

22 August 2014

ASX / Media Release

**GALILEO JAPAN TRUST
AMENDMENT TO THE CONSTITUTION**

Please find attached a Galileo Japan Trust (ASX code: GJT) announcement relating to an amendment to the Constitution.

Investor and media enquiries:

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About Galileo Japan Trust

The Trust is listed on the Australian Securities Exchange with an indirect interest in a portfolio of 20 Japanese Real Estate investments valued at approximately ¥55.76 billion as at 31 December 2013 (approximately A\$577 million)¹. The portfolio is diversified by both sector and geography, however, retains a bias to Tokyo.

Further information on Galileo Japan Trust is available at www.galileofunds.com.au

¹ Valuation as at 31 December 2013 adjusted for the sale of Lions Square which occurred on 24 July 2014. AUD/JPY exchange rate of ¥96.62 being the rate applicable at 22 August 2014.



22 August 2014

**GALILEO JAPAN TRUST
AMENDMENT TO THE CONSTITUTION**

Galileo Japan Funds Management Limited ("GJFML") as responsible entity for Galileo Japan Trust (ASX code: "GJT") advises that the Constitution of Galileo Japan Trust has been amended by resolution of the directors.

Please find attached the Supplemental Deed Poll amending the Constitution and a consolidated version of the Constitution.

A copy of the Supplemental Deed Poll and a consolidated version of the Constitution have been sent to ASIC.



Supplemental Deed Poll

Galileo Japan Trust Constitution

Amending the Constitution of the Galileo Japan Trust (ARSN 122 465 990)

21 August 2014

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Supplemental Deed Poll

Date

21 August 2014

Parties

Name

Address

GALILEO JAPAN FUNDS MANAGEMENT LIMITED
(ACN 121 567 244)

Level 9, 1 Alfred Street, Sydney

Recitals

- I. Galileo Japan Funds Management Limited (ACN 121 567 244) (the **RE**) of Level 9, 1 Alfred Street, Sydney is the responsible entity of the trust known as the Galileo Japan Trust (ARSN 122 465 990) (the **Trust**) constituted under the constitution dated on or around 25 October 2006 and as amended on 17 November 2006 and 2 December 2010 (the **Constitution**).
- II. The Trust has been registered pursuant to section 601EB of the Corporations Act 2001(Cth) (the Corporations Act) by the Australian Securities and Investments Commission (ASIC) as a managed investment scheme.
- III. Clause 26 of the Constitution provides that subject to the Corporations Act, the RE may amend the Constitution by deed.
- IV. Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme, such as the Trust, may be modified, or repealed and replaced with a new constitution by special resolution of the members of the scheme or by the RE if the RE reasonably considers the change will not adversely affect members' rights.
- V. The RE has considered the proposed amendments and has determined that the amendments do not adversely affect the members' rights.
- VI. Pursuant to section 601GC(2) of the Corporations Act, the modification to the Constitution set out in this Supplemental Deed Poll cannot take effect until a copy has been lodged with ASIC.

IT IS DECLARED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Unless otherwise defined in this Supplemental Deed Poll terms defined in the Constitution bear the same meaning when used in this Supplemental Deed Poll.

Effective Date means the date on which a copy of this Supplemental Deed Poll is lodged with ASIC pursuant to section 601GC(2) of the Corporations Act.

1.2. Interpretation

Clause 1.2 of the Constitution applies to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

1.3. Benefit of the Supplemental Deed Poll

This Supplemental Deed Poll is made by the RE with the intent that the benefit of this Supplemental Deed Poll shall ensure to the Unit Holders of the Trust jointly and severally.

2. AMENDMENT OF CONSTITUTION

With effect on and from the Effective Date, but not before, the RE amends the Constitution by:

- (a) Inserting the following new definition after the definition of "Business Day" in clause 1.1:

"Buy-Back Market Price for a Unit means the volume weighted average market price (as that term is defined in the Listing Rules) for Units, calculated over the last 5 days on which sales in the Units were recorded before the day on which the purchase under the buy-back is to be made."

- (b) Deleting the current clause 8.12 and inserting the following new clause 8.12:

"8.12 On-market buy-back of Units

- (a) *While the Units are Officially Quoted the RE may (subject to, and in accordance with, the terms of any applicable ASIC Exemption, the Corporations Act and any requirements under the Listing Rules) effect a buy-back of Units by purchasing Units on-market at a price that complies with clause 9A.*
- (b) *Immediately following registration of a transfer of a Unit following a purchase in accordance with clause 8.12(a) the Unit is cancelled and no redemption price is payable on such cancellation."*
- (c) Inserting the following new clause 9A after clause 9:

"9A. Purchase price for on-market buy-back of Units

The purchase price payable under clause 8.12 for a Unit shall be determined by the RE as follows:

- (a) *during any period in which a purchase may be made, the RE (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing from time to time if appropriate, provided that the purchase price on any day is not more than 5% above the Buy-Back Market Price (except to the extent that the purchase price is permitted under the terms of any relevant provisions of the Corporations Act, ASIC relief or Listing Rules); and*
- (b) *the purchase price must otherwise satisfy the conditions of any ASIC Exemption."*

3. GOVERNING LAW AND JURISDICTION

This Supplemental Deed Poll shall be governed by the law of New South Wales and the RE submits to the non-exclusive jurisdiction of its Courts.

EXECUTED and delivered as a Deed in Sydney

Executed as a deed in accordance with s127
of the Corporations Act by
Galileo Japan Funds Management Limited
(ACN 121 567 244)



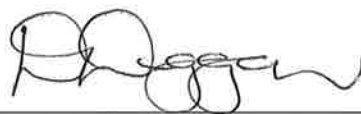
Signature of Director

NEIL WERRETT

Print name

21 August 2014

Date



Signature of ~~Director~~/Company Secretary

DONNA DUGGAN

Print name

21 AUGUST 2014

Date

Galileo Japan Trust Constitution

(consolidated to include amendments made by
Supplemental Deed Polls dated 8 November 2006, 13
November 2006, 1 December 2010 and 21 August 2014)

Responsible Entity –
Galileo Japan Funds Management Limited

Galileo Japan Trust Constitution

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Galileo Japan Trust Constitution

Date	2006
Parties	Galileo Japan Funds Management Limited (ACN 121 567 244) of Level 56, MLC Centre, 19-29 Martin Place, Sydney NSW 2000 (the RE).

It is declared as follows.

1. Definitions and Interpretation

1.1 Definitions

In this Constitution the following definitions apply unless the context otherwise requires.

Adviser includes any adviser, consultant or expert including any architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, investment manager, broker, administrator, property manager, environmental auditor or assessor and any other person appointed by the RE to provide advice in relation to the Scheme.

Advisory Board means the advisory board (if any) established under clause 21.1.

AFM Quoted means quoted on an approved foreign market as defined in an ASIC Exemption.

Approved Valuer means any person, independent of the RE, who is duly qualified to value any Property of the Scheme.

ASIC means the Australian Securities and Investments Commission and its successors.

ASIC Exemption means:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the RE or the Scheme.

Assets means all the Property, Investments, rights and income of the Scheme from time to time.

Asset Value at any time means the value of all Assets in the Scheme Property at that time, as most recently calculated in accordance with clause 18.

ASX means the Australian Stock Exchange Limited or the financial market operated by that company (whichever the context requires).

ASX Trading Day means those Business Days on which buying and selling occurs through the Stock Exchange Automated Trading System.

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Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (a) or (b).

Bid Consideration has the meaning given in clause 7.8(a).

Business Day has the meaning given to that term in the Listing Rules, if Units are Officially Quoted. In any other case, Business Day means a weekday on which banks are open in Sydney, New South Wales.

Buy-Back Market Price for a Unit means the volume weighted average market price (as that term is defined in the Listing Rules) for Units, calculated over the last 5 days on which sales in the Units were recorded before the day on which the purchase under the buy-back is to be made.¹

Calculation Date, in relation to a Unit or an Option (as applicable), means:

- (a) where the Unit or Option (as applicable) is offered by way of a product disclosure statement, information memorandum or other offer document, the date specified in that document;
- (b) where the Unit is offered as Bid Consideration, or as part of the Bid Consideration, the day the offer is announced; or
- (c) in any other case, the date of issue of the Unit or Option (as applicable).

Call means a call on a Unit Holder to pay all or any part of the unpaid Issue Price for a Partly Paid Unit.

Cash includes cheques.

Class means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only 1 Class.

Commencement Date means the date on which the Scheme commences in accordance with clause 2.2(b).

Commodity means any tangible personal property, currency, interest or other rate, financial or other index or indices (including any share index) and such other tangible or intangible thing determined by the RE to be a Commodity for the purposes of this definition.

Compliance Officer means the person from time to time appointed to that role within the RE.

¹ Amended by Supplemental Deed Poll of 21 August 2014.

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Compliance Plan Auditor means the last person appointed under clause 27.1(b) to audit the Scheme compliance plan as required by section 601HG of the Corporations Act.

Constitution means this deed as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified by any ASIC Exemption.

Custodian means a custodian or nominee appointed under clause 19.2.

Derivatives has the meaning given in the Corporations Act but also includes:

- (a) any contract (including a master agreement) commonly known as a derivative, futures contract or synthetic under which there are rights in respect of the acquisition, disposal or trading of any Commodity, Property or Investment and under which delivery, settlement, payment or adjustment is to be made at a future date at a price, or based on a formula, agreed on when the contract is made; or
- (b) any financial instrument or arrangement, contract or transaction that relates to any Commodity, Property or Investment and is, in the opinion of the RE, for the purpose or anticipated or intended purpose of:
 - (i) managing, limiting or reducing perceived risks or anticipated costs relative to returns;
 - (ii) augmenting or improving returns having regard to perceived risks or anticipated costs; or
 - (iii) securing a profit or avoiding a loss, associated with any Commodity, Property or Investment.

Distributable Income has the meaning given in clause 16.1.

Exercise Price has the meaning given in clause 4.1.

Expenses includes any costs, liabilities, expenses, commissions, brokerage, fees, Taxes and duties. Examples of expenses are given in schedule 1.

Financial Instrument has the meaning given in clause 4.4.

Financial Instrument Holder means a person registered as the holder of a Financial Instrument (including persons registered jointly).

Financial Year means a year ending on 30 June in each year but:

- (a) the period commencing on the Commencement Date and ending on the following 30 June will be a Financial Year; and
- (b) the period commencing on 1 July immediately before the termination of the Scheme and ending on the day on which the Scheme terminates will be a Financial Year.

Fully Paid Unit means a Unit for which the Issue Price is fully paid.

GST has the meaning given in section 195–1 of the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

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GST Group has the meaning given to that term by the *A New Tax System (Good and Services Tax) Act 1999 (Cth)*.

Half Year means:

- (a) for the first Half Year, the period from the date Units are first Officially Quoted to the next 30 June; and
- (b) in all other circumstances, the six month period ending on 30 June and 31 December.

Holder means a Unit Holder, an Option Holder or a Financial Instrument Holder.

Input Tax Credit has the meaning given to that term by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Interest Rate means the bank bill swap rate (**BBSW**) plus 4%, where BBSW is the rate determined by the RE to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30am Sydney time on the first day of the relevant Month on the Reuters screen BBSW page for that Month after eliminating 1 of the highest and 1 of the lowest of those rates; or if for any reason there are no rates displayed for the relevant Month then the BBSW will be the rate determined by the RE to be the average of the buying rates quoted to the RE by 3 Australian banks selected by the RE at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to 1 Month. Rates will be expressed as a yield per cent per annum to maturity.

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

Investment means any type of investment, whether in Australia or elsewhere, which a natural person or corporation may make on its own behalf and not as a responsible entity and includes:

- (a) (without limiting paragraph (b)) financial products; and
- (b) the pursuit of gain or the protection against loss by way of any of the following:
 - (i) acquiring or holding of any Property;
 - (ii) making available financial accommodation; or
 - (iii) entering into any contract or a Derivative,

and may involve incurring a liability or obligation of any kind.

Issue Price in relation to a Unit means the price at which that Unit is issued calculated in accordance with clause 7.

Land includes any interest in land whether vested or contingent, freehold or leasehold, whether at law or in equity and any buildings or other improvements on that land.

Law includes:

- (a) the Corporations Act and any statute; and

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- (b) any rule of common law, rule of equity or judgement which applies to the Scheme or the RE (as the case may be).

Liabilities at any time means all present liabilities of the Scheme including any provision which the RE decides should be taken into account in determining the liabilities of the Scheme but excluding the amount representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holder capital, capital reserves, or 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 Scheme.

Liquid in relation to the Scheme, has the meaning given by section 601KA(4) of the Corporations Act.

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

Market Price of a Unit (or where applicable, of a Class) on a particular day means:

- (a) the average of the weighted average price per Unit in that Class for sales of that Class on the ASX (excluding any special crossings) on an ASX Trading Day for the period of 10 ASX Trading Days (or, for the purposes of clause 6.16, 5 ASX Trading Days) immediately prior to the relevant day (whether or not a sale was recorded on any particular day) adjusted to take into account any ex entitlement dates that occurred during this period; or
- (b) if Units in that Class:
 - (i) have not been traded for at least 10 consecutive ASX Trading Days before the relevant day; or
 - (ii) in the RE's opinion a determination under paragraph (a) would not provide a fair reflection of the current market value of the Unit,
the price per Unit that an independent valuer determines to be the market price of the Unit on the relevant day; or
- (c) for Units issued in lieu of the performance fee payable under Schedule 2, as calculated in accordance with paragraph 2(d) of Schedule 2.

Month means a calendar month.

Net Accounting Income has the meaning given in clause 15.1.

Net Proceeds From Realisation means the proceeds from sale or other realisation of the Assets after paying or providing for:

- (a) all Liabilities of the Scheme;
- (b) any unpaid fees payable (or to be payable) to the RE; and
- (c) the Expenses of termination.

Net Scheme Value at any time, means the Scheme Value less the Liabilities at that time.

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Net Income has the meaning given in clause 15.4.

Official List has the same meaning as in the Listing Rules.

Officially Quoted means quotation on the Official List, including when quotation is suspended for a continuous period of not more than 60 days.

Option means an option to be issued a Unit.

Option Holder means a person registered as the holder of an Option (including persons registered jointly).

Partly Paid Proportion means the number derived from multiplying the number of Partly Paid Units on Issue by the following fraction:

$$\frac{\text{the total of all amounts paid or due but unpaid for Partly Paid Units on Issue}}{\text{the total of all Issue Prices for Partly Paid Units on Issue}}$$

Partly Paid Units means Units which have an Issue Price which is payable by instalments and in respect of which all instalments have not been called.

Placement Resolution means in relation to the approval or ratification of an issue of Units, a special resolution where both of the following apply:

- (a) votes are cast only in respect of Units (**Eligible Interests**):
- (b) that are held by a Unit Holder who will not (or did not) acquire any of the Units that are (or were) to be issued; or
- (c) that are held by a Unit Holder for the benefit of another person who will not (or did not) obtain beneficial ownership of any of the interests that are (or were) to be issued; and
- (d) the value of the Eligible Interests held by the Unit Holders who vote represents at least 25% of the total value of Eligible Interests.

Property means property of any description and includes:

- (a) Land and any personal property;
- (b) any estate or interest in property;
- (c) any debt or chose in action or any other right or interest;
- (d) any permit, licence or authority or any patent, copyright, design, trade mark or other form of intellectual property; and
- (e) anything regarded as an asset for the purposes of Australian Accounting Standards.

Purchase Plan Holder means:

- (a) subject to paragraphs (b) and (c), a Unit Holder on the Register on the date required under the Listing Rules or by ASX as the record date for the offer or if there is no such date, a date which is not more than five Business Days before the offer documents are sent to Unit Holders; and
- (b) if two or more people are recorded on the Register as jointly holding Units they are taken to be a single Holder; and

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- (c) if a trustee or nominee is noted on the Register as holding Units on account of another person (**Beneficiary**):
 - (i) the Beneficiary is taken to be the Holder of those Units; and
 - (ii) any issue of Units to the trustee or nominee is taken to be an issue to the Beneficiary.

Quarter means a period of 3 Months ending on 31 March, 30 June, 30 September and 31 December in each year (or that part of such a period occurring at the commencement or termination of the Scheme) and **Quarterly** has a corresponding meaning.

RE means Galileo Japan Funds Management Limited or any other person appointed as responsible entity of the Scheme.

Register means each of the registers kept under clause 20.

Related Issue means, in relation to an issue of Units, an issue of Units in the same Class which has not been approved or ratified by Unit Holders in accordance with clause 7.6 or issued in accordance with other provisions of this Constitution.

Representative Member has the meaning given to that term by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

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

Scheme means the scheme constituted by this Constitution.

Scheme Auditor means the last person appointed under clause 27.1(a).

Scheme Property means all Assets of the Scheme (including money paid to the RE for the issue of any Units).

Scheme Value at any time, means the aggregate of the following at that time as calculated by the RE:

- (a) the gross Asset Value;
- (b) the amount of money held in the Scheme Property (to the extent not included in paragraph (a)); and
- (c) the gross value of any other Assets (to the extent not included in paragraphs (a) or (b)).

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Tax means all income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, withholding tax, municipal rates, stamp duties and other tax, impost, rates, duties, charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority in Australia or elsewhere, including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, impost, rates, duties, charges or levies.

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Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Transaction Costs means:

- (a) when calculating the Issue Price of a Unit, the RE's estimate of the total Expenses which would be incurred if all the Assets were to be acquired at the relevant time; and
 - (b) when calculating the Withdrawal Price of a Unit, the RE's estimate of the total Expenses which would be incurred if all the Assets were to be disposed of at the relevant time,
- (in each case of (a) and (b) excluding the actual cost of the Assets); or
- (c) in either case of (a) and (b), to the extent permitted by the Corporations Act if applicable, a lesser amount (including zero) determined by the RE.

In estimating the total Expenses the RE may take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

Unit means a unit created under this Constitution and for the time being held by Unit Holders.

Unit Holder means the person registered as the holder of that Unit (including persons registered jointly).

Units on Issue in relation to a Unit or Class means the total number of Units of that kind issued which have not been withdrawn.

Valuation Time means any time the Net Scheme Value is determined.

Withdrawal Offer means an offer made by the RE in accordance with section 601KB of the Corporations Act.

Withdrawal Price in relation to a Unit means the price at which that Unit is to be withdrawn in accordance with clause 9.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity and the converse also applies.
- (e) A reference to a *clause* or *schedule* is to a clause (or sub-clause) of or schedule to this Constitution.

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- (f) A reference to a party to this Constitution or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to an agreement or document (including a reference to this Constitution) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *dollars* or \$ is to Australian currency unless otherwise stated.
- (j) A word or phrase appearing in a certain context which, when used in a similar context in the Corporations Act or Australian Accounting Standards would have a particular meaning, has that meaning in this Constitution.
- (k) A reference to a *right* or *obligation* of any 2 or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each 2 or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (l) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (m) Mentioning anything after *includes*, *including*, *for example* or similar expressions, does not limit what else might be included.
- (n) Any appointment of the RE as an attorney under this Constitution is irrevocable.

1.3 Rounding and currency

- (a) Subject to clause **Error! Reference source not found.**, all calculations under this Constitution may be rounded up or down to the number of decimal places (or nearest whole number) determined by the RE, who may discriminate in the treatment of fractional entitlements of Holders where the directors consider it to be fair to Holders as a group.²
- (b) Subject to clauses **Error! Reference source not found.**, 5.6 and 16.7, where total amounts payable to or by a person include a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the RE.
- (c) Where the RE needs to convert an amount in a currency to another currency, it may calculate the conversion in such manner as it considers appropriate. In relation to conversions affecting the number of Units, Options or Financial

² Amended by Supplemental Deed Poll of 1 December 2010.

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Instruments to be issued to an applicant, the RE will disclose the method of calculating the conversion to the applicant.

1.4 Constitution binding

This Constitution binds the RE, each Unit Holder, any other person with an interest in the Scheme and any person claiming through any of them as if each of them had been a party to it.

2. The Scheme

2.1 Appointment of responsible entity

The RE agrees to act as responsible entity of the Scheme.

2.2 Holding on trust

- (a) As provided by the Corporations Act, the RE holds the Scheme Property on trust for the Unit Holders in accordance with this Constitution.
- (b) The Scheme commences on the date Units are first issued.

2.3 Name of Scheme

- (a) The name of the Scheme is the Galileo Japan Trust or any other name that the RE determines.
- (b) Subject to clause 2.3(c) and clause 2.3(d), if:
 - (i) the RE retires or is removed as responsible entity of the Scheme; or
 - (ii) there is a change in who controls the RE;(each a **Name Event**) then the name of the Scheme must be changed by deleting the word 'Galileo', and the RE or new responsible entity must not use that word (or any substantially or deceptively similar words) in connection with the Scheme. The RE or new responsible entity must amend this Constitution to reflect the change in the name of the Scheme within 20 Business Days of the Name Event occurring. The RE or new responsible entity covenants that it will not amend this clause 2.3 other than to give effect to the preceding sentences of this paragraph.
- (c) The RE or new responsible entity may use the word 'Galileo' for the purpose of advertising the change of name of the Scheme for 20 Business Days after the Name Event or in the case of the RE retiring or being removed, such longer period as the RE agrees. In the case of the RE retiring or being removed, any advertisement must be approved by the RE. That approval will not be unreasonably withheld.
- (d) Clause 2.3(b) does not apply if Galileo Japan Funds Management Limited agrees otherwise subject to any conditions it may specify (in its absolute discretion).

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3. Units and Unit Holders

3.1 Units

The beneficial interest in the Scheme Property will be divided into Units which may be issued by the RE at any time. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations, of Unit Holders under this Constitution.

3.2 Classes

Different Classes may be issued. If the RE so determines in relation to particular Units, the terms of issue of those Units may:

- (a) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units;
- (b) provide for conversion of Units from one Class to another Class and, if the RE so determines, change the number of Units on such a conversion.

3.3 Fractions

Fractions of a unit may not be issued. Subject to clause 3.6, when any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit. Any excess application or other money becomes an Asset.³

3.4 Equal value

At any time, all the Units in a Class are of equal value.

3.5 Interest

A Unit confers an interest in the Scheme Property as a whole. No Unit confers any interest in any particular Asset.

3.6 Consolidation and re-division

- (a) Subject to clause 3.6(b), the RE may at any time consolidate or divide the Scheme Property into any number of Units other than the number into which the Scheme Property is for the time being divided.
- (b) A consolidation or division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Unit Holder to the Units on issue in that class, other than due to rounding up or down in accordance with clause 1.3(a).⁴

³ Amended by Supplemental Deed Poll of 1 December 2010.

⁴ Amended by Supplemental Deed Poll of 1 December 2010.

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3.7 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
 - (i) interfere with any rights or powers of the RE under this Constitution;
 - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to the Unit Holder (or any other person).

3.8 Directions

Unit Holders may not give any directions to the RE if it would require the RE to do or omit doing anything which:

- (a) may result in the RE acting contrary to Law; or
- (b) would otherwise be within the scope of any discretion or power expressly conferred on the RE by this Constitution.

4. Options and Financial Instruments

4.1 Issue of Options

- (a) The RE may issue Options:
 - (i) on the basis that the price for a Unit to be issued on exercise of the Option (the Exercise Price):
 - (A) if the Unit is Officially Quoted, is the Market Price as at the Calculation Date; or
 - (B) if the Unit is not Officially Quoted, is the Issue Price determined in accordance with clause 7.1(c), calculated as at the last Valuation Time before the Calculation Date; or
 - (C) is a price determined by the RE in accordance with clauses 7.5, 7.6 or 7.11; or
 - (D) subject to clause 4.1(b), is a price determined by the RE other than in accordance with paragraphs (A) to (C) of this clause 7;
 - (ii) for consideration;
 - (iii) for no consideration; and
 - (iv) on such other terms as the RE determines, subject to any requirements of the Listing Rules.
- (b) The RE may issue an Option on the basis that the Exercise Price is a price determined by the RE other than in accordance with clauses 4.1(a)(i)(A) to 4.1(a)(i)(C), to the extent it is permitted to do so by an ASIC Exemption (and

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subject to the terms of that ASIC Exemption). The following conditions apply to the extent they reflect the requirements of a relevant ASIC Exemption:

- (i) The RE must offer the Options to Unit Holders on the Register on a date not more than 20 Business Days before the date of the offer (the Entitled Unit Holders) in proportion to the value of their interests.
 - (ii) Subject to clause 7.10, the RE must make the offer to all Entitled Unit Holders. Subject to clause 4.1(b)(ix), Options offered to Entitled Unit Holders but not acquired by them, may be issued to other persons.
 - (iii) The Options offered must be in the same class.
 - (iv) The issue price and the Exercise Price of all the Options offered must be the same.
 - (v) The means of working out the Exercise Price must be set out in the terms of issue of the Options.
 - (vi) If the Units to which the Option relates are Officially Quoted, the Exercise Price of an Option must not be less than 50% of the Market Price of a Unit determined on the date which is five Business Days before the proposal to issue the Options is announced.
 - (vii) If the Units to which the Option relates are not Officially Quoted, the Exercise Price of an Option must not be less than 50% of the price of a Unit on the date which is five Business Days before the Options are offered as determined under clause 7.1.
 - (viii) The RE must offer the Options to Entitled Unit Holders at substantially the same time.
 - (ix) The RE must only issue Options to any of its associates as Entitled Unit Holders.
- (c) The entitlement of Holders of Partly Paid Units will be determined by reference to the amount of the Issue Price actually paid up on those Partly Paid Units at the relevant time.

4.2 Reorganisation of Options

Subject to the Listing Rules, the RE may at any time reorganise Options in accordance with their terms.

4.3 Option exercise

- (a) Options may only be exercised in accordance with their terms.
- (b) The RE must deal with payment for and issue of Units on exercise of Options as if such payment and issue were an application for Units but the RE must not refuse to issue any Units except if the terms of issue and, if applicable, the Listing Rules permit (or if any Law requires) such refusal.

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4.4 Financial Instruments

Subject to the Corporations Act and the Listing Rules:

- (a) the RE may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Scheme (including Derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) (**Financial Instruments**); and
- (b) Financial Instruments may be issued:
 - (i) for consideration or no consideration;
 - (ii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the RE determines.

4.5 Rights attaching to Options and Financial Instruments

- (a) An Option will not confer any interest in, or any rights to participate in the income or capital of, the Scheme Property.
- (b) Subject to the terms of the Financial Instrument, a Financial Instrument will not confer any interest in, or any right to participate in the income or the capital of, the Scheme Property.
- (c) Each Option Holder and, subject to the terms of the Financial Instrument, each Financial Instrument Holder agrees not to:
 - (i) interfere with any rights or powers of the RE under this Constitution;
 - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to them (or any other person).

4.6 Offer of Option

- (a) Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder who is not a Unit Holder is entitled to attend any meeting of Unit Holders but is not entitled to receive notice of or speak or vote at such a meeting.
- (b) Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder who is not a Unit Holder is not entitled to any other rights of a Unit Holder.

5. Offer of Units, Options and Financial Instruments

5.1 Offer and minimum subscription

- (a) Subject to clause 5.1(b), the RE may at any time offer Units, Options or Financial Instruments for subscription or sale. The RE may determine a minimum amount which must be lodged with an application for Units, Options or Financial Instruments and a minimum holding of Units, Options or Financial Instruments for

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the Scheme. The RE may invite persons to make offers to subscribe for or buy Units, Options or Financial Instruments.

- (b) The RE cannot issue any Units after the 80th anniversary from the day before the Scheme commenced if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity. The preceding sentence prevails over all other provisions of this Constitution.

5.2 Form of application

Each application for Units, Options or Financial Instruments will, unless the RE approves otherwise:

- (a) conform with the form and content requirements of any relevant disclosure document; and
- (b) be accompanied by application moneys as required by any relevant disclosure document; or
- (c) if there is no relevant disclosure document, be made in such manner as the RE approves.

5.3 Acceptance or rejection

The RE may, without giving any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of the application.

5.4 Uncleared funds

Units, Options or Financial Instruments issued against application money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not cleared within 5 Business Days (or other period stated in a relevant disclosure document) of being presented for payment.

5.5 Issue of Units, Options and Financial Instruments

Units, Options or Financial Instruments are taken to be issued when:

- (a) the RE accepts the application and the Units, Options or Financial Instruments are entered in the Register; or
- (b) the application money is received by (or Property which is acceptable to the RE against which Units, Options or Financial Instruments are to be issued is transferred to) the RE,

whichever is the later or at such other time as the RE determines.

5.6 Number of Units issued

Subject to clause 5.7 and the terms of any Option, Financial Instrument or Partly Paid Unit, the number of Units issued at any time in respect of an application for Units will be calculated as follows:

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- (a) by deducting the Initial Fee (if any) from the relevant application moneys or Property paid;
 - (b) by dividing the balance of the application moneys or the value of the Property paid by the applicable Issue Price at that time;
 - (c) by rounding down to the nearest Unit,
- and any balancing amount will become an Asset.

5.7 Units as consideration

Where an Investment is acquired for consideration which includes the issue of Units by the RE, the number of Units created and issued by the RE is determined in accordance with the following formula.

$$\frac{MVA - C}{IP}$$

Where:

- MVA = the value of the Investment being acquired as determined in accordance with this Constitution
- C = the amount of the cash consideration paid in respect of the Investment (if any)
- IP = the Issue Price of the Units being issued (as determined in accordance with clause 7.3)

5.8 Certificates

No certificates will be issued for Units, Options or Financial Instruments (unless the RE determines otherwise in relation to some Units, Options or Financial Instruments, a Class or all Units).

5.9 Defective applications

Where, within 10 Business Days of the issue of Units, Options or Financial Instruments (or such longer period as the RE determines), the RE determines that :

- (a) the applicant was not entitled to hold the Units, Options or Financial Instruments;
- (b) the application form was incorrectly executed or executed without power or authority;
- (c) the application form was defective and was accepted in error; or
- (d) the application moneys due were not credited to the RE's account or, if credited, were later reversed by the paying party,

the RE may, in its sole discretion, cancel those Units, Options or Financial Instruments and make an appropriate entry in the Register and, if necessary, repay the application moneys to the applicant out of the Scheme Property. If Units, Options or Financial Instruments are cancelled under this clause 5.9, the RE is not required to adjust the Scheme Value, Issue Price or Withdrawal Price determined before the cancellation of the Units in the Scheme.

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5.10 Restriction on issue of interests

The RE cannot issue or redeem any Units or any other interests in the Trust from the 80th anniversary of the Commencement Date if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity. Subject to clause 37, this clause prevails over all other provisions of this Constitution.

6. Partly Paid Units and Forfeiture

6.1 Terms of Issue

The RE may issue Partly Paid Units on such terms and conditions as it determines. In particular, without limitation, the RE may determine the number of instalments and the terms on which they are payable. This is subject to the Listing Rules if applicable.

6.2 Calls

Each Holder of a Partly Paid Unit must pay a Call made in accordance with the terms of issue of the Unit. The RE may only make a Call if the Call is made on all Unit Holders of that Class. Subject to the terms of issue of the Partly Paid Unit, if the date fixed for payment of a Call is not a Business Day, the Call is due and must be paid on the immediately preceding Business Day.

6.3 Interest on late payment of Call

If any Call is not paid on or before the day appointed for payment, the Holder of such Partly Paid Unit must pay interest on the amount of the Call from the day appointed for the payment to the time of actual payment. Interest which accrues on an unpaid Call will become an Asset. Unless the terms of the Partly Paid Unit specify otherwise, interest will be payable at the Interest Rate.

6.4 Non-receipt of notice of Call

A Call is not invalidated because any Unit Holder does not receive a notice of the Call, or because accidentally notice is not sent to any Unit Holder.

6.5 Deductions for unpaid Calls

If all or part of a Call is not paid by the date appointed for payment, the RE may apply any amount payable to the relevant Unit Holder under this Constitution to pay amounts unpaid under the Call (as well as accrued interest and all costs and expenses incurred by the RE in relation to the unpaid Call).

6.6 Notice requiring payment of sums payable

- (a) If a Call is not paid by the day appointed for the payment, the RE may, while any part of the Call remains unpaid, give a notice to the Unit Holder requiring payment of the unpaid amounts, accrued interest and all costs and expenses incurred by the RE in relation to the unpaid Call.
- (b) The notice must appoint a day (at least 14 days after the date of the notice) by which the payment required by the notice is to be made.

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- (c) The notice must also state that, if the payment is not made by the day appointed, the Units to which the Call related will be liable to be forfeited.
- (d) While the Trust is admitted to the Official List the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

6.7 Forfeiture on non-compliance with notice

- (a) If all or part of a Call is not paid by the date appointed for payment, any Units the subject of the Call must be forfeited.
- (b) Forfeiture must be effected by a notice from the RE, with effect from the date of the notice.
- (c) Forfeiture includes forfeiture of all distributions and other money payable to the Unit Holder relating to the forfeited Units not actually paid to the Unit Holder before the forfeiture (except where such amounts have already been applied to reduce the Call amount under clause 6.5).
- (d) Unless the RE determines otherwise, the rights attaching to forfeited Units which have not yet been sold (or otherwise disposed of) are suspended for the period from the date of the forfeiture to the date of sale (or disposal).

6.8 Entry on Register of Unit Holders

Where any Unit has been forfeited in accordance with this clause, the RE will enter the forfeiture and the date of the forfeiture in the Register of Unit Holders.

6.9 Disposal of forfeited Units

- (a) Subject to the Listing Rules, the Corporations Act and any relevant ASIC Exemption, the RE may sell (or otherwise dispose of) a forfeited Unit in the manner and at such price as the RE determines (including on the basis that the purchaser of such forfeited Units is not obliged to pay the unpaid Calls).
- (b) If the Unit is Officially Quoted, to the extent that it is a requirement of a relevant ASIC Exemption, the sale of the forfeited Unit must take place by public auction in accordance with section 254Q of the Corporations Act (other than sections 254Q(1), (9), (10) and (13)) as if the interests were shares, the Scheme was the company and the RE was each director of the company.
- (c) The RE is not liable to a Unit Holder for any loss suffered by the Unit Holder as a result of the sale.

6.10 Cancellation of forfeiture

At any time before a forfeited Unit is sold:

- (a) the RE may cancel the forfeiture upon such conditions as it determines; and
- (b) if the Unit Holder pays to the RE the full amount owing in relation to the forfeited Units (including accrued interest and all costs and expenses incurred by the RE in relation to the unpaid Call), the forfeiture must be cancelled.

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6.11 Transfer of forfeited Units

- (a) The RE may, on any sale of forfeited Units, receive the selling price for those Units and effect a transfer of those Units in the name of the Unit Holder whose Units have been forfeited, in favour of the person to whom the Units have been sold. The Unit Holder authorises the RE to take these steps and appoints the RE its agent or attorney to do so. The Unit Holder indemnifies the RE against any claim or liability the RE may incur in doing so.
- (b) Upon effecting the transfer, the transferee must be registered as the holder of the Units. The transferee's title to the Units will not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Units.

6.12 Liability notwithstanding forfeiture

A Unit Holder whose Units have been forfeited ceases to be a Unit Holder (in respect of the Units forfeited) from the date the RE gives a notice under clause 6.7(b) (subject only to cancellation of the forfeiture under clause 6.10). Despite this, the Unit Holder remains liable to pay to the RE all amounts unpaid specified in clause 6.15(a), (b) and (c) which are referable to the forfeited Units. That liability ceases when the RE is paid all such amounts under clause 6.15 or otherwise, and (if relevant) amounts under clause 6.16, in relation to the Units.

6.13 Lien

Subject to the Listing Rules, the RE has a first and paramount lien upon every Unit for unpaid Calls and other moneys payable to the RE by the Unit Holder in relation to a Unit. That lien extends to all distributions and other money from time to time payable in relation to that Unit.

6.14 Sale of Units to enforce lien

For the purpose of enforcing a lien, the RE may sell the Units subject to the lien, in the same manner, so far as is applicable, as if the Units had been forfeited for non-payment of a Call.

6.15 Proceeds of sale

The net proceeds of any sale of forfeited Units or the sale of Units to enforce a lien (including all distributions and other money from time to time payable to the Unit Holder in relation to those Units) must be applied:

- (a) first, in paying all costs which have been or will be incurred in relation to enforcing the lien or the forfeiture (as the case may be) and the sale;
- (b) second, in satisfying the amount of the unpaid Call; and
- (c) third, in satisfying the amount of any accrued interest on the Call and any other moneys payable to the RE.

The balance (if any) must be paid to the Unit Holder whose Units have been sold. If the net proceeds of any sale are insufficient to pay the amounts in paragraphs (a), (b) and (c)

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then the Unit Holder remains liable for the difference between the net proceeds of sale and the sum of those amounts.

6.16 Underwriting of Calls

- (a) If:
- (i) the RE has appointed an underwriter to underwrite the payment of a Call;
 - (ii) in discharging its obligations, the underwriter has purchased Units at a public auction or on the market conducted by the ASX or otherwise as contemplated by clause 6.9 at a price which is more than the Market Price of a Unit (in respect of which the relevant Call has been paid) where the relevant day is the date of purchase of the Units; and
 - (iii) the RE is liable or required to pay the underwriter in respect of each Unit purchased in accordance with clause 6.16(a)(ii), an amount equal to the difference between the Market Price of the Unit (in respect of which the relevant Call has been paid) where the relevant day is the date of purchase of the Units, and the price paid by the underwriter for the Unit,
- then the former Unit Holder whose Units have been forfeited and sold is liable to pay to the RE, in respect of those forfeited Units, and may be sued for:
- (iv) all money payable by the RE to the underwriter as contemplated by paragraph (iii) of this clause;
 - (v) interest;
 - (vi) all costs and expenses incurred by the RE in procuring payment from the former Unit Holder; and
 - (vii) any fee the RE is liable to pay the underwriter in respect of the underwriting of the Call pro rated (if necessary) according to the number of forfeited Units of the former Unit Holder.
- (b) The RE may assign its rights of action under this clause 6.16(a) other than paragraph (vii) against the former Unit Holder to an underwriter. The Unit Holders acknowledge that rights against each of them under this clause 6 may be assigned in the manner contemplated by this paragraph and such assignment will not affect the ability of the RE to recover the amounts referred to in clauses 6.15 and 6.16(a) to the extent these amounts are not assigned.

6.17 Joint Holders

Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due on the Partly Paid Units held by them.

6.18 Unpaid Issue Price on termination

Subject to their terms, the whole of the unpaid Issue Price of each Partly Paid Unit is payable upon termination of the Scheme.

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7. Issue Price

7.1 Issue Price while Units are not Officially Quoted

- (a) The Issue Price for the first issue of Units is \$1.
- (b) The Issue Price for the Units issued under the first product disclosure statement prepared for the Scheme is \$1.00 per Unit.
- (c) Subject to clauses 7.2 to 7.10 and 7.11 for Units that are not Officially Quoted, the Issue Price for any Unit issued after Units issued in accordance with clause 7.1(b), after the first issue and for Units that are not Officially Quoted, the Issue Price for any Unit will be equal to:

$$\frac{\text{Net Scheme Value} + \text{Transaction Costs}}{\text{number of Fully Paid Units on Issue} + \text{Partly Paid Proportion}}$$

all calculated as at the first Valuation Time after the RE receives:

- (i) the application for Units; or
- (ii) the application money (if applicable) or the Property (or other Investment) to be transferred to the RE, whichever happens later.

7.2 Issue Price while Units are Officially Quoted

Subject to clauses 7.3 to 7.10 and 7.11 and paragraph 2(d) of Schedule 2, for Units that are Officially Quoted, the Issue Price for any Unit will be the Market Price on the Calculation Date.

7.3 Issue of Units to acquire an Asset

- (a) Where Units that are not Officially Quoted are consideration (in whole or in part) for the acquisition of Property or another Investment, the Issue Price for those Units must be calculated in accordance with clause 7.1(c) calculated on the date of the agreement under which there will be an issue of the Units.
- (b) Subject to clause 7.8, where Units that are Officially Quoted are consideration (in whole or in part) for the acquisition of Property or an Investment, the Issue Price for those Units must be the Market Price calculated on the day which is 5 Business Days prior to the day on which the RE publicly announces the transaction (or proposed transaction) under which there will be an issue of the Units (or if there is no such announcement, 5 Business Days prior to the date of the agreement under which there will be an issue of the Units).

7.4 Rights Issues

The RE may issue Units at an Issue Price determined by the RE, being a price other than the Issue Price calculated in accordance with clauses 7.1 and 7.2 by way of rights issue or similar offering to the extent that it is permitted to do so by an ASIC Exemption (and subject to the terms and conditions of that ASIC Exemption). The following conditions apply to the extent that they reflect the requirements of a relevant ASIC Exemption.

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- (a) The RE must offer the Units to Unit Holders on the Register on a date not more than 20 Business Days before the date of the offer (Rights Unit Holders) in proportion to the value of each Rights Unit Holder's interests in the Scheme on that date. Subject to clause 7.4(g), Units offered to, but not acquired by, Rights Unit Holders may be issued to other persons.
- (b) Subject to clause 7.10, the RE offers Units to all the Rights Unit Holders at substantially the same time.
- (c) All the Units offered must be in the same Class.
- (d) The Issue Price of all the Units offered must be the same.
- (e) If the Units are Officially Quoted, the Issue Price of a Unit must not be less than 50% of the Market Price for the Units in that Class on the day which is five Business Days preceding the date on which the intention to make the offer or issue is announced to the ASX.
- (f) If the Units are not Officially Quoted, the Issue Price of a Unit must not be less than 50% of the Issue Price for the Units in that Class (calculated in accordance with clause 7.1(c)) on the day which is five Business Days preceding the date on which the intention to make the offer or issue is announced.
- (g) The RE must only issue Units to associates as Rights Unit Holders.

7.5 Placements of Units without Unit Holder Approval

The RE may issue Units at an Issue Price determined by the RE, being a price other than the Issue Price calculated in accordance with clauses 7.1 and 7.2 by way of placement or other non-proportionate offer without Unit Holder approval to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms and conditions of that ASIC Exemption). The following conditions apply to the extent they reflect the requirements of a relevant ASIC Exemption.

- (a) The Units (or if the Units to be issued are in a Class of Units, Units in that Class) must be Officially Quoted or AFM Quoted (and in either case quotation is not suspended).
- (b) Units must not be issued to the RE or its associates.
- (c) The amount by which the Issue Price is less than the Market Price on the date which is five Business Days before the offer or issue is announced does not exceed 10% of that Market Price.
- (d) The issue, together with any Related Issue in the previous year does not, immediately before the issue, comprise more than 15% of Units in that Class.

7.6 Placements of Units with Unit Holder Approval

The RE may issue Units at an Issue Price determined by the RE, being a price other than the Issue Price calculated in accordance with clauses 7.1 and 7.2 by way of placement or other non-proportionate offer with Unit Holder approval to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms and conditions of that ASIC Exemption).

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The following conditions apply to the extent they reflect the requirements of a relevant ASIC Exemption.

- (a) The Units (or if the Units to be issued are in a Class of Units, Units in that Class) must be Officially Quoted or AFM Quoted (and in either case quotation is not suspended).
- (b) Units must not be issued to the RE or its associates.
- (c) Unit Holders who hold Units in the same Class must approve the issue by a Placement Resolution.
- (d) Unless the RE reasonably considers that the issue will not adversely affect the interests of Unit Holders in another Class (if any) (nor the interests of persons holding interests of any other kind in the Scheme), Unit Holders in that other Class (or persons holding interests of any other kind in the Scheme) must approve the issue by a Placement Resolution.
- (e) Any notice convening a meeting to vote on a proposed Placement Resolution must contain particulars of the use to be made of the money raised by the issue.

7.7 Reinvestment

The RE may issue Units at an Issue Price determined by the RE, being a price other than the Issue Price calculated in accordance with clauses 7.1 and 7.2, under a distribution reinvestment arrangement referred to in clause 16.6, to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms and conditions of that ASIC Exemption). The following conditions apply to the extent they reflect the requirements of a relevant ASIC Exemption.

- (a) Subject to clause 7.10, each Unit Holder may from time to time elect to participate in the distribution reinvestment arrangement as to the whole, or some proportion, of the distributions which are, or would otherwise be, payable to that Unit Holder.
- (b) All the Units issued under the distribution reinvestment arrangement must be of the same Class.
- (c) The price of each Unit issued in relation to any particular distribution must be the same.
- (d) The Units issued in relation to any particular distribution must be issued at substantially the same time.
- (e) The price of each Unit issued must not be less than 50% of the Issue Price of each Unit, calculated under clauses 7.1 and 7.2 (as applicable) as at the date determined by the RE under clause 16.6 for the reinvestment of entitlements to income.

7.8 Issue of Units as Bid Consideration

- (a) If the RE considers that it would be in the best interests of Unit Holders to issue Units as consideration, or part of the consideration, to acquire financial products of a target entity (***Bid Consideration***):

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- (i) the RE may offer the Bid Consideration under a takeover bid made in accordance with Chapter 6 of the Corporations Act, or other offer to acquire financial products of a target entity; and
 - (ii) the Issue Price of a Unit which is, or forms part of, the Bid Consideration is the Market Price on the Calculation Date. However, the RE may amend this Constitution to provide a specific issue price of the Units offered as Bid Consideration.
- (b) It is acknowledged that any amendment by the RE of this Constitution in the manner contemplated by paragraph (a)(ii) of this clause 7.8 will not, for the purposes of section 601GC(1) of the Corporations Act, adversely affect Unit Holders' rights.

7.9 Unit Purchase Plan

The RE may issue Units at an Issue Price determined by the RE being a price other than the Issue Price calculated in accordance with clauses 7.1 and 7.2 under a Unit purchase plan to the extent it is permitted to do so by an ASIC Exemption. The following conditions apply to the extent they reflect the requirements of a relevant ASIC Exemption.

- (a) The Units (or if the Units to be issued are in a Class of Units, Units in that Class) must be Officially Quoted and quotation is not suspended.
- (b) Subject to clause 7.10, the Units are offered to each Purchase Plan Holder.
- (c) The Units are offered on the same terms and conditions and on a non-renounceable basis.
- (d) The Issue Price is not less than the Market Price during a specified period in the 30 days before either the date of the offer or the date of the issue.
- (e) No Purchase Plan Holder is issued with Units with an Issue Price totalling more than \$5,000 in any 12-month period.

7.10 Foreign Unit Holders

Subject to the terms of any relevant ASIC Exemption (whether modifying the Corporations Act or otherwise), the RE is not required to offer Units or Options under clauses 4.1(b), 7.4, 7.7 and 7.9 to Unit Holders whose address on the Register is outside Australia.

7.11 General

Despite any other provision in this clause 7 but subject to any applicable ASIC Exemption and the Listing Rules, the RE may issue Units at an Issue Price determined by the RE, being a price other than the Issue Price calculated in accordance with clauses 7.1 and 7.2, to the extent the RE is permitted under the Corporations Act to do so. This includes determining the Issue Price by reference to a specified criteria or formula set out in a document other than this Constitution.

7.12 Satisfaction of Issue Price

The Issue Price may be satisfied by payment of Cash or by transfer to the RE of Property or another Investment acceptable to the RE (or by a combination of both).

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8. Withdrawal of Units

8.1 Withdrawal request while Scheme is Liquid

Subject to clause 8.3, while the Scheme is Liquid or is not a registered scheme, any Unit Holder may request that some or all of their Units be withdrawn. Each request must:

- (a) satisfy the form and content requirements prescribed by the RE; and
- (b) be delivered to the RE at its registered office (or other place nominated by the RE).

Upon making such a request, the Unit Holder will have no right to deal with the Units (unless and until the request is denied by the RE). A Unit Holder may not withdraw a withdrawal request unless the RE agrees.

8.2 Action following request

Within a reasonable time of receiving a withdrawal request under clause 8.1, the RE must consider that request and, in the RE's absolute discretion:

- (a) deny the request (but it must then notify the Unit Holder accordingly); or
- (b) effect the withdrawal by causing the number (or value) of Units held by the Unit Holder referred to in the withdrawal request to be redeemed at the applicable Withdrawal Price out of the Scheme Property; or
- (c) subject to the Listing Rules and the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder referred to in the withdrawal request; or
- (d) partially effect the withdrawal in the manner described in clause 8.2(b) and partially purchase Units (or arrange for Units to be purchased) in the manner described in clause 8.2(c).

8.3 Suspension of withdrawal request right

Unless the RE determines otherwise, the right to make a withdrawal request under clause 8.1 is suspended while the Scheme is admitted to the Official List.

8.4 Withdrawal while Scheme is not Liquid

- (a) While the Scheme is a registered scheme but is not Liquid the RE may make a Withdrawal Offer to all Unit Holders or to Unit Holders in a Class. A Unit Holder may withdraw from the Scheme in accordance with the terms of any current Withdrawal Offer. Otherwise, a Unit Holder has no right to request that some or all of the Unit Holder's Units be withdrawn. A Unit Holder may not withdraw an acceptance of a Withdrawal Offer unless the RE agrees.
- (b) A Withdrawal Offer must contain the information required by the Corporations Act and, if applicable, the Listing Rules. The Withdrawal Offer may be made by:
 - (i) publishing it (for example, in a national newspaper or on the internet); or
 - (ii) giving a copy to all Unit Holders (or Holders in a Class).

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- (c) Subject to the Corporations Act and the Listing Rules, the RE may determine the terms of a Withdrawal Offer in its absolute discretion but the means of effecting the withdrawal must be one of those permitted under clause 8.2 (subject to the Corporations Act and the Listing Rules).
- (d) The RE may cancel a Withdrawal Offer in accordance with the Corporations Act.

8.5 Minimum holding

- (a) Subject to the Listing Rules, the RE may, at any time, upon giving 30 days' notice to Unit Holders, establish (or reduce or increase) a minimum number of Units which must be held at any time.
- (b) Upon doing so, the RE may after giving 30 days' notice to a Unit Holder who holds, in aggregate, Units less than the minimum holding, redeem that Unit Holder's Units. The RE may treat a withdrawal request (including acceptance of a Withdrawal Offer), which if accepted, would lead a Unit Holder to hold fewer Units than that minimum number, as a request for the withdrawal of all that Unit Holder's Units.
- (c) If there is more than one Class, this clause only applies to Units in the same Class.

8.6 Sums owed

The RE may deduct from the proceeds of withdrawal of Units any money due to the RE in relation to the Unit Holder.

8.7 Transfer of Assets to effect a withdrawal

Rather than pay Cash to effect a withdrawal in whole or in part, the RE may transfer Assets to a Unit Holder (or the Unit Holder's nominee). The RE must satisfy itself that the Asset Value (with any Cash paid) will equal the total amount of Cash otherwise payable. The RE may do this on the basis of a valuation of the Assets obtained within 1 month of the withdrawal date.

8.8 Liquid or not Liquid

The RE will determine whether or not the Scheme is Liquid. Such a determination is binding on Holders and no Holder will challenge it.

8.9 Cooling off

Nothing in this clause 8 prevents the RE from complying with any requirement to return application money to Unit Holders in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the RE or the Scheme.

8.10 Increase of minimum holding

If the RE increases the minimum holding for the Scheme, the RE may, after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Withdrawal Price less than the current minimum holding, redeem that Unit Holder's holding without the need for a withdrawal request.

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8.11 Order

Unless the RE decides otherwise, the first Units issued to a Unit Holder are the first Units withdrawn.

8.12 On-market buy-back of Units⁵

- (a) While the Units are Officially Quoted the RE may (subject to, and in accordance with, the terms of any applicable ASIC Exemption, the Corporations Act and any requirements under the Listing Rules) effect a buy-back of Units by purchasing Units on-market at a price that complies with clause 9A.
- (b) Immediately following registration of a transfer of a Unit following a purchase in accordance with clause 8.12(a) the Unit is cancelled and no redemption price is payable on such cancellation.

9. Withdrawal Price

The Withdrawal Price for any Unit will be equal to:

$\frac{\text{Net Scheme Value} - \text{Transaction Costs}}{\text{number of Fully Paid Units on Issue} + \text{Partly Paid Proportion}}$	X	$\frac{\text{amount paid up on that Unit}}{\text{Issue Price of that Unit}}$
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While the Scheme is not a registered scheme or is Liquid, each of these variables will be calculated as at the next Valuation Time after the RE received (or is taken to have received) the withdrawal request. If the Scheme is a registered scheme but is not Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes. The RE may adjust any variable where the calculation is in respect of a particular Class.

9A. Purchase price for on-market buy-back of Units⁶

The purchase price payable under clause 8.12 for a Unit shall be determined by the RE as follows:

- (a) during any period in which a purchase may be made, the RE (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing from time to time if appropriate, provided that the purchase price on any day is not more than 5% above the Buy-Back Market Price (except to the extent that the purchase price is permitted under the terms of any relevant provisions of the Corporations Act, ASIC relief or Listing Rules); and
- (b) the purchase price must otherwise satisfy the conditions of any ASIC Exemption.

⁵ Amended by Supplemental Deed Poll of 21 August 2014.

⁶ Amended by Supplemental Deed Poll of 21 August 2014.

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10. Transfers

10.1 Transferability

- (a) Subject to this Constitution and their terms of issue, a Unit, Option or Financial Instrument may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the RE approves.
- (b) A transferor of Units, Options or Financial Instruments remains the Holder of the Units, Options or Financial Instruments (as the case may be) transferred until the transfer is registered.

10.2 Uncertificated system

Units, Options or Financial Instruments may be transferred in any manner permitted by an applicable uncertificated trading system. The RE may require before registration of any such transfer that there be provided to the RE any documents which the rules of the uncertificated system require or permit the RE to require be provided to it to authorise registration.

10.3 Registration of transfers

- (a) Where Units, Options or Financial Instruments are transferred other than in accordance with an applicable uncertificated trading system, the following documents must be lodged for registration at the registered office of the RE or the location of the Register:
 - (i) the instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units, Options or Financial Instruments; and
 - (iii) any other information that the RE may require to establish the transferor's right to transfer the Units, Options or Financial Instruments.
- (b) On compliance with clause 10.3(a), the RE will, subject to the powers or obligations of the RE to refuse registration, register the transferee as a Holder.
- (c) The RE may waive compliance with clause 10.3(a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.

10.4 Where registration may be refused

Subject to the Corporations Act, the Listing Rules or the rules of any applicable uncertificated trading system, the RE may refuse to register any transfer of Units, Options or Financial Instruments. When the Listing Rules apply, the RE may also apply a holding lock (or ask that a holding lock be applied) to the extent permitted by the Listing Rules.

10.5 Restricted Securities

- (a) When Units are Officially Quoted and the Listing Rules or a restriction agreement requires, the RE must refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any restricted securities on issue which is or might

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be in breach of the Listing Rules or any restriction agreement entered into by the RE under the Listing Rules in relation to the restricted securities.

- (b) 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 (subject to the Corporations Act) voting rights in respect of the restricted securities.

11. Transmission of Units, Options and Financial Instruments

11.1 Entitlement to Units on death

- (a) If a Holder dies:
 - (i) the survivor (or survivors, where the Holder was a joint Holder); and
 - (ii) the legal personal representatives of the deceased, where the Holder was a sole holder,

will be the only persons recognised by the RE as having any title to the Holder's interest in the Units, Options or Financial Instrument (as the case may be).
- (b) The RE may require evidence of a Holder's death as it thinks fit.
- (c) This clause does not release the estate of a deceased joint Holder from any liability in respect of a Unit, Option or Financial Instrument that had been jointly held by the Holder with other persons.

11.2 Registration of persons entitled

- (a) Subject to the *Bankruptcy Act 1966* (Cth), the Corporations Act and to the production of any information that is properly required by the RE, a person becoming entitled to a Unit, Option or Financial Instrument in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Holder may elect to:
 - (i) be registered personally as a Holder; or
 - (ii) have another person registered as the Holder.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
 - (i) the right to transfer;
 - (ii) the registration of the transfer of; and
 - (iii) the issue of certificates for,

Units, Options or Financial Instruments apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Holder had not occurred and the notice or transfer were a transfer signed by that Holder.

11.3 Distributions and other rights

- (a) If a Holder dies or suffers a legal disability, the Holder's legal personal representative or the responsible entity of the Holder's estate (as the case may be) is, on the production of all information as is properly required by the RE, entitled to

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the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Scheme or to voting or otherwise) as the Holder would have been entitled to if the Holder had not died or suffered a legal disability.

- (b) Where 2 or more persons are jointly entitled to any Unit, Option or Financial Instrument as a result of the death or legal disability of a Holder, they will, for the purposes of this Constitution, be taken to be joint Holders of the Unit, Option or Financial Instrument (as the case may be).

12. Successor Scheme

12.1 Transfer of Assets to Successor Scheme

The RE may, in relation to specific Unit Holders or all Unit Holders, in full discharge of those Unit Holders' rights in respect of Units and rights arising under this Constitution:

- (a) transfer Assets of the Scheme Property having a value equal (as nearly as practicably possible) to the value of the Units of the relevant Unit Holders to another managed investment scheme (*Successor Scheme*) in exchange for the issue to those Unit Holders of units in the Successor Scheme with an equivalent total issue price (as nearly as practicable); or
- (b) cause the Units of those Unit Holders to be transferred to the responsible entity or custodian of the Successor Scheme in exchange for the issue to the relevant Unit Holders of units in the Successor Scheme with an equivalent total issue price (as nearly as practicable),

if having regard to any reasonably foreseeable material benefits and detriments to Unit Holders the RE believes that to do so is in the interests of the Unit Holders as a whole, or is not materially adverse to those Unit Holders and to the Unit Holders as a whole.

12.2 Applications

The RE is authorised to complete any application for units or other documents reasonably required in relation to the issue of units in the Successor Scheme, and any form of transfer or other documents reasonably required in relation to the transfer of Units to the responsible entity or custodian of the Successor Scheme, in each case on behalf of and in the name of the relevant Unit Holder, as agent or attorney.

12.3 Notice

The RE must give notice to the affected Unit Holders not less than 21 days before the date of the proposed transfer which must contain information about the Successor Scheme considered appropriate by the RE.

13. Exchange of Units

- (a) Subject to the Corporations Act and the Listing Rules, if, with the approval of or by the RE, a written offer to transfer or redeem some or all of their Units (an Exchange

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Offer) is made to Unit Holders or to one or more specific Unit Holders (Offer Unit Holders) in consideration of any or all of:

- (i) the issue or transfer of units in another trust, or interests of whatever nature in or in relation to another entity;
- (ii) a cash payment; and
- (iii) a transfer of Assets,

and at least 21 days notice is given to Offer Unit Holders to accept the Exchange Offer, then on expiry of the period of notice any Offer Unit Holder who has not made an election in relation to the Exchange Offer will be taken to have accepted the Exchange Offer in accordance with paragraph (b).

- (b) Where an Exchange Offer is comprised of:
 - (i) cash and 1 or more other alternatives, the Offer Unit Holder is taken to have elected to accept the cash alternative; and
 - (ii) 1 or more non-cash alternatives, the Offer Unit Holder is taken to have elected to accept the alternative determined by the RE.
- (c) The RE is irrevocably authorised to complete any application for units, forms of transfer or other documents reasonably required for the purposes of this clause, in each case on behalf of and in the name of the relevant Offer Unit Holder, as agent or attorney.
- (d) Payment made to or an issue or transfer effected in favour of a Unit Holder pursuant to this clause is in full discharge of the Unit Holder's rights in respect of the Units to which the Exchange Offer relates.
- (e) The RE will not give its approval to any Exchange Offer if, having regard to any reasonably foreseeable material benefits and detriments to Unit Holders, the RE believes that to approve the Exchange Offer is not in the interests of the Unit Holders as a whole, or is materially adverse to the Exchange Unit Holders and to the Unit Holders as a whole.

14. Small Holdings

14.1 Sale or Redemption

- (a) Subject to this clause 14, the RE may in its discretion from time to time sell or redeem any Units held by a Unit Holder which comprise less than a marketable parcel as notified by the RE to Unit Holders from time to time without request by the Unit Holder.
- (b) The RE may only sell or redeem Units pursuant to this clause 14 on 1 occasion in any 12 Month period. The RE must notify the Unit Holder of its intention to sell or redeem Units under this clause 14.
- (c) The RE will not sell or redeem the relevant Units:

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- (i) before the expiry of 6 weeks from the date of the notice given under this clause 14; or
 - (ii) if, within the 6 weeks allowed under paragraph (i), the Unit Holder advises the RE that the Unit Holder wishes to retain the Units.
- (d) The RE's power to sell or redeem the Units lapses following the announcement of a full takeover but the procedure may be started again after the close of the offers made under the takeover.
- (e) The RE or the purchaser of the Units must pay the costs of the sale as the RE decides. The proceeds of the sale or redemption will not be sent until the RE has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed.

15. Net Accounting Income and Net Income

15.1 Income of the Scheme

The income of the Scheme for each Financial Year will be determined in accordance with applicable Australian Accounting Standards.

15.2 Expenses and provisions of the Scheme

For each Financial Year:

- (a) the Expenses of the Scheme will be determined in accordance with applicable Australian Accounting Standards; and
- (b) provisions or other transfers to or from reserves may be made in relation to such items as the RE considers appropriate in accordance with applicable Australian Accounting Standards.

15.3 Net Accounting Income

The RE will determine (or cause to be determined) the **Net Accounting Income** for each Financial Year by:

- (a) applying against the income of the Scheme for that Financial Year:
 - (i) the Expenses, provisions and reserve transfers referred to in clause 15.2 subject to any other prudent adjustments in accordance with applicable Australian Accounting Standards; and
 - (ii) any Net Accounting Loss (as defined below in this clause) carried forward from a preceding Financial Year; and
- (b) adjusting the amount calculated under paragraph (a) by such other amounts or contingencies necessary (including amortisation, changes to accounting policies, any realised or unrealised gains or losses (including revaluation of a capital Asset and the effect of marking to market any derivative contracts)) in order that the Net Accounting Income for the period may fairly represent the amount of income of

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the Trust available for distribution by the Trust for that Financial Year. Where the amount is negative it will be the **Net Accounting Loss** for that Financial Year.

15.4 Net Income

The RE will determine (or cause to be determined) the **Net Income** for each Financial Year in accordance with section 95(1) of the *Income Tax Assessment Act 1936* (Cth).

16. Distributions

16.1 Distributable Income

- (a) Subject to clause 16.1(b), **Distributable Income** of the Scheme for each Financial Year is the Net Accounting Income (as determined in accordance with clause 15.3) for that Financial Year.
- (b) The RE may determine that the Distributable Income for a Financial Year will be:
 - (i) the Net Income (as determined in accordance with clause 15.4) for that Financial Year less any amounts included in Net Income that are not represented by cash (for example, foreign tax credits); or
 - (ii) some other amount not less than the Net Accounting Income for that Financial Year.

16.2 Present entitlement

On and from the last day of each Financial Year, the Unit Holders on the Register on the last day of the Financial Year have a vested and indefeasible interest in, and will be presently entitled to receive distribution of the Distributable Income of the Scheme for that Financial Year (other than any part of the Distributable Income which has previously been distributed in that Financial Year as permitted by this clause 16) in the proportion specified in clause 16.3(c).

16.3 Distribution of Distributable Income

- (a) The RE may determine to make an interim distribution during any Interim Distribution Period (an **Interim Distribution**). The Interim Distribution will be an amount equal to the Distributable Income for the Interim Distribution Period calculated as if the Interim distribution Period were a Financial Year. . The RE must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Unit Holders on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in clause 16.3(c).
- (b) Within 90 days of the end of the Financial Year and subject to clause 16.3(d), the RE must pay to the Unit Holders on the Register at the end of the last day of that Financial Year an amount equal to the Distributable Income of the Scheme for the Financial Year less any amounts previously distributed during that Financial Year under clause 16.3(a).

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- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class and to clause 16.3(d), a Unit Holder on the Register at the end of the last day of the Financial Year or Interim Distribution Period:
- (i) for the purposes of clause 16.2, has a vested and indefeasible interest in, and is presently entitled to;
 - (ii) for the purposes of clause 16.3(b), is entitled to a distribution of; and
 - (iii) for the purposes of clause 16.3(a), is entitled to an Interim Distribution of, the proportion of the Distributable Income, or such Interim Distribution which the RE determines to make, as is equal to the number of Units held by that Unit Holder on that date divided by the number of Units on Issue on that date.
- (d) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Unit Holder is entitled to receive a distribution under clause 16.3(a) or 16.3(b) in accordance with the following formula:

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

where:

- A = the amount of the Distributable Income or Interim Distribution in respect of the relevant Financial Year or Interim Distribution Period (as the case may be);
- B = the amount (if any) of additional withholding tax (or any similar or equivalent tax) which has been withheld from any dividends or distributions paid to the Scheme during or in respect of the relevant Financial Year or Interim Distribution Period as a consequence of the characteristics of any particular Unit Holder or Unit Holders including the number or percentage of Units on Issue held by any such Unit Holder;
- C = the aggregate of the number of Units held by the Unit Holder as at the close of business on the last Business Day of that Financial Year or Interim Distribution Period which are entitled to a full income distribution for that period plus, if the Unit Holder holds at the close of business on the last Business Day of that period Units issued during that period which have a proportionate income entitlement in accordance with clause 16.7, the aggregate number of such Units held by that Unit Holder multiplied by the relevant proportion;
- D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Financial Year or Interim Distribution Period plus, if Units have been issued during that period which have a proportionate income entitlement in accordance with clause 16.7, the aggregate of the total number of such Units multiplied by the relevant proportion, in each case calculated as at the close of business on the last Business Day of that period; and

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E = the amount (if any) of additional withholding tax (or any similar or equivalent tax) which has been withheld from any dividends or distributions paid to the Scheme during or in respect of the relevant Financial Year or Interim Distribution Period as a consequence of the characteristics of the Unit Holder including the number or percentage of Units on Issue held by the Unit Holder.

16.4 Capital distributions

The RE may distribute capital of the Scheme to the Unit Holders. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the RE divided by the number of Units on the Register on that date. A distribution may be in Cash or of Assets or by way of bonus Units.

16.5 Grossed up Tax amounts

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders in proportion to the Distributable Income for a Financial Year or an Interim Distribution, as the case may be, which is referable to a dividend or other income to which they are presently entitled.

16.6 Reinvestment

A Unit Holder may, if the RE approves, elect to reinvest some or all of any distribution by acquiring Units in the Scheme and the amount of the distribution must be applied on behalf of the Unit Holder to acquire the additional Units in the Scheme. In those cases, the RE is treated as having received an application to reinvest distributions on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 7. The procedure for reinvestment of distributions is to be determined by the RE and notified to Unit Holders from time to time.

16.7 Other Rights or Restrictions

For the removal of doubt and despite anything in this clause 16, the rights of a Unit Holder under this clause 16 are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the RE is entitled to do so by the Corporations Act and the Listing Rules, the RE may decide to issue:

- (a) Partly Paid Units which for the purposes of distribution entitlements are to be treated according to:
 - (i) that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit rounded to the nearest 2 decimal places; and
 - (ii) the length of time during the Financial Year or Interim Distribution Period for which the proportion or different proportions of the Issue Price were paid up; or

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- (b) Units on terms which entitle the Unit Holder to receive a distribution of Distributable Income in respect of a Financial Year or Interim Distribution Period in which such Units are issued in an amount which is not greater than the proportion of the Distributable Income or Interim Distribution, as applicable, to which a Unit Holder holding a Unit during the whole of that period is entitled, multiplied by the number of days from the date of issue of those Units to the end of that period divided by the total number of days in that period; or
- (c) Units on terms which do not entitle the Unit Holder to receive a distribution of Distributable Income in respect of a Financial Year or Interim Distribution Period in which such Units are issued; or
- (d) Partly Paid Units or Units on such other terms as to the above matters or otherwise that the RE determines.

16.8 Scheme taxed as company

If the Scheme is to be taxed as if it were a company, the RE may determine that this clause 16.8 applies to any period (a ***Distribution Period***) instead of clauses 16.1 to 16.6. If it does so:

- (a) As soon as practicable after the end of the Distribution Period the RE must determine the income in respect of the Distribution Period. Unless the RE determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with applicable Australian Accounting Standards.
- (b) The RE must provide for, and pay from the Assets of the Scheme when appropriate, all Tax attributable to the income of the Scheme.
- (c) The RE may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a ***Distributable Amount***) to Unit Holders on the Register on any date determined by the RE (***CD Date***).
- (d) For each Distributable Amount being paid to Unit Holders under this clause 16.9 the RE:
 - (i) must comply with the Tax Act; and
 - (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) A Unit Holder is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

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- A = the aggregate of the number of Units held by the Unit Holder as at the close of business on the CD Date for that Distributable Amount which are entitled to a full income distribution plus, if the Unit Holder holds on the CD Date for that Distributable Amount Units which have proportionate income entitlement in accordance with clause 16.7, the aggregate number of such Units held by that Unit Holder multiplied by the relevant proportion;
- B = the aggregate of the total number of Units entitled to a full income distribution plus, if Units have been issued which have a proportionate income entitlement in accordance with clause 16.7), the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the CD Date for that Distributable Amount; and
- C = the Distributable Amount.

The Distributable Amount must be paid to Unit Holders within two Months after the relevant CD Date.

16.9 Withholding Tax

The RE may deduct from any amount dealt with under this clause any Tax that it is required by Law to deduct from such amount.

17. Powers of RE

17.1 Powers

The RE has all the powers:

- (a) in respect of the Scheme that it is possible under the Law to confer on a responsible entity;
- (b) as though it were the absolute owner of the Assets and acting in its personal capacity; and
- (c) necessary for fulfilling its obligations under this Constitution and at Law.

For example, the RE's powers include the following:

- (i) to acquire Property or dispose of Assets for cash or other consideration;
- (ii) to develop, improve and otherwise deal with any Assets;
- (iii) to borrow, raise money or otherwise obtain financial accommodation (for example, for the purposes of paragraphs (i) and (ii)) and to incur all types of obligations and liabilities;
- (iv) to create Security Interests over the Scheme Property or any Asset or any future Scheme Property (for example, for the purposes of paragraphs (iii) and (v));
- (v) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (vi) to apply for listing of the Scheme, and quotation of the Units, Options or Financial Instruments (or any other financial product), on any stock

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exchange, including the ASX, and for this purpose the RE is authorised on its own behalf and on behalf of each Holder as the Holder's agent or attorney to do all things necessary to effect a listing and quotation;

- (vii) to make any kind of Investment (including entering into Derivatives);
- (viii) to delegate its investment powers and discretions, in whole or in part, to an investment advisory committee;
- (ix) to buy-back Units;
- (x) to fetter future discretions, such as by the granting of options;
- (xi) to enter into any arrangement or agreement with underwriters in relation to the Scheme;
- (xii) to institute, defend and compromise legal proceedings, including arbitrations and investigations;
- (xiii) to insure any Assets against all or any risks and for amounts the RE considers appropriate;
- (xiv) to attend and vote at meetings of any company or other entity; and
- (xv) to exercise all voting rights conferred by the Assets as it thinks fit.

17.2 Specific Powers

Without limiting clause 17.1, the RE has the specific powers described in schedule 3.

17.3 Unit Holders Acknowledgement

The Unit Holders acknowledge that the Scheme was specifically established for the purpose of doing the things described in schedule 3 and authorise the RE to do those things.

17.4 Delegation

- (a) The RE may appoint delegates or agents (including Custodians) to perform any act or exercise any power of the RE (including a power in turn to appoint its own agent or delegate).
- (b) An agent or delegate may be an associate or employee of the RE.
- (c) An appointment may be joint.
- (d) Subject to section 601FB of the Corporations Act, the RE will not be liable for the acts or omissions of any delegate so long as reasonable care is taken in selecting the delegate. The RE may include provisions in the delegate's appointment to protect and assist those dealing with the delegate as the RE thinks fit.

17.5 Advisers

Without limiting clause 17.1, the RE may engage Advisers to assist it with its duties and functions under this Constitution. An Adviser may be an associate or employee of the RE.

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18. Valuations

18.1 Valuation of an Asset

Subject to clause 18.2, the RE may cause an Asset to be valued at any time.

18.2 Valuation if required

The RE must cause an Asset to be valued if required by ASIC or under the Corporations Act and the valuation must be undertaken in accordance with those requirements.

18.3 Valuation method

The RE may determine and vary valuation methods and policies for each category of Asset. Unless the RE determines otherwise, the value of an Asset will be its market value. Where the RE values an Asset at otherwise than its market value, the valuation methods and policies applied by the RE must be capable of resulting in the calculation of an Issue Price or a Withdrawal Price that is independently verifiable.

18.4 Determination of Net Scheme Value

The RE may determine the Net Scheme Value at any time in its discretion, including more than once a day.

19. Holding Assets

19.1 How held

Subject to clauses 19.2 and 19.3, all Assets will be held in the name of the RE.

19.2 Other Custodian

If the RE considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the RE and acting as agent for the RE.

19.3 Holding of Assets

The Custodian of a particular Asset must hold that Asset either:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the RE (while the Scheme is a registered scheme, to the extent permitted by the Corporations Act or an ASIC Exemption).

20. The Register

20.1 Keeping Registers

The RE must establish and keep a Register of Unit Holders, a Register of Option Holders and a Register of Financial Instrument Holders.

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20.2 Information in Registers

To the extent applicable, the Registers must be kept in accordance with, and contain the information required by, the Corporations Act. Otherwise, the RE may decide what information is included in the Registers. If the Corporations Act applies, the RE has the powers conferred under the Corporations Act in relation to the Register. The RE is not obliged to register more than three persons as joint Holders.

20.3 Changes

Every Holder must promptly notify the RE of any change of name or address and the RE must alter the relevant Register accordingly.

21. Advisory Board

21.1 Formation and composition of Advisory Board

The RE may form an Advisory Board comprising the number of members the RE determines and notifies to Unit Holders. The Advisory Board may comprise representatives of the RE and Unit Holders. Members of the Advisory Board will be appointed and removed in the manner the RE determines.

21.2 Functions of Advisory Board

The Advisory Board will have the functions determined by the RE from time to time.

21.3 Meetings of Advisory Board

The Advisory Board, if any, will meet at least once in each Quarter. The RE, at its own discretion or upon the request of a member of the Advisory Board (which request may be withdrawn at any time), may convene a meeting of the Advisory Board at any time. The Advisory Board may make rules for the conduct of its meetings and may meet in person or by any technology its members agree.

21.4 Appointment of Advisers

The Advisory Board may appoint Advisers (who may be associates of the RE or any Unit Holder) qualified to advise on matters relevant to the Scheme to assist it to discharge its functions. The appointment of any Adviser under this clause must be on arms length terms.

21.5 Remuneration of members of Advisory Board

A member of the Advisory Board is entitled to receive a fee as determined by the RE, payable from the Scheme Property.

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22. The RE's and Advisory Board's Limitation of Liability

22.1 General

Subject to the Corporations Act, neither the RE nor any member of the Advisory Board is liable for any loss or damage to any person (including any Unit Holder, Option Holder or Financial Instrument Holder) arising out of any matter unless, in respect of that matter, it acted both:

- (a) otherwise than in accordance with this Constitution; and
- (b) without a belief held in good faith that it was acting in accordance with this Constitution.

In any case, subject to the Corporations Act, the liability of the RE and each member of the Advisory Board in relation to the Scheme is limited to the Assets, from which the RE and each member of the Advisory Board is entitled to be, and is in fact, indemnified.

22.2 Specific

In particular, subject to the Corporations Act, the RE and each member of the Advisory Board is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (a) to the extent permitted by Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the RE or the Advisory Board; or
- (b) it acted as required by Law; or
- (c) it relied in good faith upon any signature, marking or documents.

23. Indemnities

23.1 RE's indemnity

In addition to any indemnity under any Law but subject to the Corporations Act, the RE has a right of indemnity out of the Scheme Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust.

23.2 RE's indemnity continuing

Such right of indemnity in respect of a matter (an **Indemnified Matter**) will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in respect of which the indemnity does not apply. Also, the right of indemnity continues to be available after the RE retires or is removed as responsible entity of the Scheme.

23.3 Payment

The RE may pay out of the Scheme Property any amount for which it would be entitled to be indemnified under clause 23.1 or clause 24.

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23.4 The RE not to incur liability

The RE is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

23.5 Compliance committee and Advisory Board

If any member of a compliance committee or Advisory Board established by the RE in connection with the Scheme incurs a liability in that capacity in good faith, the RE may indemnify the compliance committee member or Advisory Board member out of the Scheme Property, to the extent permitted by the Corporations Act.

24. The RE's Indemnity by Holders for Tax Liability

24.1 Liability limited

The RE is entitled to be indemnified by a Holder or a former Holder to the extent that it incurs any liability for Tax as a result of the Holder's or former Holder's action or inaction or as a result of an act or omission requested by the Unit Holder or former Unit Holder.

24.2 Joint Holders

Joint Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 24.1 applies.

25. Change of RE

25.1 Voluntary retirement while a registered scheme

While the Scheme is a registered scheme, the RE may retire as the responsible entity of the Scheme as permitted by the Corporations Act.

25.2 Voluntary retirement while not a registered scheme

While the Scheme is not a registered scheme, the RE may retire on not less than 2 months' notice to Unit Holders (or such shorter period as they agree). On retirement, the RE may appoint in writing another person to be the responsible entity.

25.3 Compulsory retirement

The RE must retire as the responsible entity of the Scheme when required by Law.

25.4 New RE

Any 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. While the Scheme is not a registered scheme the RE must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of responsible entity.

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25.5 Release

When the RE retires or is removed, subject to the Corporations Act, the RE is released from all obligations in relation to the Scheme arising after the time it retires or is removed.

25.6 Retirement benefit

Subject to the Listing Rules and the Corporations Act, the RE is entitled to agree with the incoming responsible entity that it will be paid by, or receive a benefit from, the incoming responsible entity for:

- (a) agreeing to submit a proposal for its retirement to a meeting of Unit Holders, and nominating to the Unit Holders the incoming responsible entity as its replacement; or
- (b) retiring as responsible entity,

and is not required to account to Unit Holders for such payment or benefit. The RE is also entitled to sell part or all of its business relating to managing the Scheme to the incoming responsible entity (or any related body corporate or associate of the incoming responsible entity) for any consideration the parties may agree.

26. Amendments to Constitution

Subject to the Corporations Act, the RE may amend this Constitution (including this clause) by deed or as otherwise permitted by the Corporations Act.

27. Statements, Accounts and Audit

27.1 Appointment of auditors

- (a) The RE must appoint a registered company auditor to audit the Scheme's financial report for a Financial Year and perform the other duties required of the auditor under the Corporations Act.
- (b) While the Scheme is a registered scheme the RE must appoint a Compliance Plan Auditor.

27.2 Retirement of auditors

While the Scheme is a registered scheme, the Scheme Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Corporations Act. Otherwise, the Scheme Auditor may retire or be removed in accordance with its terms of engagement or as agreed with the RE.

27.3 Remuneration of auditors

The remuneration of the Scheme Auditor and Compliance Plan Auditor will each be fixed by the RE.

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27.4 Accounts and reports

- (a) The financial statements of the Scheme must be kept and prepared by the RE in accordance with applicable Australian Accounting Standards.
- (b) The RE must report to Unit Holders concerning the affairs of the Scheme and their holdings as required by the Corporations Act. Subject to the Corporations Act, the person preparing a report may determine the form, content and timing of it.
- (c) The maintenance of financial statements in accordance with applicable Australian Accounting Standards will be for financial reporting purposes and shall not be taken to be evidence of a determination being made under clause 16.1.

27.5 Audit

The RE will cause:

- (a) the Scheme Auditor to audit and report on the financial statements; and
- (b) while the Scheme is a registered scheme the Compliance Plan Auditor to audit and report on the compliance plan,

each in the manner required by the Corporations Act to the extent it applies.

28. Meetings of Holders

28.1 Convening meetings

The RE may at any time convene a meeting of Unit Holders and must convene a meeting of Unit Holders when required to do so by the Corporations Act.

28.2 Calling and holding meetings while a registered scheme

While the Scheme is a registered scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the Corporations Act. However:

- (a) **(Section 252G(4))** Despite section 252G(4) of the Corporations Act, a notice of meeting sent by post is taken to be given the day after it is posted and, subject to clause 29.1(a), a notice of meeting sent by email or other electronic means is taken to be given on the day it is sent.
- (b) **(Section 252R(2))** Despite section 252R(2) of the Corporations Act, if, at any time, there is only one Unit Holder who may vote on a resolution, the quorum for a meeting is one.
- (c) **(Section 252R(3))** Despite section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the RE may, in determining whether a quorum is present, count the individual in respect of each such capacity.
- (d) **(Section 252W(2))** A proxy is entitled to vote on a show of hands.
- (e) **(Section 252W(3))** A proxy is entitled to speak and vote for a Unit Holder (to the extent allowed by the appointment) even if the Unit Holder is present at the meeting, but only so long as the Unit Holder does not speak or vote.

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- (f) **(Section 252Y(2))** Despite section 252Y(1) of the Corporations Act, an appointment of proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.
- (g) **(Section 252Z(5))** The RE may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any period less than 48 hours before the meeting.

28.3 Calling and holding meetings while not a registered scheme

While the Scheme is not a registered scheme, meetings of Unit Holders will be called and conducted as if Part 2G.4 applied (as modified by clause 28.2) with any necessary modifications except:

- (a) sections 252B, and 252C, and 252D, and 252E, and Division 3, and section 253E, and Division 7 will not apply; and
- (b) the procedures for calling and conducting one or more meetings may be changed if the modification is approved by a resolution passed at a meeting of Unit Holders.

28.4 Cancellation or adjournment

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

28.5 Non-receipt

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

28.6 Resolution binding on Unit Holders

A resolution passed at a meeting of Unit Holders is binding on all Unit Holders.

28.7 Written resolution

Except in circumstances where the Corporations Act requires a resolution to be passed at a meeting of members, a resolution in writing signed by Unit Holders together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders and is effective when signed by the last of the Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by 1 or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by the Unit Holder.

28.8 Option Holders and Financial Instrument Holders

This clause 28 applies to meetings of a Class of Unit Holders, Option Holders and Financial Instrument Holders with any necessary modifications.

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29. Notices

29.1 Notice to Holders

- (a) Subject to the Corporations Act, a notice or other communication from the RE to a Holder must be given in writing and may be sent to the Holder's physical or electronic address (which includes fax numbers and e-mail addresses) as recorded on the Register.
- (b) Subject to the Corporations Act, a notice or other communication from the RE to a Holder sent by:
 - (i) post, is taken to be received on the Business Day after it is posted;
 - (ii) fax, is taken to be received 1 hour after the transmitter receives confirmation of transmission from the receiving fax machine; and
 - (iii) other means, is taken to be received at the time the RE determines.

29.2 Notice to joint Holders

The RE may give a notice or other communication to joint Holders by giving it to the Holder first named in the Register for that holding.

29.3 Notice to successor

The RE may give a notice or other communication to the persons entitled to a Unit, Option or Financial Instrument in consequence of the death or legal disability of a Holder by sending it to the representatives or responsible entity of the Holder at the address supplied for the purpose by the representative or responsible entity. Until such an address has been supplied notice may be given by sending the notice or other communication to the Holder's address as recorded on the Register.

29.4 Signature on notice

The signature to any notice or other communication by the RE may be written, printed, stamped or produced electronically and the signature may be that of the RE or of any director or secretary of the RE.

29.5 Notices to the RE

Notices to the RE by Holders must be given in writing or in any other manner the RE determines. A notice is effective when it is received by the RE. A notice must be signed by the Holder or a duly authorised representative (unless the RE waives this requirement).

30. Termination of the Scheme

30.1 Scheme termination date

The Scheme will terminate on the earliest of:

- (a) a date specified by the RE as the date the Scheme will terminate in a notice given to Unit Holders; and

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- (b) the date on which the Scheme is terminated in accordance with another provision of this Constitution or by operation of Law.

30.2 Corporations Act

The RE may terminate the Scheme when permitted to do so, and must terminate it when required to do so, by the Corporations Act.

31. Procedure on Termination

31.1 Notice of termination

Within a reasonable time before, or as soon as practicable after, termination of the Scheme the RE must give to each Unit Holder notice of the termination and of its intention to distribute the Scheme Property.

31.2 Realisation of Scheme Property

Subject to clauses 31.4 and 31.5, as soon as practicable after giving of the notice under clause 31.1 the RE must sell or realise the Assets in such manner as the RE considers appropriate.

31.3 Final distribution

- (a) Subject to the terms of issue of any Unit or Class, the Net Proceeds From Realisation must be distributed among the Unit Holders in proportion to the number of Units they hold. The RE can determine that part of the Net Proceeds is a distribution of Distributable Income.
- (b) For the purposes of distribution entitlements, Partly Paid Units will be treated as that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit, rounded to the nearest 2 decimal places, or will be treated in such other manner as the RE determines.
- (c) This clause does not limit clause 31.6.

31.4 Transfer of Assets

Despite clause 31.3, the RE may transfer Assets to any Unit Holder holding Units having a value in excess of an amount as determined by the RE, in satisfaction of that Unit Holder's entitlement in the scheme property. The value of the Assets transferred will be calculated at market value, as determined by the RE, and the Expenses incurred in transferring the Assets will be borne by the Unit Holder or Unit Holders.

31.5 Postponement of realisation

The RE may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interests of Unit Holders. The RE will not be responsible for any loss attributable to the postponement.

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31.6 Retention of property

The RE may retain for as long as it thinks fit sufficient Assets as, in its opinion, may be required to meet any outgoings or Liabilities (actual or contingent) in respect of the Scheme. If any Asset retained is ultimately found not to be required, then it must be distributed to the Unit Holders in accordance with this clause 31.

31.7 Continuation of powers

The powers, duties and rights of the RE (including the rights to remuneration and to any indemnities under this Constitution or the Law) continue following termination to the extent to which they are not inconsistent with this clause 31.

31.8 Cancellation of Units

Unless the RE determines otherwise, all Units in the Scheme will be cancelled and taken to be redeemed from the date the final distribution of the Net Proceeds From Realisation is made.

31.9 Audit

If, at the time it is wound up, the Scheme is a registered scheme and ASIC policy requires it, the RE will provide for an independent review or audit by a registered company auditor of the final accounts of the Scheme after termination.

32. Fees

32.1 Management fees

- (a) From the Commencement Date until the Scheme Property is distributed under clause 31, the RE is entitled to receive the fees set out in schedule 2 for managing the Scheme (the **Management Fee**).
- (b) For the purposes of calculating the Management Fee under clause 32.1(a), (and despite the definitions of **Scheme Value** and **Asset Value** in clause 1.1), an Asset may be valued by the RE based on the gross value of an asset underlying (whether directly or indirectly) that Asset but only in proportion to the Scheme's direct or indirect interest in the asset. For example, where the Asset is a direct or indirect interest in another entity which holds an underlying asset, the Asset may be valued based on the value of that underlying asset, in proportion to the Scheme's indirect interest in the asset, disregarding any borrowings, liabilities or provisions of the other entity. In valuing an underlying asset for the purposes of this clause, the RE may adopt the value of the asset in the books of the other entity which holds the asset, or any other valuation method determined by the RE.

32.2 Waiver of fees

The RE may waive or postpone the receipt of any fee (or any part of a fee) or charge a lesser fee than it is entitled to receive under this Constitution.

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32.3 Establishment Costs

- (a) The RE, or an associate of the RE, may pay, on behalf of the Scheme, any or all Expenses incurred in connection with the establishment and initial promotion of the Scheme, including the production and distribution of the first disclosure document (the **Establishment Costs**).
- (b) In such a case, the RE or the associate (as the case may be) will be entitled to be reimbursed out of the Scheme Property for all Establishment Costs that were reasonably and properly incurred.
- (c) The RE or the associate (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Scheme Property in a year or years later than the year in which the Establishment Cost was incurred.

32.4 Differential fee arrangements

Subject to the Corporations Act and any ASIC Exemption, and only if the Units are not Officially Quoted, the RE may agree with any Unit Holder fee arrangements in respect of that Unit Holder which are different to those provided for under this Constitution.

32.5 Expenses

All Expenses reasonably and properly incurred by the RE in connection with the Scheme or in performing its obligations under this Constitution are payable or can be reimbursed out of the Scheme Property. Amounts payable under this clause 32.5 are in addition to fees payable under this clause 32 and rights to indemnification or reimbursement conferred under this Constitution or by Law.

32.6 Waiver of Expenses

The RE may waive or postpone reimbursement of any or all Expenses under clause 32.5.

32.7 Units as payment for fees

Subject to the Corporations Act and the Listing Rules, the RE may elect that it is to be issued Units instead of Cash in payment of its fees or reimbursement of its expenses under this Constitution.

32.8 GST

The fees payable to the RE under this Constitution do not include any amount referable to GST. If the RE is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution, then, in addition to any fee or other consideration payable to the RE in respect of the supply, the RE is entitled to be paid an additional amount on account of GST. The additional amount is to be 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, and the RE will be entitled to be reimbursed or indemnified for such amount of GST out of the Scheme Property.

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32.9 Fees paid to RE in a different capacity

Subject to the Corporations Act and the Listing Rules, the RE may be paid a fee for work performed in connection with the Scheme in its personal capacity. The RE may retain any such fee for its own purposes and is not required to account for the fee to the Scheme or Unit Holders.

32.10 Liability Net of GST

Where a party is entitled to be indemnified or reimbursed for any cost, expense or other liability that it has incurred, the amount of the indemnity or reimbursement shall not include the amount of any Input Tax Credit to which that party is entitled in relation to the relevant cost, expense or other liability. Any reference to a party's liability to pay GST or an entitlement to an Input Tax Credit includes a liability or entitlement of the Representative Member of that party's GST Group.

33. Unit Holders' Liability

33.1 Liability

Subject to this Constitution and to the extent permitted by Law, no Unit Holder will, in its capacity as Unit Holder, be personally liable for any obligation of, or liability incurred by, the RE.

33.2 Limitation of liability

Subject to this Constitution and to the extent permitted by Law, each Unit Holder's liability to the RE or the Scheme is limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for their Units.

34. Other Activities and Obligations of the RE

34.1 Other activities

Subject to the Corporations Act, nothing in this Constitution restricts the RE (in its personal capacity or in any capacity other than as responsible entity and responsible entity of the Scheme) or its related bodies corporate or other associates from:

- (a) dealing with the RE (as responsible entity and responsible entity of the Scheme) or any Holder; or
- (b) being interested in any contract, transaction, or matter with the RE (as responsible entity and responsible entity of the Scheme) or with any Holder;
- (c) acting as responsible entity or responsible entity in relation to any other trust or managed investment scheme; or
- (d) dealing with any entity in which the RE holds an Investment on behalf of the Scheme; or
- (e) undertaking any other business activity (including any activities relating to Land of the same kind that the Scheme may have an interest in); and

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- (f) none of them, unless they have contracted otherwise, has any obligation to present or grant any right over any Property (including Land) to the Scheme,

and in each such case the RE (or any associate) may retain for its own benefit all profits or benefits derived from that activity.

34.2 Other obligations

Subject to the Corporations Act, all obligations of the RE or restrictions on its power which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

34.3 Hold Units

Subject to the Corporations Act and the Listing Rules, the RE and its associates may hold Units, Options or Financial Instruments in any capacity.

35. Payments

35.1 Money payable

Money payable by the RE to a Holder may be paid in any manner the RE decides.

35.2 Cancel cheques

The RE may cancel cheques drawn by the RE that are not presented within 6 months. Subject to the Corporations Act, when such a cheque was drawn in favour of a Holder, the money may be:

- (a) in the case of a Unit Holder, reinvested in Units at the Issue Price prevailing at the next Valuation Time after the day the cheque is cancelled; or
- (b) held by the RE for the benefit of the Holder; or
- (c) paid by the RE in accordance with applicable unclaimed money legislation.

The same applies where the RE attempts to make a payment to a Holder by electronic transfer of funds and the transfer is unsuccessful 3 times. However, the RE may also then draw a cheque in favour of the Holder.

35.3 Joint Holders

A payment to any 1 of joint Holders will discharge the RE for the payment.

35.4 Deductions for Tax or other payments

The RE may deduct from any amount payable to a Holder or former Holder (or received from a Holder or former Holder) any amount of Tax or other payment (or an estimate of it) which the RE reasonably believes it must or should deduct, in respect of that Holder or former Holder.

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36. Complaints

36.1 Procedure

While the Scheme is a registered scheme, if a Unit Holder submits to the RE a complaint in relation to the Scheme or its operation, the RE must:

- (a) **(Acknowledge complaint)** acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) **(Consider complaint)** consider the complaint in accordance with clause 36.2;
- (c) **(Communicate)** communicate in writing to the complainant the determination and the reasons for that determination of either the compliance committee or the RE (as the case may be) in relation to the complaint as soon as practicable and in any event not more than 90 days after the RE received the complaint;
- (d) **(Further avenues)** if the complainant is dissatisfied with the outcome of the determination:
 - (i) refer the complainant to (and provide reasonable details of) an independent external dispute resolution body of which the RE is a member; and
 - (ii) provide general guidance (without any obligation to provide legal advice) on further avenues available to the complainant; and
- (e) **(Inspection of documents)** if the complainant so requests, provide the complainant with an opportunity to inspect the material referred to in clause 36.2(d).

36.2 Consideration of complaint

In considering a complaint, the RE will take into account such of the following factors as are relevant to that complaint:

- (a) the alleged breach of the Corporations Act, this Constitution or breach of trust;
- (b) legal advice (if any) it has received in relation to that alleged breach;
- (c) the supporting material provided by the Unit Holder in relation to the alleged breach;
- (d) any material held by the RE in relation to the alleged breach; and
- (e) any other relevant information.

36.3 Referral of complaint

The RE must consider a complaint by referring it to either:

- (a) the RE's Compliance Officer; or
- (b) if the Compliance Officer considers the complaint to be of a material nature, the board of directors of the RE.

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37. Listing Rules and Corporations Act

37.1 Listing Rules

If and for so long as the Scheme is admitted to the Official List the following applies:

- (a) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must 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.
- (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.

This is despite clause 26.

37.2 Corporations Act and Listing Rules

Despite any other clause of this Constitution, a clause of this Constitution which is expressed to apply subject to the:

- (a) Listing Rules, is only so subject while the Scheme is admitted to the Official List (and the clause is to be read accordingly); and
- (b) Corporations Act, is only so subject while the Scheme is a registered scheme (and the clause is to be read accordingly).

37.3 Agreed amendments

If any part of this Constitution (a **Required Part**) is included to comply with the requirements of the Corporations Act, ASIC or ASX (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that unless the RE determines otherwise, this Constitution may be amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement), and authorise the RE to make that amendment in a deed made for that purpose (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

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38. ASIC Exemptions

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Constitution contain certain provisions or may only be relied upon if this Constitution contains certain provisions, then, despite clause 26, those provisions are taken 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. However, if the relief is granted by class order (rather than specifically in relation to the Scheme) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the RE declares in writing that this is the case. This declaration may be made at any time.

39. Governing Law

This Constitution is governed by the laws of New South Wales. The RE and the Holders submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

40. Severability

If any provision of this Constitution is held or found to be void, invalid or otherwise unenforceable then so much of it as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this Constitution remains in full force and effect.

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Schedule 1

Expenses

The following are examples of Expenses and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation of the Scheme and the RE and any supplemental deed amending this Constitution or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) preparation, printing, review, distribution and promotion of any disclosure document, offering memorandum for Units, Options or Financial Instruments or marketing material (in particular, all amounts disclosed in the first disclosure document);
- (c) the sale or proposed sale, purchase or a proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets or Property, including any sponsor's fee payable to an entity in connection with the purchase of any Asset or Property;
- (d) the investigation, negotiation or acquisition of any proposed Investment;
- (e) the administration, management, promotion or valuation of the Scheme or its Assets and Liabilities, including:
 - (i) the establishment and maintenance of accounts and Registers;
 - (ii) issuing of Units, Options or Financial Instruments by the RE or any sales of Units, Options or Financial Instruments by one or more Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units, Options or Financial Instruments;
 - (iii) computer operation and development and data processing;
 - (iv) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Holder under this Constitution;
 - (v) dealing with Holder enquiries and complaints;
 - (vi) communications with Holders (written or otherwise);
 - (vii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Scheme or on an ongoing basis;
 - (viii) purchasing or leasing premises for the RE in connection with the Scheme;
 - (ix) salaries of the employees of the RE; and
 - (x) any travel expenses incurred by the RE in connection with the Scheme.

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- (f) admission of the Scheme to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Scheme from the official list of the ASX or any other exchange or the suspension of any Units, Options or Financial Instruments from trading by the ASX or any other exchange;
- (g) fees payable to ASIC, the ASX and any other regulatory body in relation to the Scheme, Units, Options or Financial Instruments;
- (h) the assigning or maintenance of a credit rating to the Scheme or any Assets;
- (i) convening and holding meetings of Holders, or of directors of the RE or of the Advisory Board, and the implementation of any resolutions;
- (j) Tax and bank fees;
- (k) the engagement of Custodians, Advisers and others;
- (l) preparation, lodgement and audit of the taxation returns and accounts, and other reports including compliance reports, of the Scheme;
- (m) termination of the Scheme and the retirement or removal of the RE and the appointment of a new RE;
- (n) any court proceedings, arbitration or other dispute concerning the Scheme including proceedings against the RE;
- (o) raising money or otherwise obtaining financial accommodation for the Scheme, including a capital raising by the Scheme, including fees payable to any underwriter or broker;
- (p) the establishment and operation of the board of directors of the RE, including the payment of fees and associated insurance premiums and travel and accommodation costs, regardless of where the directors live or where the meetings are held;
- (q) operation of the compliance committee, including fees payable to or insurance premiums payable in respect of any compliance committee member and travel and accommodation costs, regardless of where the compliance committee members live or where the meetings are held;
- (r) appointing members to, and maintaining the appointment of members to, the Advisory Board, costs and expenses reasonably and properly incurred by members of the Advisory Board in discharging their functions under this Constitution and fees paid to members of the Advisory Board; and
- (s) making a takeover bid for another entity or responding to a takeover bid for the Scheme.

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Schedule 2

Management Fees

In this Schedule:

Benchmark Index means the accumulation index utilising the securities included in the S & P / ASX 200 Property Accumulation Index (but excluding Units in this Scheme from the calculation) as calculated by Standard & Poor's, or another suitable body as determined by the RE from time to time and notified to Unit Holders, using closing market price series data except for the closing price at the end of the Half Year which shall be replaced by the 10 day volume weighted average trading prices from and including the date upon which the Scheme's Units trade ex distribution entitlement for the relevant Half Year. The index will commence at 100 utilising the closing prices on the date immediately prior to the date upon which the Units shall first become Officially Quoted. If the S&P / ASX 200 Property Accumulation Index ceases to be published or reasonably able to be calculated or, in the RE's reasonable opinion, is no longer a relevant benchmark there shall be substituted a comparable index selected by the RE.

Date of Delisting means the earlier of:

- (a) the date upon which the RE receives notification from the ASX of the removal of the Scheme from the Official List of the ASX; or
- (b) where the Units are suspended from quotation on the Official List of the ASX by the ASX for a continuous period of 60 days, the day following the expiration of that 60 day period.

Scheme Index means the accumulation index for the Scheme as calculated by Standard & Poor's, or other suitable body as determined by the RE from time to time and notified to Unit Holders, using closing market price series data except for the closing price at the end of the Half Year which shall be replaced by the 10 day volume weighted average trading price from and including the date upon which the Units trade ex distribution entitlement for the relevant Half Year. The index will commence at 100 on the date immediately prior to the date upon which Units shall first become Officially Quoted.

Trigger Event means any of the following:

- (a) a resolution is passed at a meeting of Unit Holders removing or replacing the RE without the recommendation of the existing RE;
- (b) the Scheme terminates;
- (c) a Date of Delisting occurs;
- (d) the Units are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act;
- (e) the Unit Holders approve a formal or informal scheme of arrangement pursuant to which the Scheme is to merge with any other managed investment scheme or entity or pursuant to which there is a material change in the ownership or control of the Scheme.

The RE is entitled to receive the base management fee and the performance fee as referred to below.

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1. Base Management Fee

The RE is entitled to charge and recover from the Scheme (and any companies the shares of which are held as Scheme Property) base management fees of 0.4% of the Scheme Value, calculated on the Scheme Value (subject to clause 32.1(b)) as at 30 June and 31 December each year and payable from Scheme Property. The base management fee is payable to the RE within 5 Business Days of the end of each Quarter. Payments in respect of the Quarters ending 31 March and 30 September will be based on the Scheme Value (subject to clause 32.1(b)) at the end of the previous Half Year and will represent a part payment on account for the fee for the current Half Year. The calculation is to be made in Australian Dollars and paid to the RE in Australian Dollars.

2. Performance Fee

(a) Performance fee

The RE is entitled to charge and recover from the Scheme (and any companies the shares of which are held as Scheme Property) a performance fee in respect of each Half Year if the performance of the Scheme for the Half Year exceeds a stated benchmark. The performance fee will be payable to the RE within 5 Business Days of the date of calculation of the performance fee. The formula for determining the performance fee (if any) payable to the RE in respect of a Half Year is set out below. If the SR (as defined below) for the Scheme for a Half Year is negative, the performance fee (if any) to which the RE would have been entitled will not be paid to the RE until the end of the first succeeding Half Year in which the SR is positive, unless a Trigger Event occurs in which case paragraph (b) applies:

Performance fee payable to the RE =

PF + EPF

where:

PF (Tier 1 Performance Fee) = $NPc \times Mco \times 5\%$, but equals zero if NPc is not greater than zero;

EPF (Tier 2 Performance Fee) = $(NPc - Epb) \times Mco \times 15\%$, but equals zero if NPc is not greater than EPb ;

NPc = SR-BM (expressed as a percentage);

NPo (Opening Net Performance) = NPc of prior Half Year except in the first Half Year when $NPo = 0$;

SR (Scheme Return expressed as a percentage) =
$$\frac{(Sc - So)}{So}$$

where:

Sc = Scheme Index at the close of the Half Year; and

So = Opening Scheme Index being the Scheme Index at close of the prior Half Year or if $NPo < 0$ then So = the Scheme Index used as the Opening Scheme Index (So) for the previous period, unless, via the operation of this formula So would refer to an Opening

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Scheme Index dated in excess of 36 months prior to the close of the relevant Half Year, in which instance, So = the actual Scheme Index at the close of that Half Year which was 36 months prior to the Half Year for which the Performance Fee entitlement is being determined;

BM (Benchmark Return expressed as a percentage)

$$= \frac{(Bc - Bo)}{Bo}$$

where:

BC = Benchmark Index at the end of the Half Year; and

Bo = Opening Benchmark Index being the Benchmark Index at close of the prior Half Year or if $NPo < 0$ the Bo = the Benchmark Index used as the opening Benchmark Index (Bo) for the previous period, unless, via the operation of this formula Bo would refer to an Opening Benchmark Index dated in excess of 36 months prior to the close of the relevant Half Year, in which instance, Bo = the actual Benchmark Index at the close of that Half Year which was 36 months prior to the Half Year for which the Performance Fee entitlement is being determined;

Mco (Market capitalisation) = $Po \times Uo$

where:

Po = the weighted average trading price of all Units traded on the ASX during the ten Business Days from and including the date upon which the Units trade ex the distribution entitlement for the period ending on the last day of the relevant Half Year; and

Uo = Units on issue at the close of the last day of the relevant Half Year;

Epb (Tier 2 Performance Benchmark) = 1% for the Half Year.

(b) Cash payment on the occurrence of a Trigger Event

If a Trigger Event occurs, the RE is entitled to be paid a cash payment equal to the performance fees calculated in accordance with paragraph (a) as if the end of the Half Year was the date of the occurrence of the Trigger Event but in determining the Scheme Index at the close of the period there is to be substituted for the market price of the Units:

- (i) in the case of a takeover bid, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the Unit Holders or for the target's statement or, if there is no independent expert's report, the price per Unit which would be payable for compulsory acquisition (including in the case of non-cash consideration the market value of that non-cash component on the date of the Trigger Event);

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- (ii) in the case of a scheme of arrangement, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the Unit Holders in relation to the scheme of arrangement or if there is no independent expert's report, the fair value of the consideration per Unit as determined by an independent accountant appointed by the RE;
- (iii) in the case of delisting, the weighted average market price of the Units traded on the ASX during the 10 Business Days prior to the Date of Delisting; or
- (iv) in the case of termination of the Scheme, the amount per Unit to be received by the Unit Holders.

In addition, the RE shall be paid a cash payment equal to the full amount of the performance fee from any prior Half Year which the RE would have been entitled to but which has not been paid to the RE whether due to the Scheme Return (SR) being negative although exceeding the Benchmark Return (BM), or the performance fee exceeding 0.60% of the Scheme Value (subject to clause 32.1(b)) as at the end of the Financial Year in accordance with paragraph (c) or otherwise.

The cash payment is payable as soon as it can be calculated and shall be paid to the entity which was the RE on the day upon which the Trigger Event occurred notwithstanding that the entity may have ceased to be the responsible entity or that the Scheme has terminated.

(c) Maximum amount of performance fee

The maximum performance fee which may be paid to the RE in accordance with paragraph (a) above in respect of any Financial Year is 0.60% of the Scheme Value (subject to clause 32.1(b)) as at the end of that Financial Year. If the performance fee as calculated under paragraph (a) above exceeds this limit in respect of a Financial Year, the balance of the performance fee above the limit shall not be paid immediately but can be carried forward and be payable in any future Financial Year to the extent to which the performance fee in respect of that Financial Year (plus any carried forward performance fee proposed to be paid) is less than the limit in respect of that future Financial Year. Where there has been an annual outperformance by the Trust for a consecutive period of three years or more from the accrual of the performance fee, the accrued balance will be paid at the end of that period. This payment of outstanding fees will not be capped. Accordingly it is feasible that the Performance fee could exceed 0.60% per annum of the trust's assets after three years of consecutive outperformance.

The cash payment which may be paid to the RE in accordance with paragraph (b) above is not subject to a maximum amount.

(d) Issue of Units in lieu of the performance fee

The RE may, at its absolute discretion, determine that Units in the Scheme shall be issued to the RE in lieu of payment of the performance fee described in paragraph (a) above. These Units shall be issued at an issue price which is the greater of:

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- (i) the Market Price as determined under paragraph (a) of the definition of Market Price where the relevant day is the first Business Day after the Units trade ex the distribution entitlement with respect to the relevant Half Year; or
- (ii) the net tangible asset backing per Unit at the end of the Half Year.

The number of Units issued will be calculated by dividing the amount of the performance fee which would otherwise be payable to the RE by the issue price determined as described in this paragraph (d).

(e) No refund of performance fee

For the avoidance of doubt, where a performance fee is payable and paid to the RE in respect of a Half Year in accordance with this Schedule 2, it does not become repayable in any circumstance including by reference to the performance of the Scheme or the RE in any later period.

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Schedule 3

Specific Powers of the RE

1.1 Definitions

In this schedule:

PDS means the first Product Disclosure Statement lodged with ASIC under Part 7.9 of the Corporations Act for the first offer of Units to investors.

1.2 Powers of the RE

The RE is specifically empowered to do any thing and enter into any other document or arrangement described in the PDS or which is necessary to give effect to the transactions described in the PDS or is collateral to any document or arrangement described in the PDS.

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Executed and delivered as a **Deed** in Sydney.

**Executed by Galileo Japan Funds
Management Limited:**

Director Signature

Director/Secretary Signature

Print Name

Print Name