
Primary Securities Ltd

ABN 96 089 812 635

AFSL No. 224107

Agati Fund

**(formerly the Aurora Sandringham Australian Equity Income Trust; and
Aurora Absolute Return Fund)**

ARSN 110 303 430

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**Constitution
of the
Agati Fund
(formerly Aurora Absolute Return Fund)
ARSN 110 303 430**

Date: Consolidated as at 31 January 2019

Recitals

- A. At a meeting of **investors** of the **fund** held on 15 January 2018:
- (1) Primary was appointed as the **manager** in place of the **original manager**; and
 - (2) pursuant to Section 601GC(1)(a) of the Corporations Act variations to the consolidated constitution dated 1 July 2011 were approved by special resolution (**investor approved constitutional variations**).
- B. ASIC altered its record with respect to the responsible entity of the fund from the original manager to Primary on 29 January 2019 and as from that date Primary is the responsible entity and manager of the fund.
- C. Pursuant to clause 2.1 of this document, the manager determines the name of the fund and can change it from time to time.
- D. Pursuant to clause 2.2 if the original manager stops being the manager, the new manager must change the name to a name without any material association with the original manager.
- E. Primary has determined to change the name of the fund to the “Agati Fund”.
- F. Pursuant to 601GC(1)(b) of the **Corporations Act** Primary has included additional definitions in this document and reasonably considers the changes effected by the inclusion of the definitions will not adversely affect investors’ rights.
- G. This document, as amended by the first, second, third, fourth supplemental deeds and the investor approved constitutional variations and other variations set out in this document:
- (1) governs the Agati Fund (formerly Aurora Absolute Return Fund); and
 - (2) is made with the intent that the investors shall be bound by this document including the investor approved constitutional variations; and
 - (3) takes effect upon lodgement with **ASIC**.

Operative provisions

1 How to interpret this document

- 1.1 Clause 23 contains definitions and interpretive provisions.
- 1.2 When a defined term is first used, it is in **bold**. Thereafter, the term is not in bold. Look to clause 23 for its meaning.

2 What the fund is called

- 2.1 The manager determines the name of the fund and can change it from time to time.
- 2.2 If the manager stops being the manager, the new manager must change the name to a name without any material association with the manager or (if the investment manager asks) the investment manager, or their associates or businesses.

3 When the fund starts and ends

- 3.1 The manager declares that it holds the assets on trust for investors. The assets vest in the manager.
- 3.2 The fund starts when the manager's nominee gives the manager \$100 for **units**. The manager must issue 10 units in return.
- 3.3 The fund terminates on the first of:
 - (a) the date the manager tells investors it terminates or
 - (b) any date the law requires.
- 3.4 The fund may otherwise be terminated if there are changes in the market such that the manager believes that the fund will be unable to achieve its investment objectives as set out in the product disclosure statement.
- 3.5 No units may be issued or redeemed after the 80th anniversary of the day the fund commenced if that issue or redemption would cause a contravention of the rule against perpetuities (if there is one) or any other rule of law or equity.
- 3.6 Following termination, the manager must realise the assets (this is called winding up). See clause 20 for the detail.

4 Investors

Nature of investor's interests

- 4.1 An investor does not have any interest in a particular asset, subject to the rights and obligations attaching to any class, only a beneficial interest in the assets as a whole. It follows that an investor:

- (a) must not interfere with any rights or powers of the manager
 - (b) must not even try to exercise a right in respect of, or lodge notice (for example a caveat) affecting, an asset, or otherwise even try to claim any interest in an asset, other than as this document contemplates; and
 - (c) cannot require an asset to be transferred to them.
- 4.2 Unless listing rules require, or subject to the listing rules the manager otherwise requires, investors registered jointly as investors are joint tenants, not tenants in common.

Classes¹

- 4.3 The manager may issue classes of units with such rights and obligations as it determines (for example, subject to the Corporations Act and the listing rules if appropriate, with such rights and obligations (for example, as to fee rebates, voting, transfer, distributions and rights on winding up) as are set out in a product disclosure statement).
- 4.4 The rights conferred on the holders of the units of any class will not, unless otherwise expressly provided by the terms of issue of the units of that class, be deemed to be varied by the creation or issue of further units ranking equally in respect of those rights.
- 4.5 The manager must enter the terms of any rights or obligations of a class in the register of investors.

Options

- 4.6 The manager may issue options over units on such terms as it determines (for example, subject to this document and to the Corporations Act, with an issue price, exercise price and rights and obligations (for example, as to fee rebates, voting, transfer, distributions and rights on winding up) as set out in a product disclosure statement).

Partly paid units

- 4.7 Subject to this document, the Corporations Act and the listing rules, the manager may determine (in such manner as it determines, for example by disclosure in any product disclosure statement) that any unit or class of units is to be partly paid.

Nature of units

- 4.8 The beneficial interest in the fund is divided into units. Subject to the rights and obligations attaching to any class, each unit confers an equal undivided interest.
- 4.9 Subject to the requirements of the listing rules², the manager may determine to:
- (a) consolidate all or any of the units into units of a larger amount;
 - (b) subdivide the units or any of them into units of a smaller amount; or
 - (c) cancel units which have been forfeited.

¹ See LR 6.1; LR 6.2; LR 6.4, LR 6.5; LR 6.6.

² See LR Chapter 7 – reorganisations of capital

- 4.10 The manager may issue fractions of a unit. Where there is an issue or redemption of units so that there is a fraction, the manager may round the fraction up or down to the nearest whole unit as it determines. As far as is practicable, but subject to the Corporations Act and the listing rules, this document applies to fractions in the proportion which the fraction bears to a unit.
- 4.11 Subject to the Corporations Act and the listing rules, the manager may reduce the capital of the fund in any manner, including by way of distributing specific assets, including financial products of the fund or of any other corporation, trust or entity.
- 4.12 The manager may, in accordance with the Corporations Act and the listing rules, buy back units on any terms and conditions determined by the manager. The consideration paid for a buy back of units may include specific assets, including financial products of the fund or of any other corporation, trust or entity.³ The manager may determine to buy back units in its capacity as responsible entity and, if it does so, notwithstanding any other provision or doctrine at law, may determine not to cancel, merge or extinguish any units it has bought back so that it may re-offer the units on the ASX.

Transfer of units

- 4.13 Subject to the Corporations Act, listing rules, ASTC settlement rules and the rights and obligations attaching to any class, investors may transfer units using any form acceptable to the manager.
- 4.14 While the fund is listed, investors may make transfers in any manner permitted by CHESS.
- 4.15 Transfers given to the manager for processing must be complete and properly stamped (if required) and comply with the Corporations Act and listing rules⁴.
- 4.16 Transfers are not effective until registered by the manager, or are dealt with as CHESS contemplates and the listing rules make such transfer effective.
- 4.17 Subject to the operation of CHESS and to the listing rules, the manager may refuse to register all or part of any transfer without giving reasons, but must tell the investor as the Corporations Act requires.
- 4.18 Subject to the listing rules, the manager may request a holding lock be applied to any units where:
- (a) the manager has a lien on the units the subject of the transfer;
 - (b) the manager is served with a court order that restricts an investor's capacity to transfer the unit;
 - (c) registration of the transfer may break an Australian law and the ASX has agreed in writing to the application of a holding lock (which must not breach the ASTC settlement rules) or that the manager may refuse to register a transfer;
 - (d) if the transfer is paper-based, either a law related to stamp duty prohibits the manager from registering it or the manager is otherwise allowed to refuse to register it under the listing rules;
 - (e) the transfer does not comply with the terms of any employee incentive scheme of the fund;

³ LR 7.36

⁴ See LR 8.10 and 8.14

- (f) if the transfer is paper-based, registration of the transfer will create a new holding which at the time the transfer is lodged is less than a marketable parcel as the listing rules define this term;
- (g) if the transfer is paper-based, registration of the transfer will create a new holding which at the time the transfer is lodged is less than a marketable parcel as the listing rules define this term;
- (h) the relevant investor has agreed in writing to the application of a holding lock (which must not breach the ASTC settlement rules) or that the manager may refuse to register a transfer; or
- (i) it is otherwise permitted under the listing rules, and the manager must do so if the listing rules require, but must tell the investor or the broker as the Corporations Act or listing rules require.⁵

Restricted Securities

- 4.19 An investor may not transfer *restricted securities* during any relevant escrow period.
- 4.20 While the fund is listed, the manager must comply in all respects with the requirements of the listing rules relating to restricted securities.
- 4.21 Notwithstanding any other provisions of this document:
 - (a) restricted securities cannot be *disposed* during the escrow period for those restricted securities, except as permitted by the listing rules or the ASX;
 - (b) the manager must refuse to acknowledge a disposal (including registering a transfer) of restricted securities during the escrow period for any restricted securities except as permitted by the listing rules or the ASX; and
 - (c) during a breach of the listing rules relating to restricted securities, or a breach of a restriction agreement, the holder of the restricted securities is not entitled to any distribution, or voting rights, in respect of the restricted securities.

Takeover bids

- 4.22 If offers for units are made under a proportional takeover bid in accordance with the Corporations Act, the provisions set out in Schedule 2 apply.

What if an investor dies or is subject to a legal disability?

- 4.23 If an investor dies or becomes subject to a legal disability (such as bankruptcy or insanity), only the survivor (where the deceased was a joint holder) or the legal personal representative (otherwise) need be recognised by the manager as having any claim to the investor's units.

5 Becoming an investor

Promoting the fund and application forms

- 5.1 The manager may promote the fund any way it wishes but any offer of units to retail

⁵ See LR 8.10

investors must comply with the Corporations Act (so a product disclosure statement is generally needed).

- 5.2 A person becomes an investor when their name is recorded as such by the manager or while the fund is listed in any way CHESS or the listing rules contemplate.
- 5.3 A person becomes an investor when their name is recorded as such by the manager or while the fund is listed in any way CHESS or the listing rules contemplate.
- 5.4 By becoming an investor, they are telling the manager they have read, understood and agree to any terms of issue (for example, in the current product disclosure statement and any supplementary product disclosure statement).
- 5.5 The manager determines the other procedures for becoming an investor and may change them from time to time (for example, by requiring completion of an application form or the giving of certain information or material). Such procedures do not need to be the same for all potential investors. If the fund is listed, they must however comply with the listing rules.
- 5.6 The manager may refuse to accept all or part of any application without giving reasons, but must tell the applicant⁶.
- 5.7 Unit certificates (either original or replacement) must be completed and delivered as and by the time the Corporations Act and the listing rules require.

Application money

- 5.8 Application money must be dealt with as the Corporations Act requires. The manager determines the other procedures for paying application money and may change them from time to time, for example by:
 - (a) requiring a bank cheque or funds transfer, or acceptable transfer of acceptable property, to accompany the application or be received by a particular time and
 - (b) setting a minimum application amount,and procedures do not need to be the same for all potential investors.
- 5.9 Application money must be held and, where relevant, returned as the Corporations Act and, if relevant, the listing rules require.
- 5.10 If a transfer of property, the manager can require some or all of the associated costs to be paid by the investor or can take these into account calculating the number of units to be issued.
- 5.11 A unit issue is void if the relevant application money is not received or transfer fails.

Cooling off

- 5.12 While the fund is not listed, retail investors have cooling off rights as the Corporation Act contemplates.

Issue price of units while fund is listed

- 5.13 Subject to clauses 5.13 and 5.20, while the fund is listed and not suspended, the manager

⁶ Refer LR 10.11 – restriction on issue of units to related price

may offer units for subscription at a subscription amount equal to:

(a) the greater of:

(i) *(net asset value + spread) / number of units on issue*; and

(ii) the *market price*;

or

(b) if the amount calculated in accordance with paragraph 5.13(a)(i) is equal to the market price – at the amount calculated in accordance with paragraph 5.13(a)(i).

5.14 While the fund is listed and not suspended, the manager may offer units for subscription in respect of :

(a) in place of a distribution and reinvestment; or

(b) any other proportionate offer to investors (including a rights issue),

at a subscription amount determined in accordance with the formula for the issue price in clause 5.18 provided that:

(i) the investor to whom the unit is issued is not the manager, nor an associate of the manager, unless such investor holds the relevant units in an eligible fiduciary capacity (as defined for the purposes of section 601GAA(12B) of the Corporations Act); and

(ii) the subscription amount is at least 80% of the market price.

5.15 The manager must not issue units (other than pursuant to clause 5.14) at any time that the market price is greater than the amount determined in accordance with paragraph 5.13(a).

5.16 The *initial issue price* of a unit is \$10.00 per unit (i.e. this is the initial issue price on T+0).

5.17 The initial issue price may be rounded up or down by up to 1% or 10 cents as the manager chooses.

Issue price of units when fund is not listed

5.18 While the fund is not listed and after the close of business of T+0, the issue price of a unit is:

$$\frac{\text{net asset value} + \text{spread}}{\text{number of units on issue}}$$

5.19 While the fund is not listed, the fund is forward priced ~ that is, subject to the rights and obligations attaching to any class, each of the variables in the formula in clause 5.18, must be calculated by the manager using the most recently available information as at the next time the fund is valued after the pricing cut off time. However, the time is adjusted where unit redemption is delayed for some reason ~ see clause 6.10.

5.20 While the fund is not listed, the issue price may be rounded up or down up to 1% or 1 cent as the manager chooses.

Minimum holding

- 5.21 If the fund is unlisted, the manager may set and, on notice to investors it considers reasonable, change a minimum unit holding. If the fund is listed, the minimum unit holding is a *marketable parcel* as required in the listing rules..

Small holdings⁷

- 5.22 The manager may sell or redeem an investor's *unmarketable parcel* at any time in such way and on such terms it determines, provided that it does so in accordance with the terms of this document and with the listing rules.

6 Exiting the fund

Procedures

- 6.1 Unless the fund is not liquid, the manager determines the procedures for investors exiting the fund (including by way of buy back of units under clause 4.12) and may change them from time to time, for example by:
- (a) requiring the investor to nominate an account for funds transfer and
 - (b) setting a minimum withdrawal amount,
- and procedures must treat investors of the same class equally and investors of different classes fairly.
- 6.2 The manager may pay cash or transfer assets or both. It can borrow to provide the cash.
- 6.3 If a transfer of assets, the manager can require some or all of the associated costs to be paid by the investor or can deduct them from the withdrawal amount, and the value of the relevant assets must have been calculated within one month before the date of the proposed transfer.

Request for redemption

- 6.4 An investor may ask to exit the fund any time, but there is no obligation for the manager to satisfy the request (if it does not, it must tell the investor).⁸
- 6.5 An investor may not withdraw a redemption request unless the manager agrees.

Compulsory redemption

- 6.6 The manager can determine to redeem units or options without a request in these six circumstances and if it does so, the exit price is the next calculated after it so determines:
- (a) if the investor has breached its obligations to the manager;
 - (b) to satisfy any amount of money due to it (as responsible entity or in any other capacity relevant to the fund) by the investor;

⁷ See LR 15.13

⁸ LR 1.1, condition 5

- (c) to satisfy any amount of money it (as responsible entity or in any other capacity relevant to the fund) owes someone else relating to the investor (for example, to the **tax** office);
- (d) if this document otherwise allows (for example, where a minimum holding is or will be breached or if the manager nominates a date under clause 3.3(a));
- (e) where the manager suspects that law prohibits the person from legally being an investor; or
- (f) the terms of issue contemplate.

Redemption

- 6.7 When the manager agrees that an investor can exit the fund, it redeems the investor's relevant units. Units can only be redeemed at the exit price. Subject to the Corporations Act and the listing rules if the listing rules apply, if the manager 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.
- 6.8 If the manager so agrees, it must redeem the investor's units as soon as is practicable given any hedging arrangements it has in place.
- 6.9 Except to the extent that cooling off rights might prohibit this, the manager can delay unit redemption (and must inform investors) for up to 56 days or such longer period as considered reasonable in the manager's view in all the circumstances if:
- (a) there is a circumstance outside its control which it considers impacts on its ability to properly or fairly calculate price, for so long as the circumstance continues (for example, if the assets or relevant currencies are subject to restrictions or if there is material market uncertainty);
 - (b) it has determined to honour redemption requests in relation to a particular time the fund is valued and the total redemption moneys which would be payable at this time represent more than 5% of the net asset value of the fund, and in this case the manager can redeem the units at such future time, or at times over such period, as it determines. Payments to each investor must be in the proportion that their redemption moneys bear to all other redemption moneys which were payable at that time; or
 - (c) the terms of issue contemplate.
- 6.10 If the manager delays unit redemption:
- (a) under clause 6.9(a), the exit price is the next calculated after the circumstances stop
 - (b) under clause 6.9(b), the exit price is the next calculated after the time or times it determines units will be redeemed;
 - (c) under clause 6.9(c), the exit price is calculated according to the terms of issue.
- 6.11 Any redemption payment or transfer must be made as soon as is practicable, and in any event within 60 days of receipt of request, after the redemption moneys or assets become available.
- 6.12 The manager is not obliged to pay any part of the exit price out of its own money.

Monies owed can be deducted

- 6.13 The manager may deduct from any money payable to an investor, or adjust the value of assets to be transferred, for:
- (a) any money due to it (as responsible entity or in any other capacity relevant to the fund) by the investor or
 - (b) any money it (as responsible entity or in any other capacity relevant to the fund) owes someone else relating to the investor (for example, to the tax office).
- 6.14 For any **partly paid units**, any amount not yet paid in relation to the unit (the **uncalled amount**) must be deducted from the exit price calculated below.

Exit price of units

- 6.15 Other than for cooling off, and subject to clauses 7.11 and 20.3 and the rights and obligations attaching to any class, the exit price of units is:

$$\frac{\text{net asset value} - \text{spread}}{\text{number of units on issue}}$$

but any exit price for an option holder is calculated according to its terms of issue.

- 6.16 For the price to use when an investor is cooling off (that is if cooling off rights apply), look to the Corporations Act (generally it is the issue price on the relevant day with certain adjustments and less any administration fees as contemplated by the Corporations Act and the terms of issue).
- 6.17 The fund is forward priced ~ that is, subject to the rights and obligations attaching to any class, each of the variables in the exit price formula must be calculated as at the next time the fund is valued after the pricing cut off time. However, the time is different where the fund is illiquid (see clause 6.1), for compulsory redemptions (see clause 6.6) for reinvestments (see clause 9.8), and for unsuccessful payments and transfers (see clause 10.4 and 9.9).
- 6.18 The exit price may be rounded up or down up to 1% or 10 cents as the manager chooses.

Where the fund is not liquid

- 6.19 If the fund is not liquid, the manager may make a withdrawal offer as the Corporations Act contemplates. Offers may be made any way the manager determines (for example, by e-mail or advertisement). Offers accepted by investors must be dealt with as the Corporations Act requires.
- 6.20 Exit price for a withdrawal offer is the next price calculated after the offer closes.

Consistency with the law

- 6.21 Any withdrawal must be consistent with Part 5C.6 of the Corporations Act and, where the listing rules apply, with the listing rules. This clause applies in spite of anything else in this constitution

Distributable income reduces exit price

- 6.22 The extent to which the whole or any part of an amount paid as an exit price represents a

distribution of distributable income for a distribution period to which the investor is presently entitled will be calculated by the manager. That amount will be that investor's income entitlement as a former investor in relation to the distribution period in which the redemption occurs.

- 6.23 In calculating the extent to which an amount paid as an exit price represents a distribution of distributable income for a distribution period for the purposes of clause 6.22, the manager must have regard to:
- (a) the amount and category of any distributable income attributable to that part of the distribution period ending on the redemption date;
 - (b) the amount and category of any distributable income attributable to the realisation of assets to satisfy the redemption request or the source of funds used to satisfy the redemption request; and
 - (c) the amount of any tax loss or category of distributable income that is attributable to that part of the distribution period ending on the redemption date.

7 Calls on partly paid units

Calls on partly paid units

- 7.1 The manager may give at least 14 days notice to investors holding similarly partly paid units requiring payment of some or all of the uncalled amount on those units. The manager may revoke or postpone a call.
- 7.2 The form of notice and the procedures for the call is for the manager but they must comply with the listing rules (for example a second notice may be needed and certain information may need to be given).
- 7.3 The non receipt of a notice or accidentally not sending some notices does not invalidate the call.

Unpaid calls

- 7.4 If a call is not paid when due, the manager will give the investor a notice requiring payment by a certain a date (at least 7 days in the future) of any part of the amount which is due for payment and not paid (**unpaid amount**) together with interest calculated below from the date the call was due if the manager requires this.
- 7.5 The interest rate is 5% above the 90 day bank bill rate offered by the bankers to the manager and is calculated on the daily balance unpaid and accrues daily from the date the call was due until full payment is received.
- 7.6 If the relevant notice is not complied with by the nominated date, the unit is forfeited to the manager to be held on trust for the investors, and the manager:
- (a) must as soon as practicable, subject to the Corporations Act (and the conditions of any applicable ASIC relief from it) and the listing rules⁹, offer to sell or dispose of the units of the defaulting investor in such manner as it determines and at such price as it determines

⁹ See LR 7.39

- (b) must use its best endeavours to sell the unit as soon as is practicable, and in any case to sell within 90 days of the default by the investor;
- (c) may execute a transfer of the relevant units in favour of the purchaser or its nominee, and register the purchaser or its nominee as the holder of the unit, and the investor irrevocably authorises the manager and appoints the manager as its attorney to do so; and
- (d) must apply the proceeds of the sale:
 - (i) to the payment of costs and expenses of the forfeiture and disposal;
 - (ii) then to unpaid interest under this document;
 - (iii) then to any unpaid amount; and
 - (iv) any balance is to be paid to the defaulting investor,
 within 5 **business days** of receipt by the manager of the proceed of sale.

7.7 Any forfeiture includes any distributions declared but not made and all future distributions.

Remaining liability

7.8 The investor whose unit was forfeited ceases to be an investor from the nominated date but remains liable to pay to the manager:

- (a) all unpaid amounts in respect of the forfeited units
- (b) the costs and expenses of the forfeiture and disposal and
- (c) interest on the unpaid calls at the rate determined above from the date of forfeiture,

but their liability in respect of these matters ceases if and when the manager receives payment in full of all amounts owing in respect of the units.

7.9 The purchaser of a forfeited unit remains liable to pay the amount equal to the uncalled amount (if any) on the unit in accordance with this constitution.

Cancelling forfeiture

7.10 Subject to the Corporations Act and the listing rules, the manager may cancel, sell or forfeit before the units are disposed of or forfeited and cancelled, on such terms as it determines.

Exit price of partly paid units

7.11 For so long as units are partly paid, the uncalled amount (including the unpaid amount, if any) must be deducted from the exit price calculated under clause 6.15.

8 Investments

8.1 The manager may invest in anything it chooses, including derivatives, subject to what it tells investors from time to time (for example, in the fund's product disclosure statement or by giving them reasonable notice that there is to be a material change in investment policy).

- 8.2 Valuations must be at least as frequent as the Corporations Act requires.
- 8.3 Unless the manager determines otherwise, or the Corporations Act requires otherwise, the value of an asset for the purpose of calculating the net asset value of the fund must be market value. If the manager values at other than market value, or where there is no market value, the valuation methods used by the manager must be capable of calculating an issue price and an exit price that is independently verifiable.
- 8.4 The assets must be clearly identified as property of the fund. Unless the ASIC has modified the Corporations Act (for example, by class order) and the conditions of relief are met, assets of the fund must be held separately from the manager's and any other managed investment scheme's assets.

9 **Income and distributions to investors**

10

Present entitlement to distributable income

- 9.1 An investor or former investor of the fund is presently entitled to the distributable income of the fund for a **financial year** in the proportion that the sum of the income entitlements for that investor or former investor for all distribution periods in that financial year bears to the sum of the income entitlements for all investors and former investors for all distribution periods in that financial year.

Income entitlement

- 9.2 Subject to the rights and obligations attaching to any particular unit, the income entitlement of an investor for a **distribution period** is calculated by the manager as follows:

- (a) in respect of a distribution period ending on any distribution calculation date other than the last day of a financial year, an amount calculated as follows:

$$A = \left| \frac{B \times D}{C} \right|$$

where:

- A is the income entitlement
- B is the number of units held by the investor at the end of the distribution period;
- C is the number of units held by all investors at the end of the distribution period and;
- D is the amount (if any) by which an estimate of the distributable income for the distribution period (calculated as if the distribution period were a year of income) exceeds the aggregate of any income entitlements of former investors for the distribution period; and
- (b) in respect of a distribution period ending on the last day of a financial year, an amount calculated as follows:

¹⁰ Refer to LR 3.20 (compliance with timetable and notification of record date to ASX), LR 6.10 (removing or changing Distribution rights); and LR 6.24 (Appendix 6A Timetables)

$$A = \left| \frac{B \times D}{C} \right|$$

where:

- A is the income entitlement;
- B is the number of units held by the investor at the end of the distribution period;
- C is the number of units held by all investors at the end of the distribution period;
- D is the amount (if any) by which the distributable income for the financial year exceeds the sum of:
 - (i) the aggregate of any income entitlements of former investors for the distribution period; and
 - (ii) the aggregate of the estimates of distributable income calculated for the purposes of variable D in paragraph (a) above in respect of the previous distribution periods of the financial year.

Satisfaction of present entitlements to distributable income

- 9.3 The present entitlement of an investor or former investor to distributable income of the fund for the financial year is satisfied by the distribution to the investor or former investor of the income entitlement of the investor in respect of the financial year.

Allocation of income entitlement

- 9.4 The manager must allocate and distribute or cause to be allocated and distributed to each investor and former investor the income entitlement (if any) of the investor or former investor for a distribution period within 60 days after the end of the period to which it relates.

Classification of distributable income

- 9.5 The manager must classify into categories all or any part of the distributable income and any items constituting or relating to the assets, and may account separately for each category, such categories may include the following without limitation:
- (a) amounts of income or ordinary income or statutory income (whether or not assessable or exempt income), and amounts deductible on income account, or amounts deductible as capital allowances or otherwise as capital expenditure;
 - (b) any capital gains, and capital losses or items otherwise deductible or dealt with on capital account;
 - (c) any distribution which is franked or unfranked for the purposes of the Tax Act and the amount of any franking credit;
 - (d) any tax offset, any refundable tax offset and/or refund of a tax offset; and
 - (e) any other items identified for the purposes of the Tax Act.

The manager may allocate to an investor all or part of the distributable income to which the investor is entitled from a particular category or source and the manager may advise the investor of the extent to which the amount allocated to the investor consists of an amount from a particular category or source.

The manager and each investor agree that any extra capital gain arising under section 115 - 215 of the Tax Act (or any replacement or other provision having the same effect as section 115 - 215 of the Tax Act) in respect of the income of the fund attributable to the fund's capital gains for an income year:

- (a) will arise only for those investors who have had allocated to them an amount of distributable income consisting of those capital gains; and
- (b) will not arise for those investors who have had allocated to them an amount of distributable income that does not consist of those capital gains.

Classification of items

- 9.6 The manager 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.

Other distributions

- 9.7 The manager may at any time distribute any amount of capital or income to investors pro rata according to the number of units held as at a time decided by the manager. The distribution may be in cash or by way of additional units.

Reinvestment

- 9.8 The manager may decide whether to permit or require the investor to reinvest some or all of any distribution to acquire additional units, in accordance with this document. If the manager decides to permit or require reinvestment, it must notify investors of the procedure for reinvestment and any change in the procedure.

Unless otherwise determined by the manager, if reinvestment applies in respect of an investor's income entitlement for a distribution period, the manager is deemed to have received and accepted an application for units under clause 5 immediately following the end of the relevant distribution period having an aggregate subscription amount equal to the income entitlement for that distribution period to which reinvestment applies.

Transfer of Units

- 9.9 Income to which an investor is presently entitled but which has not yet been paid when a transfer or transmission of units is registered remains credited to the transferor.

Accounting principles and standards

- 9.10 The manager (without being obliged to do so) need only apply generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005 in carrying out any calculation or making any determination in respect of the fund. The preparation of the accounts on any particular basis is independent of and does not affect a determination of the method for calculating distributable income of the fund.

Financial year

- 9.11 The definition of financial year in this document does not constitute a determination of the financial year of the fund under section 323D of the Corporations Act.

Tax

- 9.12 The manager may take any action that it considers is necessary (including without limitation by distributing or applying capital to or for the benefit of investors) to ensure to the greatest extent possible that any assessment of tax under the Tax Act in respect of the tax net income for a distribution period is borne by the investors in proportions that correspond with the shares of distributable income to which they are presently entitled, and that the manager incurs no liability to pay tax under the Tax Act as manager of the fund.

Excess Distribution

- 9.13 If the manager determines that the total amount of the distributions actually made to investors during or with respect to a distribution period exceeds the distributable income for the distribution period, the manager may treat the excess as a distribution of capital.

10 Payments from the fund

- 10.1 The manager determines the procedures for payments to investors (for example it can pay by cheque or electronic payment) and may change them from time to time.
- 10.2 Only whole cents need be paid ~ any balance becomes an asset.
- 10.3 Payment to any one of joint investors discharges the manager from the obligation to pay.
- 10.4 Unsuccessful payments can be reinvested. Units issued for reinvested payments are priced using the issue price next calculated.
- 10.5 The manager may deduct from any amount to be paid to a person who is or has been an investor, or received from a person who is or has been an investor:
- (a) any amount of tax (or an estimate of it);
 - (b) any other amount owed by the investor to the manager or any other person; or
 - (c) any amount of anticipated tax which the investor is or is expected to be primarily liable to pay,

which the manager is required or authorised to deduct by law, by this document, the Corporations Act or the listing rules or which the manager considers should be deducted.

11 Registers, records, audit and confirmations

- 11.1 The manager must keep the registers, books and records which the Corporations Act and the listing rules require (for example, to prepare financial statements).
- 11.2 For each financial year, and if the Corporations Act requires (for example, for disclosing entities) for each half year, the manager must prepare financial statements for the fund as the Corporations Act requires.
- 11.3 The manager must appoint an auditor for the fund to perform such roles as the Corporations Act requires (for example, to prepare a report on the financial statements and the compliance plan).
- 11.4 The manager must give investors financial statements and relevant reports on them, transaction confirmations and certificates, as the Corporations Act and the listing rules require.

12 Meetings

- 12.1 The manager may at any time convene a meeting of investors or investors of a class to consider any matter, including resolutions. It must convene a meeting if requisitioned or otherwise required to do so as the Corporations Act contemplates.

Notice¹¹

- 12.2 A meeting of investors or a class must be convened by notice sent to every investor entitled to attend and vote at the meeting as well as to other persons the Corporations Act and the listing rules¹² require.
- 12.3 Subject to the Corporations Act and the listing rules, the form of the notice, the time and place of the meeting and the manner in which the meeting will be conducted (for example, the order of business and proxy mechanics) is determined by the manager¹³.
- 12.4 For meetings, the manager must give at least the notice period which the Corporations Act requires for the business at that meeting.

Quorum

- 12.5 The quorum for a meeting of investors or a class is a least 2 investors or investors of the class present in person or by proxy together holding at least 10% of all units or units of that class, unless:
- (a) the fund or class has only 1 investor who may vote on a resolution, in which case that 1 investor constitutes a quorum; or
 - (b) there is any proposal to remove the manager and the fund is not listed, then the quorum is at least 2 investors present in person or by proxy together holding at least 50% of all units.
- 12.6 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- (a) dissolved if it was to consider any proposal to remove the manager; or
 - (b) adjourned to such place and time as the manager decides.
- 12.7 At any adjourned meeting, those investors or investors of the class present in person or by proxy constitute a quorum.

Other matters

- 12.8 The manager may appoint a person to chair a meeting of investors. A poll cannot be called by investors on the issue of appointment of the chair unless the manager agrees.
- 12.9 The decision of the chair on any matter relating to the conduct of the meeting (such as who can address the meeting) is final.

¹¹ While the fund is listed, notices to unitholders must be copied to ASX LR 3.17

¹² LR 6.7

¹³ See LR 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11, 10.14 and LR 14.2

- 12.10 The chair has power to adjourn a meeting for any reason to such place and time as the chair thinks fit. A poll cannot be called by investors on the issue of adjournment unless the manager agrees.
- 12.11 A resolution binds all investors or investors of a class, whether or not they were present at the meeting.

Voting

- 12.12 Voting is by a show of hands, unless a poll is demanded.
- 12.13 Who can demand a poll, and when, is governed by the Corporations Act.
- 12.14 The value of a vote (on a show of hands or a poll) is governed by the Corporations Act.
- 12.15 The chair of the meeting has no casting vote.
- 12.16 The Corporations Act governs the number or, on a poll the value, of votes required to pass a resolution.

Voting for an investor

- 12.17 An investor which is not a body corporate may be represented at a meeting by proxy. Proxies are governed by the Corporations Act except that proxies may be accepted up to the start of the relevant business being considered, whether at the meeting or any adjournment.
- 12.18 A body corporate may be represented at a meeting by a person appointed in the manner provided in the Corporations Act.

Procedural irregularities

- 12.19 A meeting of investors or class of investors, any notice of meeting or any proceeding at a meeting is not invalidated because of the accidental omission to give notice of the meeting or the non-receipt of the notice or because of any procedural irregularity (including as defined by section 1322 of the Corporations Act)

Minutes

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

Non-physical meetings

- 12.21 Subject to the Corporations Act, the manager may hold meetings any way it determines (for example, phone hook-up, video conference, electronic voting, circular resolution or the necessary investors agreeing in writing (this includes e-mail and fax)).

13 Communications

- 13.1 Formal communications between investors and the manager (and the other way) must be in writing (subject to the Corporations Act and the listing rules, this includes email and fax).¹⁴

¹⁴ LR 15.10

- 13.2 Communications to an investor must be sent to the investor at the investor's physical or electronic address (cheques may be given to the investor anyone the manager does not doubt to be authorised by the investor or sent to the investor's physical address).
- 13.3 Communications to the manager must be sent to the manager at the last advised physical or (if the manager allows) electronic address.
- 13.4 For joint investors, the address is that of the investor first named in the register.
- 13.5 Communications: delivered are taken to be received when delivered; by post, are taken to be received the next business day; by fax, are taken to be received 1 hour after receipt by the sender of confirmation of successful transmission; and by e-mail, are taken to be delivered 1 hour after sending provided that the sender does not doubt successful receipt. Proof of actual receipt is not required.
- 13.6 Communications to the manager must carry the actual, facsimile or electronic signature of the investor or someone they authorize, unless the manager does away with this requirement. The manager can rely on signatures without enquiry if it has no reason to doubt authenticity or genuineness.
- 13.7 Subject to the Corporations Act and the listing rules, a document may be sent to an investor electronically, or in place of sending it, an electronic link to it may be sent.

14 What the manager can do

General powers

- 14.1 The manager has all the powers in respect of the fund that are possible to confer on a responsible entity under the law and as though it was the absolute owner of the assets acting in its personal capacity.
- 14.2 Without limiting this, the manager can borrow or obtain financial accommodation (whether or not on security and including investing in derivatives or financial products with internal leveraging) and incur obligations and liabilities (including giving guarantees), and may invest in, dispose of or otherwise deal with assets and liabilities.
- 14.3 The manager may decide how and when to exercise its powers in its absolute discretion.

Delegates

- 14.4 The manager may authorise any person (including associates) to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to do anything in the manager's power (including to appoint its own agent or delegate).
- 14.5 The terms of appointment are for the manager to determine except to the extent the Corporations Act (typically the related party provisions and the manager's licence) governs these.

Listing of the fund

- 14.6 Without limiting clause 14.1, the manager may in its capacity as responsible entity of the fund apply for the fund to be listed and units to be *quoted* at any time as determined by the manager and for this purpose the manager is authorised on its own behalf and on behalf of each investor to do all things necessary to effect a listing.

Investor Committee

- 14.7 The manager shall form a committee of such investors or their representatives or advisors as the manager may select (**investor committee**) with whom the manager shall consult in relation to:
- (a) fees and costs of the manager;
 - (b) investigations;
 - (c) conclusions and recommendations resulting from the investigations;
 - (d) the implementation of any recommendations;
 - (e) any litigation or negotiations relating to the fund.

Powers in relation to legal proceedings

- 14.8 The manager may on behalf of the fund, commence, prosecute, conduct, continue, carry on, defend, participate in, intervene in and settle (on such terms as the manager thinks fit) any legal proceedings relating to the fund, provided that the manager is at all times kept wholly indemnified out of the assets of the fund for all their costs and expenses of such legal proceedings.

15 Fees and expenses

Fees

- 15.1 The manager is entitled to receive in respect of each application it accepts a contribution or other fee of up to 4% (excluding GST) of the application money. It can keep this or pay it to anyone it wishes (including paying it back to the investor in cash or in units or to their adviser or any other person).
- 15.2 The manager is entitled to receive a management fee of the higher of up to 3% per annum (excluding GST) of the total asset value (i.e. gross value) or 6% per annum (excluding GST) on Net Asset Value, calculated and accrued daily and payable monthly in arrears.
- 15.3 The manager is entitled to receive a performance fee of up to 20% (excluding GST) of the **total unit return** above an indicator as determined by the manager from time to time of the fund over each financial year. The total unit return will be calculated monthly as the per unit increase in the net asset value of the units plus the value of any distributions (paid and payable), grossed up to include any tax benefits, divided by the net asset value per unit price at the start of the month adjusted for any corporate actions. The performance fee is calculated and payable in accordance with the offer document. The performance fee, plus any reduced input tax credits relating to this fee, will be paid as soon as possible after the end of the relevant performance fee period or on their placement of the manager or investment manager.
- 15.4 The manager is entitled to charge such other reasonable fees as the terms of issue contemplate for issuing a bank cheque, for drawing cheques (such as a third party cheque or foreign cheque), telegraphic transfers or providing a copy of this document to an investor.
- 15.5 The manager may accept lower fees than it is entitled to receive under this document or may defer payment: for any period; generally; for an investor; or for any type of class of investor. It can take interest on deferred fees at the rate the banker to the fund pays on the fund's deposits plus 5%. Where payment is deferred, then as relevant the fee accrues daily until paid.
- 15.6 The manager may issue units to itself instead of receiving payment in cash in respect of any fee to which it is entitled under this clause 15. Units must be issued at the issue price calculated in

accordance with clause 5 (as appropriate) and determined as at the next time the fund is valued after the relevant fee becomes payable.

Fees and expenses resulting from change of manager

- 15.6A If the manager is Primary Securities Ltd ABN 96 089 812 635, the manager may be paid reasonable fees (whether time-charged or otherwise) and be reimbursed for any expenses out of the assets of the fund including fees and expenses in relation to:
- (a) due diligence and inquiries in relation to the fund and its investments (and investment of investors) including any due diligence and inquiries undertaken before its appointment;
 - (b) any claims or litigation including the commencement, defence, prosecution, continuation, carrying on, conduct of, participation in and settlement of any legal proceedings relating to the fund;
 - (c) transitioning to the role of manager for the fund whether those fees and expenses were incurred before or after the manager's appointment to that role;
 - (d) convening and holding any meetings of investors and giving effect to any resolutions passed at such a meeting, including any such fees and expenses that were incurred before the manager's appointment to that role;
 - (e) establishing a committee of investors, holding meetings of that committee and meeting the reasonable out-of-pocket expenses incurred by any member of that committee in the course of fulfilling the role of committee member;
 - (f) taking out and maintaining professional indemnity insurance cover in respect of the fund;

Compliance committee

- 15.7 The manager must appoint a compliance committee for the fund if the Corporations Act requires.
- 15.8 If any member of the compliance committee incurs a liability in that capacity in good faith, then if the manager permits, they are entitled to be indemnified out of the assets for that liability to the extent permitted by the Corporations Act.

Expenses

- 15.9 All expenses incurred by the manager in relation to the proper performance of its duties in respect of the fund are payable or reimbursable out of the assets. This includes (but is not limited to) fund and manager establishment, promotion (including product disclosure statements, advertising and promotional material and printing), licensing, custodian, registry, insurance, listing, audit, taxation advice, external consultants, accounts, stationary, postage, hedging costs and termination costs as well as compliance and compliance committee costs, unit holder meetings, legal proceedings and such other expenses as the terms of issue contemplate from time to time.

Amendment

- 15.10 The manager may from time to time change any fee by notice to the relevant investors and as necessary disclosing it in any product disclosure statement or supplementary product disclosure statement.

Corporations Act

- 15.11 So long as the Corporations Act requires, the manager's rights to fees and to expense reimbursements are only available in the proper performance of its duties.

16 GST

- 16.1 Supplies under or in connection with this document (including the supply of any goods, services, rights, benefits or things) do not include any amount referable to GST.
- 16.2 If the manager is or becomes liable to pay GST in respect of any supply, then (in addition to any other fee, other amount or consideration payable to the manager in respect of the supply), the manager is entitled to be paid an additional amount on account of GST.
- 16.3 The amount is calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST.
- 16.4 The manager is entitled to be reimbursed or indemnified for such amount of GST out of the assets.

17 Liability of the manager

Limitation

- 17.1 Subject always to any liability which the Corporations Act might impose on the manager, if the manager acts in good faith and without gross negligence it is not liable in equity, contract, tort or otherwise to investors for any loss suffered in any way relating to the fund.
- 17.2 Subject always to any liability which the Corporations Act might impose on the manager, the liability of the manager to any person other than an investor in respect of the fund is limited to the manager's actual indemnification from the assets for that liability.

Indemnities

- 17.3 The manager is entitled to be indemnified out of the assets for any liability properly incurred by it in relation to the fund (including any liability incurred because of a delegate or agent).
- 17.4 This indemnity is in addition to any indemnity under law. It continues to apply after the manager retires or is removed as responsible entity.
- 17.5 So long as the Corporations Act requires, the manager's rights to indemnification are available only in respect of the proper performance of its duties.

Holding units

- 17.6 The manager and its associates may hold units in any capacity.

Other capacities¹⁵

Subject to the Corporations Act, the manager may:

- (a) deal with itself (as responsible entity of the fund or in any other capacity), any associate or any investor;

¹⁵ LR 10.1

- (b) be interested in any contract or transaction with itself (as responsible entity of the fund or in any other capacity), any associate or investor; and
- (c) act in the same or a similar capacity in relation to any other trust or managed investment scheme,

and retain any benefit or benefits from doing so.

Manager may rely

- 17.8 The manager may take and may act (or not act as relevant) on any advice, information and documents which the manager has no reason to doubt as to authenticity, accuracy or genuineness, and subject always to any liability which the Corporations Act might impose on the manager, is not liable for so acting or not acting on such basis.

Limit on duties

- 17.9 Subject always to any liability which the Corporations Act might impose on the manager, all obligations of the manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law.

18 Change of manager¹⁶

- 18.1 The manager may retire in the way the Corporations Act contemplates. The manager must retire when required by the Corporations Act. Investors have no right to remove the manager other than the right granted by the Corporations Act.
- 18.2 When the manager changes, the investors may choose a replacement as the Corporations Act contemplates.
- 18.3 Any proposed replacement must agree to be bound by this document as if it had originally been a party.
- 18.4 From the time of the retirement or removal of the former responsible entity, the former responsible entity must, at its own expense:
- (a) give to the incoming responsible entity all books, records, documents and other items pertaining to the fund;
 - (b) do all things necessary to transfer the legal title in the assets to the incoming responsible entity, and
 - (c) comply with all written requests by the incoming responsible entity, for reasonable assistance to bring about a full, complete and plenary transition to that role.

19 Liability of investors

- 19.1 Subject to this document, an investor's liability is limited to the amount (if any) which remains unpaid for their units.
- 19.2 An investor need not indemnify the manager if there are not enough assets to meet the claim of any creditor of the manager. In the absence of separate agreement with an investor, the recourse

¹⁶ LR 3.16.2(a)

of the manager and any creditor is limited to the assets.

- 19.3 Joint investors and former joint investors are jointly and severally liable in respect of all payments required to be made by or for an investor or former investor.
- 19.4 Each investor indemnifies the manager for all liability incurred by the manager arising directly or indirectly from the investor's breach of its obligations to the manager.

20 Winding up

- 20.1 This clause applies once the fund has terminated.
- 20.2 Unless it decides to distribute some or all assets to investors, the manager must dispose of them.
- 20.3 After paying or making allowance for all actual and anticipated liabilities, subject to the rights and obligations attaching to any class, the net proceeds (or assets equal to their value) must be distributed pro rata to investors according to the number of units they held at termination. The manager may deduct relevant moneys under clauses 6.13 and 6.14. A partly paid unit must be counted as a fraction of a unit of which the numerator is the amount paid up in respect of the unit and of which the denominator is the total issue price for that unit as determined in accordance with clauses 5.13 to 5.20 (as appropriate), rounded on such basis as the manager determines.
- 20.4 Assets (rather than cash) can be distributed to some investors or class of investors and not others. Costs related to this are payable from the money payable to the investor unless the manager determines otherwise.
- 20.5 The manager may distribute proceeds of realisation in instalments.
- 20.6 Winding up must be completed as soon as is practicable.
- 20.7 Any obligation to redeem units ceases on termination. The manager may not exercise any discretion to redeem during winding up.
- 20.8 To assist the manager to wind up the fund, the following clauses survive termination: 4.13, 6.3, 8, 10-17 and 19-23.
- 20.9 If and to the extent that the ASIC's policy so requires, the manager must arrange for independent review or audit of the final accounts of the fund by an auditor.
- 20.10 Winding up must be consistent with Part 5C.9 of the Corporations Act and, where the listing rules apply, the listing rules. This clause applies despite anything else in this constitution.
- 20.11 Amounts received under clause 9 as distributable income are not received in respect of the winding up of the fund under this clause 20, even if it occurs at the same time.

21 Amendments to this document

- 21.1 The manager may amend this document by supplemental deed.
- 21.2 When amendments take effect is governed by the Corporations Act.
- 21.3 Approval of investors to any amendment under clause 21.1 or deeming under clause 21.4 is needed if the Corporations Act requires.

- 21.4 If:
- (a) the Corporations Act requires; or
 - (b) the manager considers that any relief from the Corporations Act made available by the ASIC a condition of which is that this document contain certain provisions should be complied with; or the listing rules require,

then those provisions are deemed to be incorporated as so required or for so long as the manager has that view and, to the extent of any inconsistency, prevail over any other provision of this document.

22 Complaints

- 22.1 The manager must establish and maintain a procedure for dealing with complaints by an investor in relation to the fund which satisfies the requirements (if any) of the Corporations Act and listing rules from time to time.

Timing

- 22.2 If an investor submits a complaint to the manager relating to the fund (this date is C+O), the manager must:
- (a) if the complaint is in writing, acknowledge it as soon as practicable and, in any event, by C+14;
 - (b) if the complaint is made verbally, acknowledge the complaint verbally at the time the complaint is made (i.e. C+0);
 - (c) properly consider the complaint, whether written or verbal, as soon as practicable; and
 - (d) notify the complainant (either in writing or orally, with confirmation in writing) by C+45 progress and alternative avenues they can pursue (such as external resolution).

Handling of Complaints

- 22.3 The manager must use reasonable endeavours to deal with a complaint by an investor in accordance with this clause, the Corporations Act, and listing rules.
- 22.4 The manager must inform the complainant by notice in writing of:
- (a) its decision in relation to the complaint, and reasons thereof;
 - (b) the remedies available to the complainant in relation to the complaint (for example by way of compensation, or apology, etc); and
 - (c) any avenues of appeal (internal and/or external) that may be available to the complainant if the complainant is dissatisfied with the decision.

Assistance and Information

- 22.5 The manager must provide an investor with all reasonable information that the investor may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the manager.

- 22.6 An investor lodging a complaint in relation to the fund must provide the manager with all information the manager may require in order to properly deal with and resolve the complaint.

23 Interpretation of this document

Definitions

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

adviser includes any adviser, consultant or expert including any barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, investment manager, broker, and any other person appointed by the manager to provide advice in relation to the fund.

assets: means all the property, rights and income of the fund, but not application money or property in respect of which units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in any distribution account.

ASIC means the Australian Securities and Investments Commission established under the *Australian Securities and Investments Commission Act, 2001*, or any delegate thereof.

ASTC has the meaning given to it in the listing rules.

ASTC settlement rules means the settlement rules of the ASTC from time to time.

ASX means the ASX Limited or such other exchange on which units are quoted.

business day: a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney.

CHESS means Clearing House Electronic Subregister System established and operated in accordance with the ASTC settlement rules.

class means a class of units of the fund created under clause 4.3.

Corporations Act: means the *Corporations Act 2001 (Cth)* as amended from time to time.

disposed has the same meaning as in the listing rules.

distributable income unless the manager determines otherwise prior to the end of the distribution period, means the aggregate of:

- (a) the income and gains of the fund determined in accordance with applicable accounting principles and standards;
- (b) an additional amount which, if distributed in cash to investors for the period, would prevent the manager being liable to tax on the income of the fund under section 99 or section 99A of the Tax Act for the financial year as if the period is a year of income; and
- (c) any additional amount whether income or capital which the manager determines prior to the end of the distribution period is appropriate for distribution for the period.

distribution calculation date means the last day of each financial year and such other days as the manager determines.

distribution period means:

- + for the first distribution period, the period from the establishment of the fund to the next distribution calculation date;
- + for the last distribution period, the period from the day after the preceding distribution calculation date to the date of distribution on winding up of the fund; and
- + in all other circumstances, the period from the day after the preceding distribution calculation date to the next occurring distribution calculation date.

excluded trades means any transaction that is a special crossing (as defined in the ASX Market Operating Rules), any crossings prior to the commencement of normal trading or during the closing phase or after hours adjust phase on the ASX, or any overseas trades or trades under the exercise of any options, any overnight crossings or any other trade considered by the manager not to be reflective of normal supply and demand.

exempt income: has the meaning in the Tax Act.

exit price: means the price at which units are redeemed in accordance with clause 6.

financial year means:

- + for the first financial year, the period from the establishment of the fund to the next 30 June;
- + for the last financial year, the period from 1 July before the date the fund terminates to the date of distribution on winding up of the fund; and
- + in all other circumstances, the 12 month period ending on 30 June in each year.

former investor in respect of a distribution period, means a person who was registered as the holder of a unit at any time during the distribution period, but who is not registered as the holder of the unit at the end of the last day of the distribution period.

former responsible entity means Aurora Funds Management Limited ABN 69 092 626 885;

fund: means the fund established by this document.

GST: means a goods and services tax, value added tax or consumption tax.

holding lock has the same meaning given to in the listing rules.

income entitlement means an entitlement to the distributable income of an investor or former investor in respect of a unit calculated in accordance with clause 6 and 9.

incoming responsible entity means such responsible entity (including any temporary responsible entity) which replaces the former responsible entity;

initial issue price means the price of the first tranche of units to be issued to an investor calculated in accordance with clause 5.16.

investor means the person registered as the holder of a unit (including persons jointly registered).

investor committee means the committee formed pursuant to clause 14.7.

liabilities means all present liabilities of the fund including any provision which the manager decides should be taken into account in determining the liabilities of the fund (for example, unpaid performance fees), but does not include:

- (a) any amount representing investors' capital;
- (b) undistributed profits;
- (c) interest attributable to investors accruing on investors' capital;
- (d) capital reserves; or
- (e) any other amount representing the value of rights attaching to units, whether or not redeemable; regardless of whether characterised as equity or debt in the accounts of the fund.

listed means admission to the official list in accordance with the listing rules.

listing rule means the listing rule of the ASX and any rules of ASX which are applicable while the entity is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

manager after registration of the fund under the Corporations Act means Aurora Funds Management Limited (ABN 69 092 626 885), or such other entity entered on the ASIC's register as the responsible entity.

market price, on a particular day, means in relation to units

- (a) subject to paragraph (b) of this definition, the volume weighted average traded price per unit of all units traded on ASX for each day during the relevant *reference period* (whether or not a sale was recorded on any particular day) provided that:
 - (i) if the unit to be issued will be issued ex-distribution and the volume weighted average traded price for a unit is cum-distribution, the market price will be reduced by the amount of that distribution (with corresponding adjustments made to the extent that some but not all sales included in the volume weighted average traded price were for units cum-distribution); and
 - (ii) the manager may omit some or all of the excluded trades on any day during the reference period from the calculation of market price.
- (b) If an adviser who is qualified to determine and has relevant experience in determining a fair price for the issue of securities in circumstances similar to those in which the determination of the price of the unit is being made:
 - (i) determines an alternative price is a more appropriate measure of the market price on the relevant day than the price determined in accordance with paragraph (a) of this definition;
 - (ii) certifies the alternative price in writing to the manager; and
 - (iii) confirms to the manager that, in determining that the alternative price is a fair issue price for the issue of the unit, the adviser has had regard to:
 - (A) the nature and size of the issue;
 - (B) the circumstances of the issue; and

- (C) the interests of investors generally including, where relevant, balancing the dilutionary effect of the issue against the benefits of receiving the issue price; and confirms that the valuation methods and policies applied by the adviser results in an issue price the calculation of which is independently verifiable

then that the manager may determine that such alternative price is the market price.

marketable parcel means a parcel size that complies with ASX Listing Rules.

net asset value means the value of the assets less the liabilities.

non-assessable non-exempt income has the meaning in the Tax Act.

notional amounts means those amounts such as foreign tax credits and franking credits which give rise to assessable income but do not result in the receipt of any cash or property.

original manager means Aurora Funds Management Limited (ABN 69 092 626 885).

partly paid units means a unit in respect of which a portion of its issue price remains unpaid.

placement resolution means a special resolution where:

- (a) votes are only cast in respect of interests (the "eligible interests");
- (b) that are held by an investor who will not acquire any of the interests that are to be issued; or
- (c) that are held by an investor for the benefit of another person who will not obtain any beneficial ownership of any of the interests that are to be issued; and
- (d) the value of the eligible interests held by the investors who vote represents at least 25% of the total value of eligible interests.

pricing cut off time means the time or times the manager determines that applications or redemption requests for investors or any group or class of investors must be received to obtain a unit price calculated at a particular time.

Primary means Primary Securities Ltd ABN 96 089 812 635 and holder of Australian Financial Services Licence No. 224107.

product disclosure statement means a document complying with Part 7.9 of the Corporations Act or any other unregulated offer document issued by the responsible entity with respect to the fund from time to time, including any supplementary product disclosure statement. Where the fund is made available to investors in New Zealand, the product disclosure statement includes a reference to an investment statement, or other offer statements, which complies with New Zealand laws.

quoted means officially quoted on an exchange.

reference period means the period:

- + commencing on a trading day;
- + continuing for such number of trading days; and

+ ending on a trading day,

each as determined by the manager (where 'trading day' has the meaning given for purposes of the ASX Market Operating Rules).

+ **spread** means when calculating the issue price of a unit, the manager's estimate of the total cost of acquiring the assets (including costs associated with brokerage, stamp duty or other costs); and

+ when calculating the exit price of a unit, the manager's estimate of the total cost of selling the assets (including costs associated with brokerage, stamp duty or other costs),

but, subject to the Corporations Act, the manager may (for a particular application or request for redemption or group or generally) deem these to be less.

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

Tax Act: means the *Income Tax Assessment Act 1997* or *Income Tax Assessment Act 1936* or both, as the context requires.

tax net income in relation to a financial year, the net income of the fund determined pursuant to the provisions of the Tax Act in relation to an income year corresponding with that financial year.

tax loss a "tax loss" as defined in section 272-140 of Schedule 2F to the 1936 Act and/or a "capital loss", "net capital loss" or "unapplied net capital loss" as defined in Division 100 of the 1997 Act.

time the fund is valued means a time at which the manager calculates the net asset value of the fund.

total unit return has the meaning given to it in clause 15.3.

uncalled amount has the meaning given to it in clause 6.14.

unpaid amount has the meaning given to it in clause 7.4.

unit means an undivided share in the beneficial interest in the fund as provided in this document and, subject to this document, where the Corporations Act or the rights attaching to options or class require, includes a reference to options and classes.

unmarketable parcel means a number of units which is less than a marketable parcel.

Interpretation

23.2 Unless the contrary intention applies, in this document:

- (a) terms defined in the Corporations Act are used with their defined meaning
- (b) a reference to this document or another instrument includes any variation or replacement of any of them
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them

- (d) the singular includes the plural and vice versa
- (e) person includes a firm, a body corporate, an unincorporated association or an authority
- (f) amend includes delete or replace
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, any persons taking by novation) and assigns
- (h) the words "**including**" or "**includes**", "**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
- (i) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it
- (j) a reference to a year (other than a financial year) means a calendar year and
- (k) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

Investor information

- 23.3 Investors must give all information that the manager reasonably requests to perform its functions.

Rounding

- 23.4 Any excess application or other money or property which results from rounding becomes an asset of the fund.

Headings

- 23.5 Headings are for convenience, not for interpretation.

Governing law

- 23.6 This document must be interpreted in accordance with New South Wales laws. The parties submit to the non-exclusive jurisdiction of the courts there.

Severability

- 23.7 If the whole or any part of any part of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction.
- 23.8 The remainder of this document has full force and effect and its validity or enforceability in any other jurisdiction is not affected.
- 23.9 This clause has no effect if the severance alters the basic nature of the fund or is contrary to public policy.

Other documents

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

Constitution legally binding

- 23.11 This document binds the manager and each present and future investor 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 document.

Listing rules

- 23.12 In this document, a reference to the listing rules has effect only while the fund is admitted to the official list.
- 23.13 If the fund is admitted to the official list, the following clauses apply¹⁷:
- (a) notwithstanding anything contained in this document, if the listing rules prohibit an act being done, the act shall not be done;
 - (b) nothing contained in this document prevents an act being done that the listing rules requires 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 document to contain a provision and it does not contain such a provision, this document is deemed to contain that provision;
 - (e) if the listing rules requires this document not to contain a provision and it contains such a provision, this document is deemed not to contain that provision; and
 - (f) if any provision of this document is or becomes inconsistent with the listing rules, this document is deemed not to contain that provision to the extent of the inconsistency.
- 23.14 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the fund, a change in the text of this document because of the operation of clause 23.13 is not a modification of, or the repeal or replacement of the document for the purposes of subsection 601GC(1) and (2) of the Corporations Act.

Participation in CHESS¹⁸

- 23.15 The manager may at any time resolve that the fund will participate in CHESS.
- 23.16 Clauses 23.17 to 23.19 will apply if the fund is granted participation in CHESS.

Compliance with ASTC settlement rules

- 23.17 The fund must comply with the ASTC settlement rules if any of its units are CHESS approved securities. In particular the fund must comply with the requirements of the ASTC settlement rules and listing rules regarding the maintenance of registers, the issuing of holding statements and transfers in relation to its CHESS approved securities.

Registers

- 23.18 If the fund's units are CHESS approved securities, in addition to the CHESS subregister, it must provide for an issuer sponsored subregister, or a certificated subregister, or both (at least if the fund has restricted securities on issue).

¹⁷ LR 1, condition 2; LR 15.11; Appendix 15A

¹⁸ LR 2.1, condition 6, LR 2.1, condition 3, LR 2.5, condition 1, LR 6.1

No interference with proper ASTC transfer

- 23.19 The fund must not in any way prevent, delay or interfere with the generation of a proper ASTC transfer or the registration of a paper-based transfer in registrable form (which satisfies the requirements of clause 4.13), except as permitted by clause 4.18, the listing rules or ASTC settlement rules.

EXECUTED as a deed poll

Schedule 1 ~ Corporations Act and listing rule compliance

Subject	Sections	Clauses
consideration paid	601GA(1)(a)	5.10, 5.13-5.20
powers	601GA(1)(b)	8.1, 14.1, 14.2
complaints	601GA(1)(c)	22
winding up	601GA(1)(d) & 601NA-NF	20
fees & expenses	601GA(2)	15
powers	601GA(3)	14.1
withdrawal	601GA(4), 601KA(1) & 601KA(2)	6
enforceability	601GB	23.11, 23.6

Listing Rule Compliance

Subject	Sections	Clauses
consistent with LR	LR 1.1, condition 2	23.14
consistent with LR	LR 1.1, condition 2; LR 15.11; Appendix 15A	23.13
request for redemption	LR 1.1, condition 5	6.4
registered MIS	LR 1.1, condition 5	6.20
Participation in CHESS	LR 2.1, condition 6; LR 2.1, condition 3; LR 2.5, condition 1; LR 6.1	23.15 to 23.16
Notices as to whether approving resolution passed	LR 3.2	clause 1.7(a) Schedule 2
Notice to investors	LR 3.13.2; 3.13.3; 6.10; 7.3; 10.10; 10.11; 10.14 and LR 14.2	12.3
Change of manager	LR 3.16.2(a)	18
Notice to investors	LR 3.17	12.2 to 12.4
Income and distributions to investors	LR 3.20; LR 6.10; and LR 6.24	9
classes of units	LR 6.1; LR 6.2; LR 6.4.1; LR 6.5; LR 6.6	4.3 to 4.6
Notice to investors	LR 6.7	12.2
manager may determine to consolidate, subdivide or cancel units	LR Chapter 7- reorganisation of capital	4.9
manager may buy back units on terms and conditions determined by manager	LR 7.36	4.12

unpaid calls	LR 7.39	7.6(a)
transfer of units given to manager for processing must be complete and properly stamped	LR 8.10 and 8.14	4.15
where manager requests a holding lock be applied to any units the manager must tell the investor or broker	LR 8.10	4.18(h)
other manager capacities	LR 10.1	17.7
Manager must tell applicant when manager refuses all or part of an application the manager must tell the applicant	LR 10.11 – restriction on issue of units to related parties	5.5
formal communications between investor and manager must be in writing	LR 15.10	13.1
restricted securities cannot be disposed of during escrow	LR 15.12.1	4.19 to 4.21
MIS must not register transfer of restricted securities during escrow	LR 15.12.2	4.19 to 4.21
restricted securities and limitation on rights	LR 15.12.3	4.19 to 4.21
small holdings	LR 15.13	5.19
trusts	LR 15.14	N/A

Schedule 2

1 Proportional takeover bids

If offers for units are made under a proportional takeover bid in accordance with the Corporations Act (see clause 4.23), the following provisions apply.

Definitions

1.1 In this clause:

approving resolution has the same meaning as in section 648D(1) of the Corporations Act with the necessary modifications such that references to resolution of the company were instead references to resolution of the investors of the fund.

approving resolution deadline means the 14th day before the last day of the bid period.

proportional takeover bid means an off-market bid for a specified proportion of the units in the bid class.

Prohibition on registration of transfer unless takeover scheme approved

- 1.2 Where an offer has been made under a proportional takeover bid in respect of units included in a class of units in the fund, the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the proportional takeover bid is prohibited unless and until an approving resolution to approve the proportional takeover bid is passed in accordance with the provisions of this document and the manager must ensure that the approving resolution is voted on in accordance with this document before the 14th day before the last day of the bid period.

Approving resolution

- 1.3 An approving resolution is to be voted on, at the manager's discretion:

- (a) at a meeting of the persons entitled to vote on the approving resolution as if it were a meeting of investors convened and conducted in accordance with this document and the Corporations Act with such modifications as the manager determines that the circumstances require; or
- (b) (by means of a postal vote conducted in accordance with the following procedure:
 - (i) a notice of postal ballot and a ballot paper must be sent out to each person entitled to vote on the approving resolution not less than 10 business days before the date specified in the notice for the closing of the postal ballot or some other period as the manager may determine;
 - (ii) the form of the notice is to be determined by the manager;
 - (iii) a postal ballot is only valid if the ballot paper is duly completed and:

- (A) if a natural person, signed by the investor or duly authorised attorney;
or
- (B) if a corporation, signed in accordance with the Corporations Act or by
its duly authorised attorney or representative;
- (iv) a postal ballot is only valid if the ballot paper has been duly executed in
accordance with sub-paragraph (iii) above and received together with any
certified copies of power of attorney other authority (if applicable) by the
date and time specified in the notice of postal ballot at the place specified in
notice of postal ballot;
- (v) a person may revoke a postal ballot by notice in writing to be received by the
manager before the date and time specified in the notice of postal ballot;
and
- (vi) the non-receipt of any notice of a postal ballot paper, by or the accidental
omission to give notice of any postal ballot or ballot paper to, any person who
is entitled to vote on the approving resolution will not invalidate the postal
ballot or the approving resolution.

Entitlement to vote on approving resolution

- 1.4 A person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the proportional takeover bid was made, held units included in that class is entitled to vote on an approving resolution and, for the purposes of so voting, is entitled to 1 vote for each of those units.

Bidder and associates not entitled to vote

- 1.5 The bidder or an associate of the bidder is not entitled to vote on an approving resolution.

Approving resolution passed

- 1.6 An approving resolution is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.

Notice as to whether approving resolution is passed

- 1.7 Where an approving resolution to approve a proportional takeover bid is voted on, in accordance with this clause, before the approving resolution deadline in relation to the proportional takeover bid, the fund must, on or before the approving resolution deadline:

- (a) give to the bidder; and
- (b) serve on the home branch¹⁹,

a notice in writing stating that an approving resolution to approve the proportional takeover bid has been voted on and that the approving resolution has been passed, or has been rejected, as the case requires.

¹⁹ See LR 3.2

Approving resolution deemed to have been passed

- 1.8 Where, as at the end of the day before the approving resolution deadline in relation to a proportional takeover bid under which offers have been made, no resolution to approve the proportional takeover bid has been voted on in accordance with this clause, an approving resolution to approve the proportional takeover bid is, for the purposes of this clause, be deemed to have been passed in accordance with this clause.

Effect of this clause

- 1.9 This clause ceases to have effect on the third anniversary of the date of its adoption or of its most recent renewal.

EXECUTED

Executed by authority of the Board of Directors of)
PRIMARY SECURITIES LTD ABN 96 089 812)
635 and signed by:)



Director – Robert Garton Smith



Director/Company Secretary – Natasha Olsen