any related issue in the previous year does not, immediately before the issue, comprise more than 15% of the interests in that class; or
    - (ii)     all of the following apply:
      - (A)     members who hold interests in the same class approve the issue by a placement resolution;
      - (B)     unless the Responsible Entity reasonably considers that the issue will not adversely affect the interests of members in another class (if any)—members in that other class approve the issue by a placement resolution;

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- (C) any notice convening a meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue.

*Rights issues*

- 6.2(3) The Responsible Entity may set the amount of the consideration to acquire interests where all of the following apply:
- (a) the Responsible Entity offers the interests to persons who are members of the scheme on a date not more than 20 business days before the date of the offer, in proportion to the value of each member's interests in the scheme at that date (subject to paragraph (g), interests offered to, but not acquired by, members may be issued to other persons);
  - (b) the Responsible Entity offers the interests to all members of the scheme, except those foreign members (if any) it has excluded under clause 6.2(10);
  - (c) all the interests offered are in the same class;
  - (d) the price of all the interests offered is the same;
  - (e) the Responsible Entity reasonably believes that the amount by which the price of an interest is less than the amount that would otherwise apply under the constitution does not exceed a relevant maximum percentage specified in the constitution;
  - (f) the Responsible Entity offers the interests to the members at substantially the same time;
  - (g) the Responsible Entity only issues interests to its associates as members of the scheme or, in the case where the interests are in a class of interests that are quoted on the financial market operated by ASX Limited or an approved foreign market, in accordance with clause 6.2(12).

*Interest purchase plans*

- 6.2(4) The Responsible Entity may set the amount of the consideration to acquire interests issued in accordance with ASIC Class Order [CO 09/425].

*Distribution reinvestment plans*

- (5) The Responsible Entity may set the amount of the consideration to acquire interests (other than options for the issue of interests) where all of the following apply:
- (a) the interests are issued under an arrangement under which the whole or part of any money payable to a member under the constitution, by way of distribution of capital or income, is applied in payment for the issue of the interests;
  - (b) each member of the scheme (except those foreign members (if any) that the Responsible Entity has excluded under clause 6.2(11)), may from time to time elect to participate in the arrangement as to the whole, or some proportion, of the distributions which are, or would otherwise be, payable to that member;
  - (c) all the interests issued under the arrangement are in the same class;

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- (d) the price of each interest issued under the arrangement in relation to any particular distribution is the same;
  - (e) all interests issued under the arrangement in relation to any particular distribution are issued at substantially the same time;
  - (f) the Responsible Entity reasonably believes that the amount by which the price of an interest is less than the amount that would otherwise apply under the constitution does not exceed a relevant maximum percentage specified in the constitution.

*Negotiated fees*

- (6) The Responsible Entity may set the amount of the consideration to acquire interests where:
  - (a) the Responsible Entity and a person (the ***wholesale client***) as a wholesale client within the meaning of section 761G of the Corporations Act agree on consideration that is equal to the price at which interests would be issued under the constitution, in the absence of this section, less a reduction (a ***fee reduction***) in the fees that are payable to the Responsible Entity for the issue of the interests; and
  - (b) the Responsible Entity has given all members a statement that fees may be individually negotiated with persons as wholesale clients on or before the first date when the Responsible Entity sends communication to all members after a fee reduction is first offered; and
  - (c) each Product Disclosure Statement for interests in the scheme contains a statement that fees may be individually negotiated with persons as wholesale clients; and
  - (d) the fee reduction does not adversely affect the fees that are paid or to be paid by any other member of the scheme who does not have the benefit of a fee reduction.

*Schemes where there is limited or no pooling*

- (7) The Responsible Entity may set the amount of the consideration to acquire interests where the only contributions that may be used in common with or pooled with any other asset in the scheme are:
  - (a) money placed in a bank account held by the Responsible Entity on trust; or
  - (b) not proprietary rights and no income in which a member has any interest is to be paid or worked out by dividing up a pool; or
  - (c) used in common or pooled between joint tenants or tenants in common where:
    - (i) none of the tenants is the Responsible Entity or an associate of the Responsible Entity; and
    - (ii) each tenant is a person known to each other tenant before being offered an interest for issue.



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### *Forfeited interests*

- (8) The Responsible Entity may set the amount of the consideration to acquire interests that have, in accordance with this constitution, been forfeited to the Responsible Entity on trust for members of the scheme where all or part of the amount (the ***outstanding amount***) payable by the member in relation to the interest has not been paid when called and both of the following apply:
- (a) on the payment of the outstanding amount, the interest would be in a class of interests that are quoted on the financial market operated by ASX Limited;
  - (b) the sale of the forfeited interest is in accordance with section 254Q of the Corporations Act, other than clauses 6.2(1), 6.2(9), 6.2(10) and 6.2(13), as if the interests were shares, the scheme were a company and the Responsible Entity was each director of the company.

### *Stapled securities*

- (9) The Responsible Entity may set the amount of the consideration to acquire interests that form part of stapled securities if this constitution contains adequate provision for the amount of the consideration to acquire the stapled securities or has provisions about the amount of the consideration to acquire the stapled securities that would be permitted by other subsections of this section or by section 601GAB of the Corporations Act if the stapled securities were interests in the registered scheme.

### *Foreign members*

- (10) The Responsible Entity may elect not to make an offer to a foreign member under clause 6.2(3) if the Responsible Entity:
- (a) where the scheme is included in the official list of the financial market operated by ASX Limited—complies with the requirements of Rule 7.7 of the listing rules of the financial market operated by ASX Limited as at 1 July 2015 concerning the treatment of members with a registered address outside Australia and New Zealand that are applicable to the relevant offer and issue of interests; or
  - (b) where the scheme is not included in the official list of the financial market operated by ASX Limited and the offer is renounceable—appoints a nominee to sell the rights to acquire the interests that would otherwise have been offered to the foreign members and distribute to each foreign member their proportion of the proceeds of sale net of expenses; or
  - (c) in any other case—determines that it would be unreasonable to make the offer to the member having regard to each of the following:
    - (i) the number of members in the place (the ***relevant place***) where the registered address of the member is situated;
    - (ii) the number and the value of the interests that may be issued to members in the relevant place;

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- (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place.
- (11) The Responsible Entity may elect not to make an offer of the kind referred to in clause 6.2(5) to each foreign member with a registered address in a place if it determines that it is unreasonable to make the offer to those members having regard to each of the following:
- (a) the number of members in the place;
  - (b) the number and the value of the interests that may be issued under the arrangement to members in the place;
  - (c) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to offering the arrangement in the place.

*Underwriting of placements and rights issues by associates of the Responsible Entity*

- (12) For the purposes of clause 6.2(2) and 6.2(3), the Responsible Entity may issue interests to an associate as an underwriter or sub-underwriter where:
- (a) the issue is made under:
    - (i) an underwriting agreement between the Responsible Entity and the associate that is entered on terms that are no more favourable to the associate than terms that would be reasonable in the circumstances if the Responsible Entity and the associate were dealing at arm's length; or
    - (ii) a sub-underwriting agreement between an underwriter and the associate that is entered on terms that are no more favourable to the associate than terms that would be reasonable in the circumstances if the underwriter and the associate were dealing at arm's length; and
  - (b) the associate holds an Australian financial services licence that authorises it to deal as an underwriter or sub-underwriter in interests in managed investment schemes and contains conditions to the effect that, where the licensee is an associate of the Responsible Entity of a registered scheme:
    - (i) the licensee must not exercise voting rights in respect of any interests in the scheme that it acquires as an underwriter or sub-underwriter; and
    - (ii) the licensee may only dispose of interests in the scheme that it acquires as an underwriter or sub-underwriter:
      - (A) in the ordinary course of trading on the financial market operated by ASX Limited or an approved foreign market; or
      - (B) to a person who is not an associate of the Responsible Entity; or
      - (C) to a person who is an associate of the Responsible Entity that acquires the interests in an eligible fiduciary capacity.

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*Placements to associates of the Responsible Entity*

- (13) For the purposes of clause 6.2(2), the Responsible Entity may issue interests to a person who is its associate where:
- (a) before the interests are issued, the associate holds interests in the scheme in an eligible fiduciary capacity; and
  - (b) the associate acquires the interests in the eligible fiduciary capacity; and
  - (c) the proportion of the interests that are issued to the associate does not exceed the proportion of interests in the scheme that the associate held immediately before the issue occurred.
- (14) For the purposes of clauses 6.2(12) and 6.2(13), a person holds or acquires interests in an ***eligible fiduciary capacity*** if the interests are held or acquired by the person as:
- (a) a trustee or custodian for a professional investor who is not the Responsible Entity or an associate of the Responsible Entity; or
  - (b) a Responsible Entity of another registered scheme; or
  - (c) a life insurance company, or an agent of a life insurance company, in the investment, administration and management of the assets of a statutory fund under the *Life Insurance Act 1995*; or
  - (d) an approved trustee of a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993*.
- (15) For the purposes of this clause 6.2:

***approved foreign market*** means each of the following:

- (a) Borsa Italiana;
- (b) Bursa Malaysia Main Board and Bursa Malaysia Second Board;
- (c) Euronext Amsterdam;
- (d) Euronext Paris;
- (e) Frankfurt Stock Exchange;
- (f) Hong Kong Stock Exchange;
- (g) Johannesburg Stock Exchange;
- (h) London Stock Exchange;
- (i) NASDAQ Stock Market;
- (j) New York Stock Exchange;
- (k) NZX;

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- (l) Singapore Exchange;
  - (m) SIX Swiss Exchange;
  - (n) Tokyo Stock Exchange;
  - (o) Toronto Stock Exchange.

**foreign member** means a member of a registered scheme who has a registered address outside of this jurisdiction.

**offer** includes, in relation to an issue of interests, inviting an application for the issue of interests.

**placement resolution** means, in relation to the approval of an issue of interests, a special resolution where:

- (a) votes are only cast in respect of interests (the **eligible interests**):
  - (i) that are held by a member who will not acquire any of the interests that are to be issued; or
  - (ii) that are held by a member for the benefit of another person who will not obtain beneficial ownership of any of the interests that are to be issued; and
- (b) the value of the eligible interests held by the members who vote represents at least 25% of the total value of eligible interests.

**related issue** means, in relation to an issue of interests, an issue of interests in the same class at a price set by the Responsible Entity, which has not been approved or ratified by members in accordance with a provision in the constitution to the effect of subparagraph (2)(c)(ii) or issued in accordance with a provision of this constitution other than one to the effect of clause 6.2(2).

**stapled security** means two or more financial products including at least one interest in a registered scheme:

- (a) that under this constitution must be transferred together; and
- (b) where there are no financial products in the same class as those financial products which may be transferred separately.

#### **Discretions in constitutional provisions that set the amount of consideration for the acquisition of interests**

- 6.3(1) The formulas outlined in clauses 4.1 and 4.2 of this constitution are intended to be applied in a manner consistent with clause 6.3(2) however the Responsible Entity expressly has a discretion to do one or more of the following:
  - (a) decide a matter that affects the value of a factor included in the formula;
  - (b) decide a matter that is an aspect of the method;

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- (c) determine the amount of an adjustment to the amount determined by the formula for the costs in acquiring or disposing of scheme property, for assets of the scheme that are not scheme property or otherwise.

6.3(2) The formula or method must:

- (a) if it applies when the interests in the scheme:
  - (i) are not in a class of interests that is traded on a financial market; or
  - (ii) are in a class of interests that are AQUA products as defined in the operating rules of ASX Limited that are able to be traded on the financial market operated by ASX Limited;

be based on the value of scheme property attributable to interests in that class at the time of issue less any liabilities that under the constitution may be met from that property attributable to interests in that class divided by the number of interests on issue in that class; or

- (b) if it applies when the interests in the scheme:
  - (i) are in a class of interests that is traded on a financial market; and
  - (ii) are not in a class of interests that are AQUA products as defined in the operating rules of ASX Limited that are able to be traded on the financial market operated by ASX Limited;

be based on the market price of the interests in that class on the market at or around the time of issue.

6.3(3) A discretion in the constitution of the kind referred to in clause 6.3(1) must not be exercised on the basis that it will result in a particular amount being set as the amount of the consideration to acquire an interest in the scheme.

6.3(4) If a constitution includes a provision covered by clause 6.3(1), the Responsible Entity must comply with clauses 6.3(5) to 6.3(11).

*Exercise of discretion must be reasonable*

6.3(5) The Responsible Entity must act reasonably in exercising a discretion covered by clause 6.3(1).

6.3(6) Without limiting clause 6.3(5), the manner in which a discretion is exercised must as far as practicable be:

- (a) if the discretion relates to working out the value of scheme property—consistent with ordinary commercial practice for valuing property of the relevant kind; and
- (b) if the discretion relates to working out the market price of interests in the scheme which are quoted on a financial market—consistent with ordinary commercial practice for working out the market price of interests of the same kind in relation to an issue of the interests.

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*Documentation of exercise of discretion*

6.3(7) The Responsible Entity must prepare one or more documents that:

- (a) set out:
  - (i) a description of the formula or method that the Responsible Entity may apply in working out the amount of the consideration to acquire interests in the scheme including each discretion covered by clause 6.3(1) relevant to the formula or method; and
  - (ii) the circumstances in which the Responsible Entity may exercise each discretion; and
  - (iii) what policy (the ***documented policy***) (if any) the Responsible Entity has set dealing with how they propose to exercise each discretion and the date on which the policy was set; and
  - (iv) what records the Responsible Entity will keep about the exercise of each discretion; and
- (b) if the discretion is to be exercised by a nominee—state that the discretion will be so exercised and identify the nominee; and
- (c) in relation to each discretion for which a documented policy has been set—explain why it is reasonable to exercise the discretion in accordance with the policy; and
- (d) without limiting paragraph (c), if the exercise of the discretion in accordance with the documented policy would not be consistent with scheme property being valued, or the market price of interests being worked out, in accordance with ordinary commercial practice (see clause 6.3(6))—explain why it is impracticable to do so.

6.3(8) When the Responsible Entity exercises a discretion:

- (a) in relation to which there is no documented policy that is current at the time of exercise; or
- (b) in a way that involves a departure from the documented policy relating to the discretion that is current at the time of exercise,

they must prepare a document which sets out all of the following:

- (c) the date on which the discretion is exercised;
- (d) if the discretion is exercised by a nominee—a statement to that effect which identifies the nominee;
- (e) how the discretion is exercised;
- (f) an explanation why it was reasonable to exercise the discretion the way it was exercised;

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- (g) without limiting paragraph (f), if they do not exercise the discretion in a way which is consistent with scheme property being valued, or the market price of interests being worked out, in accordance with ordinary commercial practice (see clause 6.3(6))—an explanation why it is impracticable to do so.
- 6.3(9) The Responsible Entity must ensure that the records which it keeps under section 988A of the Corporations Act are kept in such a way as will enable:
- (a) any documented policy that was applied in the exercise of the discretion; and
  - (b) any exercise of a discretion of the kind covered by clause 6.3(8);
- that relates to an issue of an interest to be identified.
- 6.3(10) The documented policy relating to a discretion of the kind referred to in clause 6.3(1) must:
- (a) not involve the creation of another discretion of that kind; and
  - (b) be the only policy applicable to the exercise of the discretion at any one time.

*Access to and retention of documents*

6.3(11) The Responsible Entity must:

- (a) retain the documents covered by clause 6.3(7) and 6.3(8) for 7 years after they cease to be current; and
- (b) give a copy of the documents referred to in paragraph (a) to the following persons on request at no charge:
  - (i) a member of the scheme;
  - (ii) a person who has been or should have been given, or who has obtained, the Product Disclosure Statement for an interest in the scheme.

**Discretions in constitutional provisions about amounts to be paid on withdrawal**

- 6.4(1) The formula outlined in Clause 6 of this constitution is intended to be applied in a manner consistent with clause 6.4(2) however the Responsible Entity expressly has a discretion to do one or more of the following:
- (a) decide a matter that affects the value of a factor included in the formula;
  - (b) decide a matter that is an aspect of the method;
  - (c) make an adjustment to the amount determined by the formula for the costs in acquiring or disposing of scheme property, for assets of the scheme that are not scheme property or otherwise.
- 6.4(2) The formula or method must be based on the value of scheme property attributable to interests of the relevant class less any liabilities that under the constitution may be met from that property attributable to interests in that class divided by the number of interests on issue in that class.

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- 6.4(3) A discretion in the constitution of the kind referred to in clause 6.4(1) must not be exercised on the basis that it will result in a particular amount being set as the amount that will be paid to a member making a withdrawal.
- 6.4(4) If a constitution includes a provision covered by clause 6.4(1) the Responsible Entity must comply with clauses 6.4(5) to 6.4(11).

*Exercise of discretion must be reasonable*

- 6.4(5) The Responsible Entity must act reasonably in exercising a discretion covered by clause 6.4(1).
- 6.4(6) Without limiting clause 6.4(5), if the discretion relates to working out the value of scheme property, the manner in which a discretion is exercised must as far as practicable be consistent with ordinary commercial practice for valuing property of the relevant kind.

*Documentation of exercise of discretion*

6.4(7) The Responsible Entity must prepare one or more documents that:

- (a) set out:
  - (i) a description of the formula or method that the Responsible Entity may apply in working out the withdrawal amount including each discretion covered by clause 6.4(1) relevant to the formula or method; and
  - (ii) the circumstances in which the Responsible Entity may exercise each discretion; and
  - (iii) what policy (the **documented policy**) (if any) the Responsible Entity has set dealing with how they propose to exercise each discretion and the date on which the policy was set; and
  - (iv) what records the Responsible Entity will keep about the exercise of each discretion; and
- (b) if the discretion is to be exercised by a nominee—state that the discretion will be so exercised and identify the nominee; and
- (c) in relation to each discretion for which a documented policy has been set—explain why it is reasonable to exercise the discretion in accordance with the policy; and
- (d) without limiting paragraph (c), if the exercise of the discretion in accordance with the documented policy would not be consistent with scheme property being valued in accordance with ordinary commercial practice (see clause 6.4(6))—explain why it is impracticable to do so.



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6.4(8) When the Responsible Entity exercises a discretion:

- (a) in relation to which there is no documented policy that is current at the time of exercise; or
- (b) in a way that involves a departure from the documented policy relating to the discretion that is current at the time of exercise,

they must prepare a document which sets out:

- (c) the date on which the discretion is exercised;
- (d) if the discretion is exercised by a nominee – a statement to that effect which identifies the nominee;
- (e) how the discretion is exercised;
- (f) an explanation why it was reasonable to exercise the discretion the way it was exercised; and
- (g) without limiting paragraph (f), if they do not exercise the discretion in a way which is consistent with scheme property being valued in accordance with ordinary commercial practice (see clause 6.4(6))—an explanation why it is impracticable to do so.

6.4(9) The Responsible Entity must ensure that the records which it keeps under section 988A of the Corporations Act are kept in such a way as will enable:

- (a) any documented policy that was applied in the exercise of the discretion; and
- (b) any exercise of a discretion of a kind covered by clause 6.4(8);

that relates to the withdrawal of a member to be identified.

6.4(10) The documented policy relating to a discretion of the kind referred to in clause 6.4(1) must:

- (a) not involve the creation of another discretion of that kind; and
- (b) be the only policy applicable to the exercise of the discretion at any one time.

*Access to and retention of documents*

6.4(11) The Responsible Entity must:

- (a) retain the documents covered by clauses 6.4(7) and 6.4(8) for 7 years after they cease to be current; and
- (b) give a copy of the documents referred to in paragraph (a) to the following persons on request at no charge:
  - (i) a member of the scheme;
  - (ii) a person who has been or should have been given, or who has obtained, the Product Disclosure Statement for an interest in the scheme.