


This is Annexure 1 of 3 pages  
referred to in Form 5101

CLAYTON UTZ

  
.....  
Director/Secretary Dated 30/3/15  
Tony Pitt

## Supplemental Deed

360 Capital Total Return Active Fund  
ARSN 602 303 613

360 Capital Investment Management Limited  
ACN 133 363 185  
Responsible Entity

Clayton Utz  
Lawyers  
Level 15, 1 Bligh Street Sydney NSW 2000 Australia  
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## **Supplemental Deed made on 30 March 2015**

**Party**                      **360 Capital Investment Management Limited ACN 133 363 185** of Level 8, 56 Pitt Street, Sydney NSW 2000 ("**Responsible Entity**")

### **Background**

- A.        By a deed dated 13 October 2014, the 360 Capital Total Return Active Fund was established (the "**Trust**").
- B.        The constitution for the Trust referred to in Background A, as amended from time to time, is referred to in this Deed as the "**Constitution**".
- C.        There are currently no unitholders in the Trust.
- D.        Pursuant to section 601GC(1)(b), the Responsible Entity amends the Constitution as set out in the Deed.

### **Operative provisions**

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#### **1.        Operative provisions**

##### **1.1       Specific modifications**

Subject to clause 2, the Constitution is modified by:

- (a)       immediately prior to paragraph 8.1(a), inserting the following paragraph 8.1(aa):
  - "(aa)       in the case of the initial Units issued to Members pursuant to clause 24.1, at a price of \$1.00 per Unit;"; and
- (b)       in clause 24.1, deleting the words "and the Trustee and issues those Units as part of the Restructure".

##### **1.2       Provisions not affected**

The provisions of the Constitution are not otherwise affected.

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#### **2.       Effective time**

The modifications to the Constitution pursuant to clause 1.1 of this Deed take effect upon lodgement of this Deed with the Australian Securities and Investments Commission.

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#### **3.       No resettlement**

Nothing in this deed constitutes a resettlement or redeclaration of the Trust.

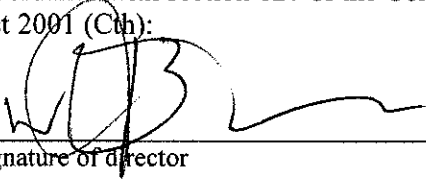
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#### **4.       Governing law**

This Deed is governed by and will be construed according to the laws of the State of New South Wales.

**Executed** as a deed.

**Executed by 360 Capital Investment Management Limited ACN 133 363 185** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

**William John Ballhausen**

Full name of director



Signature of ~~company secretary~~/director

**Tony Pitt**

Full name of company secretary/director

**C L I F F O R D  
C H A N C E**

**CLIFFORD CHANCE**

**360 CAPITAL INVESTMENT MANAGEMENT LIMITED**

**(ACN 133 363 185)**

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**360 CAPITAL TOTAL RETURN ACTIVE FUND  
UNIT TRUST CONSTITUTION  
DATED 13 OCTOBER 2014**

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## CONTENTS

Clause	Page
1. Definitions and Interpretation .....	1
2. The Trust .....	10
3. Assets held on Trust .....	10
4. Units .....	10
5. Options and Financial Instruments.....	12
6. Transfer and Transmission of Units .....	14
7. Partly Paid Units.....	17
8. Application Price for Units .....	21
9. Application Procedure.....	24
10. Redemption Price of Units .....	25
11. Redemption Procedures.....	26
12. Valuation of Assets .....	29
13. Accounts, Audit, and Register.....	30
14. Income and Distributions to Members .....	30
15. Payments .....	34
16. Powers of the Trustee.....	36
17. Retirement of the Trustee.....	37
18. Notices to Members .....	38
19. Meetings of Members.....	38
20. Rights and Liabilities of the Trustee .....	41
21. Limitation of Liability and Indemnity in favour of the Trustee.....	42
22. Liability of Members.....	43
23. Remuneration and Expenses of the Trustee .....	43
24. Duration of the Trust .....	48
25. Procedure on Termination.....	49
26. Amendments to this Trust Deed.....	50
27. Regulatory Provisions and Paramountcy .....	50
28. Stapling Provisions and Reorganisation Proposals .....	52
29. Restricted Securities.....	54
30. Small Holdings.....	55
31. Compliance Committee.....	56
32. Complaints .....	56
33. General .....	57
Schedule 1 Stapling Provisions.....	59

## DETAILS

<b>Trustee</b>	<b>Name</b>	360 Capital Investment Management Limited
	<b>ACN</b>	133 363 185
	<b>Address</b>	Level 8, 56 Pitt Street, Sydney NSW 2000
<b>Date</b>	See Signing page	

## GENERAL TERMS

**THIS DEED** poll is declared by 360 Capital Investment Management Limited (ACN 133 363 185) to be the constitution of the 360 Capital Total Return Active Fund.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this constitution:

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

**Adjusted Operating Income** means Operating Income excluding paragraphs (e) and (f) of that definition.

**Application Price** means the Unit price calculated in accordance with clause 8.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Relief** means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

**Assets** means all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

**Attached Securities** has the same meaning as in Schedule 1.

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

**Business Day** means:

- (a) while Units are not Officially Quoted, a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Sydney; and
- (b) while Units are Officially Quoted, a day which is a Trading Day for the purposes of the Listing Rules.

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

**Consolidation or Division Proposal** means a proposal to consolidate, divide or convert Units in a ratio determined by the Trustee, including rounding of the number of Units as the Trustee determines.

**Class** means a class of Units.

**Control** has the meaning given in section 50AA of the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

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

**CS Facility Operator** means the operator of the CS Facility.

**Custodian** means a person holding or appointed to hold Assets as custodian for the Trustee.

**Disposal Price** means the proceeds of the sale or redemption of a Forfeited Unit (as the case requires).

**Distributable Income** means an amount determined to be distributed by the Trust for a period in accordance with clause 14.3.

**Distribution Calculation Date** means the last day of each Financial Year and such other days as the Trustee designates.

**Distribution Date** means each day that is 60 days after a Distribution Calculation Date.

**Distribution Entitlement** means has the meaning given in clause 14.4.

**Distribution Period** means:

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

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

**Exchange Proposal** means a proposal whereby a written offer to transfer or redeem some or all of their Units or Stapled Securities is made to Members or to specific Members in consideration of any or all of:

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

**Financial Instrument** has the meaning given in clause 5.6(a).

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

**Financial Year** means:

- (a) for the first financial year, the period from the establishment of the Trust to the next Financial Year Termination Date;
- (b) for the last financial year, the period from the day after the preceding Financial Year Termination Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on the day after the preceding Financial Year Termination Date to the next occurring Financial Year Termination Date.

**Financial Year Termination Date** means:

- (a) 30 June, or if the Trust is a member of a consolidated group (as defined in the Tax Act), the date of the financial year end of that consolidated group;
- (b) the day on which the Trust becomes a "subsidiary unit holder" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a "subsidiary unit holder" or a "consolidated group" or "consolidatable group" (as defined in the Tax Act).

**Financier** means a financier to the Trustee in its capacity as trustee of the Trust (or a person acting as agent, trustee or nominee for such a financier).

**Forfeited Unit** means a Partly Paid Unit which is forfeited pursuant to clause 7.4.

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



**Instalment** means, in relation to a Partly Paid Unit, each instalment of the Application Price of that Unit which is not paid on application for the Unit.

**Liabilities** means all present liabilities of the Trust including any provision taken into account in determining the liabilities of the Trust but not liabilities:

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

**Liquid** has the same meaning as in section 601KA(4) of the Corporations Act.

**Listed** means admitted to the Official List and Listing has a corresponding meaning.

**Listing Rules** means the listing rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Market Price of a Unit**, on a particular day, means:

- (a) the weighted average price per Unit for sales on ASX (excluding any special crossings) for the period of 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
  - (i) Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the Trustee's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit that an Approved Valuer determines to be the market price of the Unit on the relevant day, having regard to the market price of Units, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the Approved Valuer considers should be taken into account in the relevant circumstances, with such determination set out in a certificate in writing addressed to the Trustee stating that in the Approved Valuer's opinion such market price determination is fair or otherwise in the best interests of Members (and the reasons and factors taken into account in arriving at such determination).

**Market Value of an Asset** means:

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, at face value plus any accrued interest;

- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Trustee, unless:
- (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
  - (ii) the Trustee reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by an Approved Valuer approved by the Trustee at the expense of the Trust;
  - (iii) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the trust on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the trust is operated by the Trustee or a related body corporate of the Trustee, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the trust;
- (c) in the case of any other Asset, the value of the Asset determined in accordance with accounting standards or, if the Trustee is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer approved by the Trustee at the expense of the Trust.

**Member** means the person Registered as the holder of a Unit (including persons jointly Registered) and where required by the Corporations Act or the context includes the holder of an Option.

**NAV Price**, in respect of a Unit, means a price calculated in accordance with clause 8.1(i) and in respect of an Attached Security a price calculated in accordance with the equivalent provision of the Stapled Entity (if applicable).

**Net Asset Value** means the value of the Assets calculated in accordance with clause 12, less the Liabilities.

**Offer Document** means the first product disclosure statement or other offering document pursuant to which Stapled Securities are offered for subscription within a 6 month period following the Restructure, as amended, supplemented or replaced from time to time.

**Official List** means the official list of ASX as defined in the Listing Rules.

**Officially Quoted** means quoted on the Official List including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension and Official Quotation has a corresponding meaning.

**Operating Income** means the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to:

- (a) property outgoings;
- (b) repairs and maintenance;
- (c) interest and other borrowing costs;
- (d) fees paid to the Trustee;
- (e) any amount that the Trustee consider prudent or appropriate to allow for depreciation and amortisation in respect of the assets held by the Trust provided that the Trustee determines such an amount prior to the Distribution Calculation Date; and
- (f) any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust provided that the Trustee determines such an amount prior to the Distribution Calculation Date.

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

**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).

**Ordinary Resolution** means a Resolution where the required majority is a simple majority.

**Overdue Amount** has the meaning given to that term in clause 7.2(b).

**Paid-up Proportion** means the number obtained by multiplying the number of Partly Paid Units on issue as at the date of calculation by the fraction obtained by dividing the aggregate of all amounts paid in respect of all Partly Paid Units on issue as at the date of the calculations by the total of the Application Prices of those Partly Paid Units.

**Partly Paid Unit** means a Unit in respect of which any portion of its Application Price remains unpaid.

**Pricing Period** means the period of 10 consecutive Trading Days ending on the Trading Day determined by the Trustee.

**Public Offering** means the first public offering of Stapled Securities which involves the raising of capital for subscription under an Offer Document with the purpose of seeking Listing and quotation of the Stapled Securities.

**Public Offer Price** means an application price of at least \$1.15 per Stapled Security.

**Ratings Agency** means any recognised ratings agency as determined by the Trustee.

**Redemption Price** means the Unit price calculated in accordance with clause 10.

**Register** means the register of Members kept by the Trustee.

**Registered** means recorded in the Register.

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

**Registration** means recording in the Register.

**Restructure** means the restructure pursuant to which unitholders in the CVC Property Fund (formerly Officially Quoted under the ASX ticker: CJT) exchanged their units in the CVC Property Fund for an equivalent value of units in the Trust and the Attached Securities.

**Restructure Price** means the ratio of 100 units in the CVC Property Fund exchanged for 1 Stapled Security under the Restructure with a deemed price for the Stapled Security of \$1.15.

**Resolution** means:

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

Except where this constitution or any applicable law provides otherwise, the required majority is a simple majority.

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

**Small Holding** has the meaning given in clause 30, as modified by Schedule 1 (if applicable).

**Stapled Entity** has the same meaning as in Schedule 1.

**Stapled Security** has the same meaning as in Schedule 1.

**Stapling** has the same meaning as in Schedule 1.

**Stapling Provisions** means the provisions relating to Stapling in Schedule 1, including where these are applied under clause 28.2 and the provisions of the Stapling Deed.

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

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

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

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

**Transaction Costs** means an amount determined by the Trustee as appropriate to factor into the Application Price or the Redemption Price to avoid an adverse impact on other Members holding Units and arising from transaction expenses which would be incurred if an acquisition or disposal of Assets was carried out because of the issue or redemption of Units. Unless the Trustee otherwise determines, the amount is:

- (a) when calculating the Application Price of a Unit, the Trustee's verifiable estimate of the total transaction costs of acquiring the Assets afresh; and
- (b) when calculating the Redemption Price of a Unit, the Trustee's verifiable estimate of the total transaction costs of selling the Assets,

in each case reduced by the proportion that the Trusts' total borrowings bears to the value of the Assets, and adjusted if appropriate for any effect of assets being held through subsidiaries of the Trust or other investment vehicles.

**Trust** means the 360 Capital Total Return Active Fund, which is constituted under and governed by this constitution.

**Trustee** means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the trustee of the Trust for the time being,

with the first trustee being Investment Management Limited (ACN 133 363 185).

**Unit** means, subject to any rights, obligations and restrictions attaching to any particular Unit or Class, an undivided share in the beneficial interest in the Trust as provided in this constitution.

**Valuation Time** means a time at which the Trustee calculates Net Asset Value.

## **1.2 Interpretation**

Unless the contrary intention appears, in this constitution:

- (a) a term or phrase defined in the Corporations Act will be accorded the same meaning when used in this constitution;
- (b) the singular includes the plural and vice versa;
- (c) the words **includes** or **including**, **for example** or **such as** when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (d) **amend** includes **delete** or **replace**;
- (e) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (f) a reference to any provision being subject to the Corporations Act only operates if the Corporations Act applies to affect that provision;
- (g) words importing a gender include any gender;
- (h) other parts of speech and grammatical forms of a word or phrase defined in this constitution have a corresponding meaning;
- (i) an expression importing a natural person includes any company, partnership, joint venture, association, corporation, other body corporate or authority;
- (j) a reference to any thing (including, without limitation, any right) includes a part of that thing;
- (k) a reference to a clause, party, or Schedule is a reference to a and clause of, and a party, and schedule to, this constitution and a reference to this constitution includes any Schedule;
- (l) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (m) a reference to law means, common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them);

- (n) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (o) a reference to a party to a document includes that party's successors and permitted assigns; and
- (p) a reference to a year (other than a Financial Year) or month means a calendar year or month respectively.

## **2. THE TRUST**

### **2.1 Name of Trust**

The Trust is called the 360 Capital Total Return Active Fund or by such other name as the Trustee determines from time to time.

### **2.2 Change of name on change of Trustee**

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

### **2.3 Trustee**

The Trustee is and agrees to act as the trustee of the Trust on the terms and conditions of this constitution.

## **3. ASSETS HELD ON TRUST**

### **3.1 Trust**

The Trustee must hold the Assets on trust for Members.

### **3.2 Holding property separately**

The Assets vest in the Trustee, but must be clearly identified as property of the Trust and held separately from the assets of the Trustee and any other managed investment scheme if and to the extent that the Corporations Act so requires.

### **3.3 Assets may be held by a Custodian**

Subject to law, the Trustee may have one or more Assets held by a Custodian.

## **4. UNITS**

### **4.1 Nature of Units**

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Subject to the Terms of Issue of a Unit or the rights conferred on particular Classes, each fully paid Unit confers an equal undivided interest and, each Partly Paid Unit confers an interest of the same nature which is proportionate according to the amount paid up on the Unit.

- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

#### **4.2 Fractions of Units**

- (a) Fractions of a Unit may be issued by the Trustee, but while the Units are Officially Quoted, fractions of a Unit may not be issued.
- (b) If any fractions of Units are on issue at a time when the Trust is to be Listed, the Trustee may cancel the fractions with effect from the date of Listing.
- (c) Where any calculation performed under this constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (d) The provisions of the constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.
- (e) Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

#### **4.3 Consolidation and Division of Units**

- (a) Units may be consolidated or divided as determined by the Trustee.
- (b) The Unit structure may only be reconstructed:
  - (i) if the proportion of Units held by Members relative to each other immediately before the reconstruction is maintained; and
  - (ii) in accordance with this constitution.

#### **4.4 Joint Tenancy**

Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Trustee otherwise agrees.

#### **4.5 Classes**

The Trustee may from time to time without amending this constitution, issue Units in different Classes with different rights, obligations and restrictions attaching to them. The Trustee may from time to time prescribe other rights, obligations and restrictions pertaining to those Classes which are not inconsistent with the provisions of this constitution or, if the Trust is a Registered Scheme, contrary to the Corporations Act.

#### **4.6 Income entitlement of Units**

The Trustee may issue Units on terms that the Units:

- (a) participate fully for Distributable Amount in respect of the Distribution Period in which they are issued; or



- (b) do not entitle the holder of the Units to receive a distribution of Distributable Amount in respect of the Distribution Period in which the Units are issued; or
- (c) entitle the holders to receive Distributable Amount in respect of the Distribution Period in which the Units are issued which is not greater than the proportion of the Distributable Amount to which a Member holding a Unit during the whole of that Distribution Period would be entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

## **5. OPTIONS AND FINANCIAL INSTRUMENTS**

### **5.1 Creation of Options**

The Trustee may create and issue Options on such terms and conditions as the Trustee determines. Options may be issued with Units or separately.

### **5.2 Issue of Options**

Subject to this constitution, the Corporations Act (and the conditions of any applicable ASIC relief from it) and the Listing Rules, the Trustee may determine that Options will be issued:

- (a) for consideration or no consideration;
- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Trustee, provided that the exercise price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 99%; and
- (c) conferring on the holder of the Option such other entitlements under this constitution as the Trustee determines,

and otherwise on terms and conditions and with such entitlements as determined by the Trustee. The terms of issue of the Option may allow the Trustee to buy-back the Options.

### **5.3 Offers of Options**

Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC relief from it), if the Trustee is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Trustee is not required to offer Options to persons whose address on the Register is in a place other than Australia.

### **5.4 Exercise of Options**

On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.

## **5.5 Rights attaching to Options**

The holder of an Option holds the Option subject to the terms and conditions attaching to that Option.

## **5.6 Financial Instruments**

Subject to the Corporations Act and the Listing Rules:

- (a) the Trustee may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including Derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) (**Financial Instruments**); and
- (b) Financial Instruments may be issued:
  - (i) if the Financial Instrument does not constitute an interest in the Trust for the purposes of the Corporations Act – for consideration or no consideration;
  - (ii) if the Financial Instrument constitutes an interest in the Trust for the purposes of the Corporations Act – for consideration as specified in the terms of issue relating to the Financial Instrument;
  - (iii) 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 Trustee determines.

## **5.7 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 Trust.
- (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 Trust.
- (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 Trustee 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).
- (d) Subject to the terms of the Option or Financial Instrument and the Corporations Act, an Option Holder or a person to whom a Financial Instrument has been issued who is not a Member is entitled to attend any

meeting of Members but is not entitled to receive notice of or speak or vote at such a meeting.

- (e) Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder or a person to whom a Financial Instrument has been issued who is not a Member is not entitled to any other rights of a Member.

## **6. TRANSFER AND TRANSMISSION OF UNITS**

### **6.1 Transfer**

Units may be transferred subject to their terms, this clause 6 and clause 29.

### **6.2 Transfer of Units if not Officially Quoted**

If Units are not Officially Quoted:

- (a) Members may transfer Units;
- (b) transfers must be in a form approved by the Trustee and be presented for Registration duly stamped;
- (c) the Trustee may refuse to record any transfer in the Register without giving any reason for the refusal; and
- (d) the Trustee must ensure that no transfer of Units is recorded in the Register unless and until the transferee has entered into or acceded to any Unitholders Agreement that is effective immediately prior to the transfer.

### **6.3 Transfer if Officially Quoted**

Subject to this constitution and the Listing Rules, if a Unit is Officially Quoted, it is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

If a duly completed instrument of transfer:

- (c) is used to transfer a Unit in accordance with clause 6.3(b); and
- (d) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Trustee properly requires to show the right of the transferor to make the transfer,

the Trustee must, subject to the Trustee's powers, register the transferee as the Member.

**6.4 When a transfer is effective**

Except as provided by any applicable Operating Rules of a CS Facility, a transfer is not effective until Registered.

**6.5 Transfer to a financial institution**

Except if the Units are Officially Quoted and despite any provision to the contrary in this constitution, the Trustee must not refuse to record any transfer in the Register:

- (a) where such transfer is in favour of a Financier and the transfer is as contemplated by, or pursuant to, any mortgage, charge or security interest of Units in favour of the Financier; or
- (b) where such transfer is by or on behalf of a Financier in favour of any third party upon disposal or realisation of Units following a Financier having become entitled to exercise or enforce its rights under any such mortgage, charge or security interest,

and a certificate by any officer of a Financier that the relevant transfer is within clause 6.5(a) or 6.5(b) is conclusive evidence of that fact.

**6.6 Trustee may request holding lock or refuse to register transfer**

If the Units are Officially Quoted, and if permitted to do so by the Listing Rules, the Trustee may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to Register a transfer of other Units to which a holding lock described in clause 6.6(a) does not apply.

**6.7 Trustee must request holding lock or refuse to register transfer**

If the Corporations Act or Listing Rules require the Trustee to do so or a transfer is in breach of clause 29, the Trustee must:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to Register any transfer of Units to which a holding lock described in clause 6.7(a) does not apply.

**6.8 Notice of holding locks and refusal to register transfer**

If, in the exercise of its rights under clauses 6.6 or 6.7, the Trustee requests the application of a holding lock to prevent a transfer of Units or refuses to Register a

transfer of Units, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

- (a) the holder of the Units;
- (b) the purported transferee; and
- (c) the broker lodging the transfer, if any.

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

#### **6.9 Transmission on death**

If a holder of Units, who does not hold them jointly, dies, the Trustee will recognise only the personal representative of the holder as being entitled to the holder's interest in the Units.

#### **6.10 Information given by personal representative**

If the personal representative gives the Trustee the information it reasonably requires to establish the representative's entitlement to be registered as a holder of the Units:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Trustee, elect to be registered as the holder of the Units; or
  - (ii) by giving a completed transfer form to the Trustee, transfer the Units to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the Units, to the same rights as the previous holder.

On receiving an election under clause 6.10(a)(i), the Trustee must register the personal representative as the holder of the Units.

A transfer under clause 6.10(a)(ii) is subject to the clauses that apply to transfers generally.

#### **6.11 Death of joint owner**

If a holder of Units, who holds them jointly, dies, the Trustee will recognise only the survivor as being entitled to the holder's interest in the Units. The estate of the holder is not released from any liability in respect of the Units.

#### **6.12 Transmission on bankruptcy**

If a person entitled to Units because of the bankruptcy of a holder of Units gives the Trustee the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, the person may:

- (a) by giving a written and signed notice to the Trustee, elect to be registered as the holder of the Units; or

- (b) by giving a completed transfer form to the Trustee, transfer the Units to another person.

On receiving an election under clause 6.12(a), the Trustee must register the person as the holder of the Units.

A transfer under clause 6.12(b) is subject to the clauses that apply to transfers generally.

This clause has effect subject to the Bankruptcy Act 1966 (Cth).

### **6.13 Transmission on mental incapacity**

If a person entitled to Units because of the mental incapacity of a holder of Units gives the Trustee the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units:

- (a) the person may:
  - (i) by giving a written and signed notice to the Trustee, elect to be registered as the holder of the Units; or
  - (ii) by giving a completed transfer form to the Trustee, transfer the Units to another person; and
- (b) the person is entitled, whether or not registered as the holder of the Units, to the same rights as the previous holder.

On receiving an election under clause 6.13(a)(i), the Trustee must register the person as the holder of the Units.

A transfer under clause 6.13(a)(ii) is subject to the clauses that apply to transfers generally.

## **7. PARTLY PAID UNITS**

### **7.1 Issue of Partly Paid Units**

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units the Application Price of which is payable by one or more Instalments of such amounts and at such times as set out in the Terms of Issue or as the Trustee determines, provided that the aggregate amount of the Instalments equals the Application Price.
- (b) The Terms of Issue of any Partly Paid Units may provide that the whole of the unpaid Application Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- (c) A holder of a Partly Paid Unit must pay the Instalments of the Application Price in accordance with the Terms of Issue of the Partly Paid Unit and in accordance with this constitution.

- (d) Unless the Trustee determines otherwise in respect of all Partly Paid Units, a Partly Paid Unit will not be credited or deemed to be fully paid until the Trustee has received all moneys unpaid in relation to that Unit.
- (e) The provisions of clauses 7.2 to 7.8 (inclusive) apply in relation to Partly Paid Units except to the extent they are excluded by the Terms of Issue of such Partly Paid Units.

## **7.2 Failure to pay Instalment on Partly Paid Unit**

- (a) The Trustee must serve each Member holding a Partly Paid Unit with a notice not later than one calendar month before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise specify a due date. The omission to give such notice by the Trustee or the non-receipt of such notice by the Member holding a Partly Paid Unit does not in any way whatsoever affect the obligation of the Member to pay the Instalment.
- (b) If a Member holding Partly Paid Units does not pay an Instalment in full on the due date, that Member must pay the aggregate of the following (Overdue Amount):
  - (i) so much of the Instalment as is unpaid;
  - (ii) interest which accrues daily and may be capitalised monthly or at such other intervals as the Trustee determines on so much of the Instalment as is unpaid from time to time, from the date when the Instalment falls due to the date of actual payment:
    - (A) if the Trustee has fixed a rate, at the rate so fixed; or
    - (B) in any other case, at the rate prescribed in respect of unpaid judgements in the Supreme Court of New South Wales; and
    - (C) any costs and expenses incurred by the Trustee in relation to the non-payment or late payment of the Instalment.

## **7.3 Forfeiture of Units**

- (a) If a Member holding Partly Paid Units fails to pay the whole of an Instalment when it falls due, the Trustee may serve a notice on that Member:
  - (i) requiring payment of the Overdue Amount;
  - (ii) naming a further date (at least 5 Business Days after the date of service of the notice) by which, and a place at which, the Overdue Amount is to be paid; and
  - (iii) stating that in the event of non-payment of the whole of the Overdue Amount by the time and at the place named, the Unit in respect of which the Instalment was due will be forfeited.

- (b) A Partly Paid Unit is forfeited and the Trustee may redeem such Forfeited Unit or offer that Forfeited Unit for sale if payment in full is not received by the due date specified in the notice issued under clause 7.3(b).
- (c) A forfeiture under clause 7.3(b) will include all distributions, interest and other money payable to the Member in respect of their Forfeited Units and not actually paid before the forfeiture.
- (d) Where a Partly Paid Unit has been forfeited:
  - (i) notice of the forfeiture must be given to the Member who held the Forfeited Unit immediately before the forfeiture; and
  - (ii) an entry of the forfeiture, with the date, must be made in the Register.
- (e) Failure to give the notice or make the entry required under clause 7.3(b) does not invalidate the forfeiture.

#### **7.4 Disposal of Forfeited Unit**

- (a) The Trustee may:
  - (i) offer a Forfeited Unit for sale as agent for the person in whose name the Forfeited Unit was registered immediately before its forfeiture and in any manner that the Trustee determines and, while the Trust is a Registered Scheme, in accordance with any applicable ASIC Relief; or
  - (ii) redeem the Forfeited Unit at the amount paid up on that Unit at the time of forfeiture.
- (b) The Trustee is not liable to the Member for any loss suffered by that Member as a result of any sale or redemption as contemplated by clause 7.4(a).
- (c) A person whose Partly Paid Units have been forfeited ceases to be the holder of those Partly Paid Units, but remains liable to pay, and must immediately pay, to the Trustee, all Instalments, interest costs and expenses owing in respect of the Partly Paid Units at the time of the forfeiture.
- (d) The Trustee may:
  - (i) exempt a Partly Paid Unit from all or any part of this clause 7.4;
  - (ii) waive or compromise all or any part of any payment due to the Trustee (as trustee of the Trust); and/or
  - (iii) before a Forfeited Unit has been redeemed, sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as it thinks fit.



#### **7.5 Income and Capital of a Forfeited Unit**

Any distribution of income and capital under clause 14:

- (a) payable in respect of a Forfeited Unit; and
- (b) which has not been paid before forfeiture,

must be applied in accordance with clause 7.8 as if it formed part of the Disposal Price of a Forfeited Unit.

#### **7.6 Cancellation of Forfeiture**

The Trustee must cancel the forfeiture of a Partly Paid Unit, if before a sale or redemption, the full amount of the Instalment due in respect of the Forfeited Unit together with interest on that Instalment calculated in accordance with clause 7.2(b) and any other Overdue Amount in respect of the forfeiture, is received by the Trustee from or on behalf of the person who was the holder of the Forfeited Unit immediately before it was forfeited.

#### **7.7 Consequences of disposal and continuing liability**

- (a) On completion of a sale or redemption of a Forfeited Unit, the Member holding the Forfeited Unit ceases to be the holder of that Unit but remains liable to the Trustee for the total Overdue Amount payable under clause 7.2(b).
- (b) The Member's liability under this clause ceases as soon as the Trustee receives:
  - (i) payment in full of the Overdue Amount;
  - (ii) the costs and expenses associated with the forfeiture; and
  - (iii) the costs and expenses of all proceedings instituted against the Member to recover the amount due.
- (c) A statement signed by a director or secretary of the Trustee setting out:
  - (i) that a Partly Paid Unit has been forfeited; and
  - (ii) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale or redemption of the Forfeited Unit the Trustee must apply the Disposal Price in accordance with clause 7.8.
- (e) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must register the transferee as the holder of the Forfeited Unit.

- (f) The transferee of the Forfeited Unit is not required to verify the application of the Disposal Price and is not liable to pay any of the Overdue Amount (but may be liable for all future Instalments).
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or redemption of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the transferee.

## **7.8 Proceeds of sale of Forfeited Unit**

- (a) Upon the sale or redemption of a Forfeited Unit, the Trustee must apply the Disposal Price in the following order and manner:
  - (i) by paying any costs and expenses incurred by the Trustee in relation to the sale or redemption of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (ii) by paying any costs and expenses incurred by the Trustee in relation to the forfeiture or any proceedings brought against the former holder of the Forfeited Unit;
  - (iii) by holding as an Asset, the interest accrued in respect of the outstanding Instalments calculated under clause 7.2(b);
  - (iv) by holding as an Asset, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (v) by paying any balance to the former Member whose Units are forfeited.
- (b) If there is a sale or redemption of more than one Forfeited Unit, the Trustee must pay the costs and expenses listed in clauses 7.8(a)(i) and 7.8(a)(ii) *pro rata* to the number of Forfeited Units being sold or redeemed.

## **8. APPLICATION PRICE FOR UNITS**

### **8.1 Application Price for Units**

Subject to this constitution (including the Stapling Provisions), and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be issued at an Application Price:

- (a) in the case of Units issued to Members under the Restructure, at the Restructure Price;
- (b) in the case of Units issued under the Public Offering, in accordance with clause 8.3;
- (c) units issued on the exercise of an Option, in accordance with clause 5.2(b);

- (d) in the case of a proportionate offer (including a rights issue), in accordance with clause 8.4;
- (e) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 8.6;
- (f) in the case of reinvestment of distributions while Units are Officially Quoted, in accordance with clause 14.15;
- (g) subject to clauses 8.1(b) to 8.1(f), in all other cases while Units are Officially Quoted, the Market Price of Units;
- (h) subject to clause 8.1(a), while the Units are not Officially Quoted and the Trust is not a Registered Scheme, agreed by the Members and notified to the Trustee by the Members in writing;
- (i) subject to clause 8.1(a), while the Units are not Officially Quoted and the Trust is not Registered Scheme, calculated in accordance with the following formula:

$$\frac{\text{NAV} + \text{TC}}{\text{U} + \text{PP}}$$

where:

**NAV** is the Net Asset Value;

**TC** is the Transaction Costs;

**U** is the aggregate number of fully paid Units on issue; and

**PP** is the Paid-up Proportion; or

- (j) in the case of Partly Paid Units, in accordance with clause 7.1.

## 8.2 Time of Calculation

Each of the variables in clause 8.1 must be determined as at the next Valuation Time after:

- (a) the Trustee receives the application for Units; or
- (b) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee,

whichever happens later.

## 8.3 Post Restructure Public Offering

The Trustee may at any time issue Units to any person under the Public Offering at a price and on terms determined by it, provided that:

- (a) the Trustee complies with any Listing Rules applicable to the issue and any applicable ASIC Relief;
- (b) the price is at least equal to the Public Offer Price.

#### **8.4 Pro rata issues**

While the Trust is Listed and subject to the Listing Rules and terms of any applicable ASIC Relief, the Trustee may offer Units for subscription at a price determined by the Trustee to those persons who were Members on a date determined by the Trustee not being more than 20 Business Days immediately prior to the date of the offer if,

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
- (b) the Application Price of the Units is not less than 50% of the average Market Price of the Units calculated as at the last Business Day before the date of the Offer Document under which the offer is made.

Subject to the Listing Rules and the conditions of any applicable ASIC Relief, the Trustee is not required to offer Units under this clause 8.4 to persons whose address on the Register is in a place other than Australia or New Zealand.

#### **8.5 Terms or pro rata issues**

- (a) Any offer made under clause 8.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the number of their respective Unit holdings on the date determined by the Trustee under clause 8.4. The Trustee may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, The Trustee must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 8.4 which are not subscribed for within the period for acceptance set by the Trustee may be offered for subscription by the Trustee to any person. The Application Price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription under clause 8.4, the underwriter may take up any Units not subscribed for by the Member.

#### **8.6 Placements and other issues**

While the Trust is Listed, the Trustee may at any time issue Units to any person, whether by way of a placement or otherwise:

- (a) at the average Market Price of a Unit on the day the Units are offered; or
- (b) at a price and on terms determined by it, provided that the Trustee complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC Relief.

## **8.7 Rounding**

The Application Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1 per cent. of the Application Price. Any excess application money or property which results from rounding becomes an Asset.

## **9. APPLICATION PROCEDURE**

### **9.1 Application Form**

An applicant for Units must complete a form approved by the Trustee if the Trustee so requires. The form may be transmitted electronically if approved by the Trustee.

### **9.2 Payment**

- (a) Payment in a form acceptable to the Trustee, or a transfer of property of a kind acceptable to the Trustee and able to be vested in the Trustee or a custodian appointed by it (accompanied by a recent valuation of such property, if the Trustee requires), must:
  - (i) accompany the application;
  - (ii) be received by or made available to the Trustee or the custodian within such period before or after the Trustee receives the application form, as the Trustee determines from time to time; or
  - (iii) comprise a reinvestment of distribution in accordance with clause 14.8.
- (b) If the Trustee accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the applicant either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Trustee decides.
- (c) The Trustee may, if it considers it appropriate, accept a promissory note in full satisfaction of the obligation of an applicant to pay the subscription monies for Units.

### **9.3 Trustee May Reject**

The Trustee may reject an application in whole or in part without giving any reason for the rejection.

### **9.4 Minimum Amounts**

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

#### **9.5 Issue Date**

- (a) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (b) Except in the case of a reinvestment of distributions in accordance with this constitution, in all other cases Units are taken to be issued when:
  - (i) the Trustee accepts the application; or
  - (ii) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee,whichever happens later.

#### **9.6 Uncleared Funds**

Units issued against application money paid other than in cleared funds or in consideration of a transfer of property are void if the funds are not subsequently cleared or the property does not vest in the Trustee within 1 month of receipt of the application.

### **10. REDEMPTION PRICE OF UNITS**

#### **10.1 Redemption Price**

Subject to clause 7.4(a)(ii), 11.12 and 11.14, and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be redeemed at a Redemption Price:

- (a) while the Units are not Officially Quoted and the Trust is not a Registered Scheme, agreed by the Members and notified to the Trustee by the Members in writing; or
- (b) calculated in accordance with the following formula:

$$\frac{\text{NAV} - \text{TC}}{\text{U} + \text{PP}}$$

where:

**NAV** is the Net Asset Value;

**TC** is the Transaction Costs;

**U** is the aggregate number of fully paid Units on issue; and

**PP** is the Paid-up Proportion.

## **10.2 Time of Calculation**

Each of the variables in clause 10.1 must be determined:

- (a) while:
  - (i) the Trust is a Registered Scheme and is Liquid; and
  - (ii) at all times when the Trust is not a Registered Scheme,  
as at the next Valuation Time after the Trustee receives the redemption request or determines that the Units are to be redeemed, whichever is the earlier; or
- (b) while the Trust is a Registered Scheme and is not Liquid, at the time the withdrawal offer closes.

## **10.3 Rounding**

Subject to the Listing Rules, the Redemption Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1 per cent. of the Redemption Price. Any excess which results from rounding becomes an Asset.

## **10.4 Redemption Price may represent Distributable Income**

The Trustee may in its absolute discretion determine that the whole or any part of an amount paid as Redemption Price represents a distribution of Distributable Income for a Distribution Period to which a Member is presently entitled.

# **11. REDEMPTION PROCEDURES**

## **11.1 While Officially Quoted**

While Units are Officially Quoted:

- (a) clauses 11.10 and 11.11 (providing for the Trustee to make a withdrawal offer subject to the Corporations Act and the Listing Rules on the basis the Trust is not Liquid) apply only to the extent set out in clause 11.12 so that the Redemption Price is calculated in accordance with clause 10.1 and 10.2(b);
- (b) clauses 11.7 and 11.13 to 11.16 apply (relating, inter alia, to the source of redemption funding, on market buy backs and sums owed to the Trustee); and
- (c) clauses 11.2 to 11.9 do not apply and therefore a Member has no rights to withdraw from the Trust.

If the Stapling Provisions apply and Units comprise part of a Stapled Security that is Officially Quoted, clauses 11.12 and 11.14 apply with any necessary modifications.

## **11.2 Request for Redemption**

- (a) Subject to clause 11.1(c), clause 11.3 and clause 11.11, a Member may make a request for the redemption of some or all of their Units by giving the Trustee notice in writing specifying the number or value of Units to be redeemed and

sufficient details to identify the Member, or in any other manner approved by the Trustee. Subject to any preferred, deferred or other special rights, obligations or restrictions required by the terms of issue of any Class issued from time to time, the Trustee is not obliged to give effect to a redemption request.

- (b) A Member may not withdraw a redemption request unless the Trustee agrees.

### **11.3 When Trust is Liquid or not a Registered Scheme**

Clauses 11.4 to 11.9 apply only while:

- (a) the Trust is a Registered Scheme and Liquid at the time the redemption request is received by the Trustee and at a time when the Redemption Price is to be paid; or
- (b) the Trust is not a Registered Scheme.

### **11.4 Trustee must redeem**

Subject to the Corporations Act and the Listing Rules, the Trustee must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 10. The payment must be made within 21 days of receipt of the request or such longer period as allowed by clause 11.5.

### **11.5 Delayed payment**

If the Trustee has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control (such as restricted or suspended trading in the market for an Asset), the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.

### **11.6 Minimum application or holding amounts**

If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price less than the current minimum holding amount, the Trustee may treat the redemption request as relating to the balance of the Members holding.

### **11.7 Payment from the Assets**

The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.

### **11.8 Discretionary Redemption**

The Trustee may redeem some or all of the Units which are the subject of a redemption request.



#### **11.9 Power to compulsorily redeem Units**

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

- (a) if the Member has breached its obligations to the Trustee or breached a term of this constitution;
- (b) to satisfy any amount of money due to the Trustee (as trustee of the Trust) by the Member including, without limiting clause 7.3, in relation to any Instalment due on Partly Paid Units held by the Member;
- (c) if this constitution otherwise allows (for example, where a Member does not have a minimum holding);
- (d) where the Trustee reasonably believes that the law prohibits the person from being a Member or the person being a Member would cause the Trustee to breach a law;
- (e) where the Trustee determines it is in the best interests of Members; or
- (f) where the Trustee determines it is appropriate or necessary for administrative or other reasons.

#### **11.10 When Trust is Not Liquid**

If the Trust is a Registered Scheme, clause 11.11 applies while the Trust is not Liquid.

#### **11.11 Withdrawal offers**

- (a) While the Trust is not Liquid, or, if Liquid at the time a redemption request is made, is not Liquid at the time for payment of the redemption amount, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- (b) If the Trustee receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.
- (c) The Trustee is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
  - (i) publishing it by any means (for example in a newspaper or on the internet) that gives Members a fair opportunity to be aware of the offer; or
  - (ii) giving a copy to all Members.

#### **11.12 Withdrawal offers while Listed**

While the Units are Officially Quoted the Trustee may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 11.11, in which case the Redemption Price must to be calculated in accordance with clause 10.1 and 10.2(b).

#### **11.13 Clauses Applicable Whether or Not the Trust is Liquid**

Clauses 11.14 to 11.16 apply whether or not the Trust is Liquid.

#### **11.14 On-market buy-backs**

While the Units are Officially Quoted, the Trustee may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units. Where the Units comprise part of Stapled Securities the Trustee may only buy-back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Trustee must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

#### **11.15 Sums Owed to the Trustee**

The Trustee may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member. While the Trust is Liquid or not a Registered Scheme, the Trustee may, without a redemption request, redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

#### **11.16 When Units are redeemed**

Units are taken to be redeemed at the time that the redemption is recorded or required to be recorded in the Register and the applicable Redemption Price has been calculated. From that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

### **12. VALUATION OF ASSETS**

#### **12.1 Periodic Valuations**

- (a) The Trustee may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act. The Assets must be valued in a manner which is consistent with the nature of the Asset being valued and consistent with normal commercial practice for valuing such Asset.
- (b) The Trustee may determine Net Asset Value at any time, including more than once on each day. Unless the Trustee determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

## **12.2 Valuation Methods**

Subject to clause 12.1, the Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.

## **13. ACCOUNTS, AUDIT, AND REGISTER**

### **13.1 Accounts**

While the Trust is not a Registered Scheme, the Trustee:

- (a) must arrange the preparation and maintenance of such accounts and reports as the Trustee, reasonably exercising its discretion, considers appropriate having regard to the nature of the Trust and its Assets, with a view to ensuring that the financial position of the Trust at any time is accurately recorded; and
- (b) will determine at its discretion whether or not to have the Trust's accounts audited (but will arrange for such an audit if so directed by a Resolution).

### **13.2 Register**

While the Trust is not a Registered Scheme, the Trustee must set up and maintain the Register. The Register must show, for each Member, the Member's name and address, the number of Units held and such other information as determined by the Trustee.

## **14. INCOME AND DISTRIBUTIONS TO MEMBERS**

### **14.1 Determination of income and reserves**

The Trustee may determine whether an item is income or capital and the extent to which reserves or provisions need to be made. Any such determination must be made on or before the Distribution Calculation Date and in a manner consistent with the Accounting Standards.

### **14.2 Distribution of income**

- (a) For each Distribution Period the Trustee must calculate and distribute each Member's Distribution Entitlement.
- (b) The Trustee may at any time distribute to Members income or capital of the Trust.
- (c) For each Distribution Period, the Trustee:
  - (i) may determine the Distributable Income for the Distribution Period in accordance with clause 14.3(a); and
  - (ii) must calculate and distribute each Member's Distribution Entitlement.

### **14.3 Distributable Income**

- (a) The Trustee may determine the Distributable Income for a Distribution Period in its absolute discretion. Any such determination must be made on or before the Distribution Calculation Date.
- (b) If the Trustee makes no determination pursuant to clause 14.3(a) on or before the Distribution Calculation Date, the Distributable Income shall be the greater of:
  - (i) the net income of the Trust as defined in section 95(1) of the Tax Act for the that period excluding any non cash amounts such as franking credits; and
  - (ii) \$1.
- (c) In making a determination under clause 14.1 or 14.3(a), the Trustee:
  - (i) does not have to take into consideration the Accounting Standards or generally accepted accounting principles and practices that apply to trusts; and
  - (ii) has the discretion to determine whether any receipt, outgoing, gain or loss is regarded as being on account of capital or income or partly on account of one and partly on account of the other.

#### 14.4 Distribution Entitlement

Subject to the terms of issue for any Class, each Member's Distribution Entitlement is to be determined in accordance with the following formula:

$$DE = DI \times \frac{UH}{UI}$$

where:

- DE** is the Distribution Entitlement;
- DI** is the Distributable Income (however will exclude any Distributable Income allocated in accordance with clause 10.4);
- UH** is the aggregate of the number of fully paid Units held by the Member and the Paid-up Proportion of any holding of Partly Paid Units held by the Member at the close of business on the Distribution Calculation Date
- UI** is the aggregate number of Units on issue in the Trust at the close of business on the Distribution Calculation Date.

#### 14.5 Distribution of Distribution Entitlement

- (a) The Trustee must pay to each Member its Distribution Entitlement on or before the Distribution Date.

- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution Period, the persons who are Members on the Distribution Calculation Date for that Distribution Period have an absolute, vested and indefeasible interest in the Distributable Amount of that Distribution Period.
- (c) The Trustee must retain from each Member's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Member an amount in or towards satisfaction of any amount payable by the Member to the Trustee under this constitution or are required to be deducted by law.

#### **14.6 Categories and sources of income**

For any category or source of income the Trustee may keep separate accounts and allocate the income from any category or source to any Member.

#### **14.7 Distribution reinvestment arrangements**

The Trustee may advise Members from time to time in writing that Members may participate in an arrangement under which Members may request that all or a portion of specified distributions due to them be satisfied by the issue of further Units.

#### **14.8 Deemed application if reinvestment applies**

If reinvestment applies, the Trustee is deemed to have received and accepted an application to reinvest the distribution after the deduction of any Tax which the Trustee is required to deduct on the date upon which the distribution is to be paid.

#### **14.9 Money held for future reinvestment**

- (a) Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment, the money so held may at the discretion of the Trustee be aggregated.
- (b) On each occasion on which the aggregated amount reaches the Application Price of a Unit, the aggregated amount may be applied in the subscription for a new Unit for issue to the Member.

#### **14.10 Units issued on reinvestment**

Units issued under clauses 14.7 to 14.10 are to participate fully for income in respect of the Distribution Period in which they are issued.

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

A person registered as a Member on a Distribution Calculation Date is to receive the Distributable Amount for the distribution period notwithstanding a transfer or transmission of Units after the Distribution Calculation Date.

#### **14.12 Position on transfer of Assets**

- (a) The Trustee may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units. If the Trustee wishes to do so, it must effect the distribution to all Members in the same way. The Assets transferred to each Member must be of the same type, have the same rights and be fully paid. The Assets transferred may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Trustee:
  - (i) to act as their agent to agree to obtain the Assets; and
  - (ii) where the Assets comprise shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme.
- (b) The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer and must be valued in a manner which is consistent with the nature of Asset being transferred having regard to ordinary commercial practice).
- (c) If the Trustee requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.

#### **14.13 Deductions from distributable income**

The Trustee may deduct from any Distributable Amount or other distribution payable to a Member any sums of money presently payable by the Member to the Trustee on account of an instalment due in respect of Units or otherwise.

#### **14.14 Change in Tax Act**

Notwithstanding clauses 11.4 and 11.5, if in any Financial Year the Trustee in its capacity as trustee of the Trust becomes taxable as if it were a company under the Tax Act the following provisions shall apply and shall override the provisions of clauses 14.2 to 14.5 to the extent that they are inconsistent:

- (a) the Trustee must provide for, and pay from the Assets of the Trust where appropriate, all taxation attributable to the income of the Trust;
- (b) the Members will not have a present entitlement at the end of a Distribution Period to the income of the Trust;
- (c) distributions to Members may be from pre-tax income or post-tax income of the Trust as the Trustee in its absolute discretion determines from time to time;
- (d) the respective entitlements of the Members to distributions pursuant to clause 14.14(c) shall be calculated based on their respective holdings, using the same principle to determine their relative entitlements as is set out in clause 14.4;

- (e) when distributions are being made to Unitholders pursuant to clause 14.14(c) from income of the Trust, the Trustee may calculate the level of the franking credit balance at the time of the distribution, and take all necessary or desirable steps in relation thereto, including the franking of the distributions; and
- (f) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to public trading trusts;

#### **14.15 Reinvestment price while Officially Quoted**

- (a) If reinvestment applies while the Units are Officially Quoted, the application price for each additional Unit issued or transferred upon reinvestment is the weighted average price per Unit for the Pricing Period for the relevant Distribution Period (DRP Price) less any discount not exceeding 20% as the Trustee determines. However, if the Trustee believes that the DRP Price does not provide a fair reflection of the market price of the Units during the relevant period, an Approved Valuer will determine the market price to be used in the calculation of the Application Price of each additional Unit in accordance with paragraph (b)(ii) of the definition of Market Price of a Unit.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

### **15. PAYMENTS**

#### **15.1 Trustee Discretion**

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

#### **15.2 Unpresented Cheques**

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

#### **15.3 Unsuccessful Payment**

- (a) Where the Trustee attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the Trustee must use its reasonable commercial endeavours to contact the relevant Member and effect the transfer in some other agreed manner.
- (b) If, after using its reasonable endeavours, the Trustee is unable to contact the relevant Member, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after failure of the third attempt to transfer funds by electronic means.

#### **15.4 No Fractions**

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

#### **15.5 Discharge of the Trustee**

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

#### **15.6 Deductions**

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

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

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

#### **15.7 Transfer of Assets**

The Trustee may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution of income or capital, or on winding up of the Trust, either:

- (a) with the consent of the Member; or
- (b) if the Trustee reasonably considers the transfer of Assets rather than cash is in the best interests of Members, without the consent of the Member.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer and must be valued in a manner which is consistent with the nature of Asset being transferred having regard to ordinary commercial practice). If clause 15.7(a) applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

For the purposes of this clause 15.7, the Trustee will be taken to have transferred Assets to a Member or former Member where the Trustee has done everything reasonably necessary on its part to convey the Assets to the Member or former Member.



## **16. POWERS OF THE TRUSTEE**

### **16.1 General Powers**

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

### **16.2 Contracting Powers**

Without limiting clause 16.1, the Trustee in its capacity as trustee of the Trust has power to:

- (a) borrow or raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodations and debt facilities);
- (b) lend or advance money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodations and debt facilities);
- (c) enter into all forms of hedging arrangements and derivatives; and
- (d) incur all types of obligations and liabilities including guarantees and indemnities.

### **16.3 Investment Powers**

Without limiting clause 16.1, the Trustee may in its capacity as the Trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

### **16.4 Power of Delegation**

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

### **16.5 Exercise of Discretion**

Subject to clause 16.6, the Trustee may in its absolute discretion decide how and when to exercise its powers.

## **16.6 Discretion Limited**

The Trustee may not exercise its powers in a manner or to an extent that would cause the Trust to be subject to entity taxation as a non-fixed trust.

## **17. RETIREMENT OF THE TRUSTEE**

### **17.1 Voluntary Retirement**

- (a) While the Trust is a Registered Scheme, the Trustee may retire as the responsible entity of the Trust as permitted by law.
- (b) While the Trust is not a Registered Scheme, the Trustee may retire on not less than 1 month's notice to Members. On retirement, the Trustee may appoint in writing another person to be the Trustee.

### **17.2 Compulsory Retirement**

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

### **17.3 New Trustee**

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

### **17.4 Release**

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

### **17.5 Retirement Benefit**

In consideration for the proper performance of its duties as Trustee, the Trustee is entitled, subject to any approval required by law, to agree with the incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to:

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

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

## **18. NOTICES TO MEMBERS**

### **18.1 Notices to Members**

- (a) Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Trustee determines, and be delivered or sent to the Member at the Member's physical, fax or email address last advised to the Trustee for delivery of notices.
- (b) A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.
- (c) In the case of joint Members, the physical, fax or email address of the Member means the physical, fax or email address of the Member first named in the Register.
- (d) A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act, the Trustee may determine the time at which other forms of communication will be taken to be received.

### **18.2 Notices to the Trustee**

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

## **19. MEETINGS OF MEMBERS**

### **19.1 Corporations Act**

The Trustee may at any time convene a meeting of Members, and must do so if required by the Corporations Act.

### **19.2 Member's Request for Meeting**

- (a) While the Trust is not a Registered Scheme:
  - (i) the Trustee must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 20 per cent. of the votes that may be cast on the resolution; and

- (ii) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in clause 19.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

### **19.3 Notice Period**

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

### **19.4 Trustee May Determine**

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

### **19.5 Quorum**

The quorum for a meeting of Members is at least 2 Members present in person or by proxy together holding at least 10 per cent. of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

### **19.6 No Quorum**

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

### **19.7 Chairman**

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

#### **19.8 Adjournment**

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

#### **19.9 Resolutions Binding**

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

#### **19.10 Proxies and Voting while the Trust is a Registered Scheme**

While the Trust is a Registered Scheme:

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

#### **19.11 While the Trust is not a Registered Scheme**

While the Trust is not a Registered Scheme, the remaining clauses 19.12 to 19.15 apply.

#### **19.12 Voting**

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

#### **19.13 Poll**

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

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

#### **19.14 Proxies**

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

#### **19.15 Variation of Class rights**

The rights attaching to a Class must not be varied without the written consent of all Members holding Units of that Class or by a special resolution of Members holding Units of that Class.

#### **19.16 Class or Option Holder meetings**

Meetings of Members holding Units of a Class or of Option Holders are to be convened and conducted in the same manner as meetings of Members generally under this constitution.

### **20. RIGHTS AND LIABILITIES OF THE TRUSTEE**

#### **20.1 Holding Units**

The Trustee and its associates may hold Units in any capacity.

#### **20.2 Other Capacities**

Subject to the Corporations Act and other applicable law, nothing in this constitution restricts the Trustee (or its associates) from:

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

#### **20.3 Trustee May Rely**

The Trustee may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;

- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Trustee believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely,

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

## **21. LIMITATION OF LIABILITY AND INDEMNITY IN FAVOUR OF THE TRUSTEE**

### **21.1 Limitation on the Trustee's Liability**

- (a) While the Trust is a Registered Scheme, the Trustee is not liable in contract, tort or otherwise to Members for any loss suffered in any way, relating to the Trust except to the extent that the Corporations Act imposes such liability.
- (b) While the Trust is not a Registered Scheme, if the Trustee acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- (c) Subject to the Corporations Act, the liability of the Trustee to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as the Trustee of the Trust or in relation to any Assets) is limited to the Trustee's ability to be indemnified from the Assets.

### **21.2 Indemnity in Favour of the Trustee**

- (a) The Trustee is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- (b) To the extent permitted by the Corporations Act, (if the Corporations Act applies, and otherwise without limitation), the indemnity under this clause 21.2 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Trustee.
- (c) This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Trustee retires or is removed as the Trustee of the Trust.

### **21.3 Right of indemnity not affected by unrelated breach of Trust**

Where a Liability is incurred pursuant to a proper exercise of the Trustee's powers under this constitution or at law, the Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any

creditor of the Trustee (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust any have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Trustee or by any person or entity acting on behalf of the Trustee:

## **22. LIABILITY OF MEMBERS**

### **22.1 Liability Limited**

- (a) Subject to paragraph (clauses 22.1(c) and 22.2) the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- (b) In the absence of separate agreement with a Member, a Member need not indemnify the Trustee if there is a deficiency in the Assets to meet the claim of any creditor of the Trustee in respect of the Trust.
- (c) The Trustee is entitled to be indemnified by a Member or former Member to the extent that the Trustee incurs any liability for Tax as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which clause 22.3 applies.

### **22.2 Recourse**

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

### **22.3 Restrictions on Members**

A Member:

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

## **23. REMUNERATION AND EXPENSES OF THE TRUSTEE**

### **23.1 Fees**

The Trustee is entitled to charge or be paid or retain as remuneration for the proper performance and services as Trustee under the terms of this Constitution the following fees out of the Trust Fund:

- (a) a Management Fee;



- (b) a Performance Fee;
- (c) an Asset Acquisition Fee; and
- (d) an Asset Disposal Fee; and

All fees as stated are exclusive of GST,

### 23.2 Management Fee

The Management Fee is a monthly fee equal to one twelfth of 0.65% of the Gross Asset Value calculated as at the end of the previous month and payable on the first Business Day of each month provided that the Management Fee will be not be less than the lower of:

- (a) \$12,500 per month; and
- (b) one twelfth of 1.625% of the Gross Asset Value at the end of the previous month.

For the purposes of this clause 23.2, the Gross Asset Value means the aggregate of the Market Value of the Assets of the Trust.

### 23.3 Performance Fee

- (a) The Performance Fee is the amount calculated at each Determination Date in accordance with the following formula:

**Performance Fee = 20% x (Closing Market Capitalisation + Distributions - Hurdle Amount)**

Where:

**Closing Market Capitalisation** means, on any given Determination Date, the Market Price of a Stapled Security multiplied by the total number of Stapled Securities on issue on that Determination Date.

**Determination Date** means:

- (i) 30 June in each year;
- (ii) if the date of termination of the Trust occurs during the year, the date of termination of the Trust; and
- (iii) the date on which the person who was the Trustee at the Inclusion Date ceases to be the Trustee of the Trust.

**Distributions** means all distributions from any Stapled Entity whether by way of dividend or capital, paid during the Performance Fee Period.

**Hurdle Amount** means, on any given Determination Date, the aggregate of the following amounts:

- (i) an amount equal to the price per Stapled Security required to give a 12% per annum increase in the Market Price of a Stapled Security since the previous Determination Date, multiplied by the total number of Stapled Securities on issue on that previous Determination Date; plus
- (ii) if there has been an issue (a New Issue) of Stapled Securities (each a New Stapled Security) since the previous Determination Date, an amount equal to the price per New Stapled Security required to give a 12% per annum increase on the issue price of a New Stapled Security, multiplied by the total number of New Stapled Securities issued in the New Issue; minus
- (iii) if there has been a redemption or buy back (Redemption) of Stapled Securities (each a Redeemed Stapled Security) since the previous Determination Date, an amount equal to the price per Redeemed Stapled Security required to give a 12% per annum increase on the redemption price of a New Stapled Security, multiplied by the total number of Redeemed Stapled Securities.

**Inclusion Date** means the later of the date the right to this Performances Fee was included in this Constitution and the date the Trust was admitted to the Official List.

**Market Price of a Stapled Security** has the meaning given to that term in Schedule 1.

**Performance Fee Period** means:

- (i) for the first Performance Fee Period, the period from the Inclusion Date up to and including the first Determination Date; and
  - (ii) for each subsequent Performance Fee Period, the period starting on the day immediately after the last Determination Date and ending on the earlier of the following Determination Date and the date of termination of the Trust.
- (b) The Trustee as at each Determination Date, must determine whether a Performance Fee is payable which shall be the case if the Performance Fee is greater than zero.
  - (c) If a Performance Fee is payable, it must be paid to the Trustee within 1 month after the Determination Date.

Example Performance Fee calculations are attached as an appendix to the Constitution.

#### 23.4 Asset Acquisition Fee

On completion of the acquisition of any investment by the Trust which was located or introduced by the Trustee or any of its associates, the Trustee is entitled to receive an Asset Acquisition Fee of up to 1 % of the total purchase price of the investment.

### **23.5 Asset Disposal Fee**

On completion of the sale or disposal of any Trust investment, the Trustee is entitled to receive an Asset Disposal Fee of up to 1% of the total sale price.

### **23.6 Lower or Deferred Fees**

The Trustee may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

### **23.7 Expenses**

All expenses incurred by the Trustee in connection with the Trust are payable or reimbursable out of the Assets, but while the Trust is a Registered Scheme such reimbursement or payment is only available to the extent that the amounts are incurred in the proper performance of the Trustee's duties as responsible entity and only to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation and registration (if applicable) of the Trust;
- (b) the preparation, review, distribution and promotion of any prospectus or offer document in respect of Units or other promotion of the Trust;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities;
- (f) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (g) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (h) Tax, including any amount charged by a supplier of goods or services, or both, to the Trustee by way of or as a reimbursement for GST;
- (i) financial institution fees;
- (j) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Trustee;
- (k) preparation and audit of the Tax returns and accounts of the Trust;
- (l) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;

- (m) costs of the admission of the Trust to the Official List and compliance with the Listing Rules;
- (n) any court proceedings, arbitration or other dispute concerning the Trust or its Assets or Liabilities, including proceedings against the Trustee, except to the extent that the Trustee is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 23.7(m) must be repaid;
- (o) any compliance or other committee established by the Trustee in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (p) while the Trust is a Registered Scheme but there is no compliance committee, any costs and expenses associated with the board of directors of the Trustee carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (q) the preparation, implementation, amendment and audit of any compliance plan;
- (r) complying with any law, and any request or requirement of ASIC or ASX;
- (s) any Stapling of Units to Attached Securities;
- (t) in connection with any Consolidation or Division Proposal, Stapling Proposal, Exchange Proposal or any other reorganisation relating to Units or Stapled Securities; and
- (u) having the Trust rated by a Ratings Agency.

## 23.8 GST

- (a) If the Trustee 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 amount or consideration payable to the Trustee in respect of the supply, the Trustee is entitled to be paid out of the Assets an additional amount on account of GST, such amount 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. This clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this constitution.
- (b) In relation to any fee that is expressed as GST inclusive in this constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by  $(1 + n)$  where  $n$  is the new prevailing rate of GST (expressed as a decimal).

- (c) In the event that the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Trustee is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax.

#### **23.9 Amendment of fee provisions is contemplated**

Without limiting clause 27.1, the Trustee has power to amend any part of this clause 23 with the effect of increasing or decreasing any amount of fees due to it, or introducing new types of fees, or to otherwise amend, delete or replace any of the provisions of this clause 23.9, if:

- (a) while the Trust is a Registered Scheme, the Trustee complies with any applicable requirements of the Corporations Act relating to:
  - (i) amending the constitution of a Registered Scheme, and
  - (ii) increasing fees or charges in relation to a Registered Scheme; or
- (b) while the Trust is not a Registered Scheme, the Trustee obtains the written consent of the sole Member or, if there is more than one Member, gives at least five Business Days' prior notice to Members of the amendment.

#### **23.10 Sums Owed to the Trustee**

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

### **24. DURATION OF THE TRUST**

#### **24.1 Commencement**

The Trust commences when the first applicant is issued with Units and the Trustee and issues those Units as part of the Restructure.

#### **24.2 Termination**

The Trust terminates on the earliest of:

- (a) while the Trust is a Registered Scheme:
  - (i) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
  - (ii) a date determined by the Trustee and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
- (b) while the Trust is not a Registered Scheme, the date specified by the Trustee as the date of termination of the Trust in a notice given to Members; and

- (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law.

#### **24.3 Restriction on issue and redemption of Units**

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

### **25. PROCEDURE ON TERMINATION**

#### **25.1 Realisation of Assets**

- (a) Unless otherwise required by law, the Trustee is responsible for the winding up of the Trust.
- (b) The Trustee must convert the Assets to money, deduct all proper costs and then divide the balance amongst the Members in accordance with clause 25.3. The Trustee may make interim distributions (i.e. income or capital) during the winding up process as it sees fit.
- (c) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Members to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (d) If there is, or, in the reasonable opinion of the Trustee, there will be, a deficiency after making allowance for all Liabilities of the Trust (actual and anticipated) the Trustee must make calls in accordance with relevant terms of issue of Partly Paid Units (if any).
- (e) The Trustee may retain money from the proceeds of realisation of the Assets:-
  - (i) to meet future payment obligations which the Trustee reasonably believes will fall due after a distribution is made to Members pursuant to this Constitution, and
  - (ii) to pay its own remuneration and expenses for work to be done following the realisation of the Assets.

#### **25.2 Auditor and liquidator**

- (a) If, at the time it is to be wound up, the Trust is a Registered Scheme, and to the extent that ASIC policy so requires, the Trustee must arrange for an audit of the final accounts of the Trust by a registered company auditor with a copy to be sent to Members within 30 days after receipt of the audit by the Trustee.
- (b) If the Trust is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Trustee to meet Liabilities from the Assets as and when they fall due, the Trustee may appoint an appropriately qualified liquidator to carry out the winding up and delegate to the liquidator

the powers of the Trustee under this Constitution as necessary to facilitate the winding up.

### **25.3 Distribution Following Termination**

The net proceeds of realisation, after making allowance for all Liabilities (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, including expenses referred to in clause 25.1(d), must be distributed to the Members *pro rata* according to the number of fully paid Units plus the number obtained by multiplying the number of Partly Paid Units held by the proportion to which those Units are paid up, as at a time decided by the Trustee. The Trustee may distribute proceeds of realisation in instalments. The Trustee may also determine whether any portion of the distribution under this clause 25.3 is income of the Trust.

### **25.4 Constitution applies until date of final distribution**

The provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 25.3, but during that period the Trustee may not accept any applications for Units from a person who is not an existing Member and the Trustee is under no obligation to consider or process redemption requests received after the date of termination.

## **26. AMENDMENTS TO THIS TRUST DEED**

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

- (i) by Resolution; or
- (ii) by deed executed by the Trustee.

If the constitution is amended by Resolution, the Trustee may give effect to the amendments by executing a supplemental deed.

(b) While the Trust is not a Registered Scheme, the Trustee may by deed amend this constitution.

## **27. REGULATORY PROVISIONS AND PARAMOUNTCY**

### **27.1 Listing Rules**

While the Trust is included in the Official List:

- (a) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act 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 taken to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains the provision, this constitution is taken not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.

## **27.2 Corporations Act and ASIC Relief**

If:

- (a) the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Trustee has determined it wishes to rely on which is expressly applicable to the Trust and the Trustee requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply (**Required Provisions**); or
- (b) any part of this constitution (a **Required Part**) is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes,

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

The Members:

- (i) authorise the Trustee to make the amendments referred to in this clause 27.2 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

## **27.3 Application of Corporations Act and Listing Rules**

In this constitution:

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



## **27.4 ASIC Class Orders**

In accordance with ASIC Class Order [CO 98/1808] or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this constitution because of the operation of clause 27.2 that is covered by such instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 27.4 applies are made pursuant to the power in clause 24 but in respect of such changes the requirements of clause 24 are to be read subject to this clause 27.4.

## **27.5 Paramountcy of provisions**

Subject to the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:

- (a) first, clauses 27.1 and 27.2 and provisions taken to be included or amended under them;
- (b) then, the Stapling Provisions set out in Schedule 1 and the provisions in clause 28 regarding Stapling and the Stapling Provisions; and
- (c) then, the Reorganisation Proposals set out in clause 28.3 to 28.7,

provided that clauses 27.5(b) and 27.5(c) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

## **28. STAPLING PROVISIONS AND REORGANISATION PROPOSALS**

### **28.1 Stapling**

The Trustee may determine:

- (a) that the Stapling Provisions will take effect in accordance with clause 28.2; and
- (b) the Stapling Commencement Date.

### **28.2 Stapling Provisions**

If the Trustee determines, the Stapling Provisions take effect on and from the Stapling Commencement Date until they cease to apply in accordance with this constitution.

On and from the Stapling Commencement Date:

- (a) subject to clause 27, the Stapling Provisions apply and this constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act, the Listing Rules or any other law; and

- (b) provisions of this constitution, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

### **28.3 Power to enter into Reorganisation Proposals**

Without limiting clause 16 the Trustee may enter into:

- (a) without reference to or approval from Members:
  - (i) a Consolidation or Division Proposal;
  - (ii) a Stapling Proposal; or
- (b) any Exchange Proposal or other reorganisation of Units or Stapled Securities, which is in each case approved by Ordinary Resolution.

It is a term of issue of each Unit, that the Unit may be subject to a Reorganisation Proposal as provided in this clause 28.3. Each Member by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

### **28.4 Power to give effect to the Stapling Provisions and Reorganisation Proposals**

- (a) In order to effect an initial or subsequent Stapling of securities to the Units as contemplated by clause 28.1 and Schedule 1, the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions.
- (b) If the Trustee determines to enter into a, Consolidation or Division Proposal, a Stapling Proposal or Exchange Proposal other reorganisation proposal which has been approved by Ordinary Resolution in accordance with clause 28.3, then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (c) If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 28.3(b), then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

### **28.5 Specific Powers**

Without limiting clause 28.4, to give effect to a Stapling and the Stapling Provisions, a Consolidation or Division Proposal, Stapling Proposal or Exchange Proposal or other reorganisation proposal which been approved by an Ordinary Resolution in accordance with clause 28.3(b), the Trustee has power to:

- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;

- (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body;
- (c) issue Units;
- (d) transfer Assets; and
- (e) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

#### **28.6 Appointment of Trustee as agent and attorney**

Without limiting clause 28.4, to give effect to a Stapling and the Stapling Provisions, a Consolidation or Division Proposal, a Stapling Proposal or Exchange Proposal or other reorganisation proposal which has been approved by an Ordinary Resolution in accordance with clause 28.3(b), the Trustee is irrevocably appointed the agent and attorney of each Member to:

- (a) apply any proceeds referred to in clause 28.5(a) on behalf of the Member;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;
- (c) execute a transfer of Assets to a Member; and
- (d) execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the Stapling or relevant transaction or proposal.

The Trustee is authorised to execute these documents and to do these things without needing further authority or approval from Members.

#### **28.7 Liability of Trustee**

The Trustee has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling or any Reorganisation Proposal.

#### **28.8 Paramountcy of provision**

The provisions of this clause 27.1 prevail over other provisions of this constitution in the case of any inconsistency to the extent provided in clause 27.

### **29. RESTRICTED SECURITIES**

#### **29.1 Disposal of Restricted Securities**

If the Listing Rules require, Restricted Securities cannot be disposed of during the Escrow Period and the Trustee must not register a transfer of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

## **29.2 Restriction on distributions and voting rights**

During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Restricted Securities.

## **30. SMALL HOLDINGS**

### **30.1 Application of this Clause**

This clause 30 applies while the Units are Officially Quoted.

### **30.2 Trustee may sell or redeem**

Subject to the provisions of this clause 30, the Trustee may sell or redeem any Units held by a Member without request by the Member where the Units comprise less than a marketable parcel as provided in the Listing Rules (a **Small Holding**). The Trustee may only sell or redeem Units comprising a Small Holding on one occasion in any 12 month period. Subject to clause 30.6, if the Units are redeemed, the Redemption Price must be the amount calculated under clause 10.1.

### **30.3 Trustee must notify**

The Trustee must notify the Member in writing of its intention to sell or redeem a Small Holding under this clause 30, and give the Member at least 6 weeks from the date of the notice in which to notify the Trustee that the Member wishes to retain the Small Holding.

### **30.4 Timing**

The Trustee will not sell or redeem the relevant Small Holding:

- (a) before the expiry of 6 weeks from the date of the notice given by the Trustee under clause 30.3; or
- (b) if, within the 6 weeks allowed by clause 30.4(a):
  - (i) the Member notifies the Trustee that the Member wishes to retain the Small Holding; or
  - (ii) the market value of the Small Holding held by the Member increases to at least a marketable parcel as provided in the Listing Rules.

### **30.5 Takeover**

The power to sell a Small Holding lapses following the announcement of a takeover of the Trust, but the procedure may be started again after the close of the offers made under the takeover.

**30.6 Costs of sale**

The Trustee or the purchaser of the Small Holding must pay the costs of the sale or redemption as the Trustee decides.

**30.7 Certificate**

The proceeds of the sale or redemption will not be sent to the Member until the Trustee has received any certificate relating to the Small Holding, or is satisfied that the certificate has been lost or destroyed.

**30.8 Trustee as Member's attorney**

To effect the sale or redemption of Units under this clause 30, the Member appoints the Trustee as the Member's attorney to do all acts and things and execute all documents which the Trustee considers necessary, desirable or reasonably incidental or appropriate to effect the sale or redemption of a Small Holding.

**31. COMPLIANCE COMMITTEE**

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

**32. COMPLAINTS**

**32.1 Wholesale clients**

While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Member who is a wholesale client (complainant) submits to the Trustee a complaint alleging that the Member has been adversely affected by the Trustee's conduct in its management or administration of the Trust, the Trustee:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must, where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) must, where there is no compliance committee, consider the complaint;
- (d) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (e) may in its discretion give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;

- (ii) an apology; or
  - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (f) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Trustee of the complaint:
- (i) the determination of the compliance committee (or if clause 32.1(c), the Trustee);
  - (ii) the remedies (if any) available to the Member; and
  - (iii) information regarding any further avenue for complaint.

### **32.2 Retail clients**

The Trustee, as an Australian Financial Services Licensee will comply with the dispute resolution system requirements in section 912A(2) of the Corporations Act for the purposes of handing complaints against the Trustee made by retail clients in connection with the provision of all financial services covered by its Australian Financial Services Licence.

## **33. GENERAL**

### **33.1 Other documents**

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

### **33.2 Constitution legally binding**

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

### **33.3 Severance**

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

### **33.4 Governing law**

This constitution is governed by the law of the State of New South Wales.

### **33.5 Other obligations excluded**

Except as required by the Corporations Act, all obligations of the Trustee which might otherwise be implied or imposed by law or equity are expressly excluded to the extent

permitted by law, including without limitation any obligation of the Trustee in its capacity as the Trustee of the Trust arising under any statute.

**EXECUTED** as a deed.

## **SCHEDULE 1 STAPLING PROVISIONS**

The following provisions take effect on and from the Stapling Commencement Date apply unless and until they cease to apply in accordance with the relevant Constituent Document.

On and from the Stapling Commencement Date:

- (a) the Stapling Provisions apply and the relevant Constituent Document is to be read subject to the Stapling Provisions; and
- (b) subject to the articles of the Issuer's Constitution titled "Replaceable rules do not apply", "Official Quotation", "Application of Listing Rules" and "Paramountcy of Provisions" in the relevant Constituent Document, the Stapling Provisions prevail over all other provisions of the relevant Constituent Document including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law.

The Stapling Provisions apply to the Issuer in respect of its respective Stapled Entity and its Attached Securities. Unless the contrary intention appears, in this Schedule a reference to a clause is a reference to a clause of this Schedule.

### **1. INTERPRETATION**

#### **1.1 Defined Terms**

Unless the contrary intention appears, capitalised terms not defined in this Schedule have the same meaning as given to them in the Constitution.

**360 Capital Total Return Passive Fund** means the fund so entitled.

**Accession Deed** means the deed of that name between each Issuer and:

- (a) the responsible entity of any new trust; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Stapling Deed.

**Amounts** has the meaning given in clause 9(c).

**Approved Valuer** means any person, independent of the Issuer (and not an associate of the Issuer), who is duly qualified and experienced to conduct a valuation.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security and Attached Security will be construed accordingly. For the avoidance of doubt, on and from the date on which the first Member is issued with Units and units in the 360 Capital Total Return Passive Fund as part of the Restructure, the Units and the units in the 360 Capital Total Return Passive Fund are Attached Securities.



**Constitution** means the constitution of the Trust and includes any amendment or replacement of it.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of an Attached Security.

**Defaulted Attached Security** means a partly paid Attached Security on which an instalment is due and payable but unpaid or in respect of which, a valid call has been made but has not paid in the time specified in the call.

**Defaulted Stapled Security** means a Stapled Security where one or more Attached Securities is a Defaulted Attached Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with clause 9(b).

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist,

or any other arrangement having similar effect to any of the foregoing.

**entity** has the meaning given to it in section 9 of the Corporations Act.

**First Notice** has the meaning given in clause 5.3(a).

**Foreign Investor** means an Investor whose address on the Register is in a place other than Australia, and such other jurisdictions (if any) as the Issuer may determine.

**Group** means the Stapled Entities and any Subsidiary of a Stapled Entity.

**Intra-Group Loan** means any of the actions set out in clause 12.6.

**Investor** means a person entered in the Register as a holder of a Stapled Security.

**Issuer** means an issuer of an Attached Security. For the avoidance of doubt, on and from the date on which the first Member is issued with Units and units in the 360 Capital Total Return Passive Fund as part of the Restructure, each of the Trustee (in its capacity as trustee of the trust) and the Trustee (in its capacity as trustee of the 360 Capital Total Return Passive Fund) are Issuers.

**Market Price of a Stapled Security** on a particular day is:

- (a) the weighted average price per Stapled Security for sales on ASX (excluding any special crossings) for the period of 15 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
  - (i) Stapled Securities have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security that an Approved Valuer determines to be the market price of the Stapled Security on the relevant day, having regard to the market price of Stapled Securities, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the valuer believes should be taken into account.

**New Attached Security** has the meaning given in clause 7(a).

**Register** means the register of Investors kept by the Stapled Entities under clause 6 and the Corporations Act.

**Registrar** means the person appointed to maintain the Register.

**Reorganisation** means the consolidation, division or conversion of the Attached Securities in the ratio determined by the Issuer from time to time and **Reorganise** is to be construed accordingly.

**Restapling** has the meaning given in clause 8.3.

**Reserve Price** has the meaning given in clause 5.7(h).

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee is entered in the Register in respect of those Stapled Securities, and will receive the New Attached Securities pursuant to the Stapling and sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in clauses 9(c) and (d).

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Securities** has the meaning given to the term "securities" in section 92 of the Corporations Act.

**Small Holding** means a holding of securities which comprises less than a marketable parcel, as provided in the Listing Rules.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Stapling Deed or an Accession Deed.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Security Price** has the meaning given in clause 4.2(a).

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the other Attached Security(ies) and, where the Attached Securities are Listed, so that the Attached Securities are quoted on ASX jointly. **Stapled** has a corresponding meaning.

**Stapling Commencement Date** means the most recent date on which the Issuer determines that the Stapling of Attached Securities commences. For the avoidance of doubt, the Issuer has determined that the Stapling Commencement Date for the Stapling of Units and units in the 360 Capital Total Return Passive Fund is the date on which the first Member is issued with Units and units in the 360 Capital Total Return Passive Fund as part of the Restructure.

**Stapling Deed** means the deed of that name between the Trustee and each other Issuer, and as amended from time to time and includes for the avoidance of doubt the co-operation deed entered into between the Trustee (in its capacity as trustee of the Trust) and the 360 Capital Total Return Passive Fund (in its capacity as trustee of the 360 Capital Total Return Passive Fund) dated on or about the date of the Constitution.

**Stapling Matter** means a matter specified in clause 2.3.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Security Price** has the meaning given in clause 4.2(a).

**Subsidiary** of an entity means a company which is a subsidiary of the first entity within the meaning of Part 1.2 Div 6 of the Corporations Act or another entity which is controlled by the first entity within the meaning of control under section 50AA of the Corporations Act.

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group from time to time; and any amending or supplemental

agreements to those documents and any other document that the Issuers consider necessary or desirable for or in connection with the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and the achievement of the investment objectives of the Group from time to time and includes, without limitation, the Co-operation Deed.

**Transfer** has the meaning given in clause 7(d).

**Transferee** has the meaning given in clause 5.7(f).

**Unstapled Security** means a Security which is not Stapled.

**Unstapling** means the process that results in the Attached Securities no longer being Stapled to each other. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

## **1.2 Interpretation**

Unless the contrary intention appears, the interpretation provisions in clause 1.2 of the Constitution apply to this Schedule.

## **2. STAPLING - GENERAL INTENTION**

### **2.1 Stapled Securities - general intention**

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Date. Subject to clause 8 of this Schedule it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each other Attached Security;
- (b) as far as the law permits, the Attached Securities shall be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each other Attached Security is issued at the same time to the same person.

## **2.2 Transaction Documents**

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

## **2.3 Stapling matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor by subscribing for, taking a transfer of, or otherwise acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including without limitation:
  - (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation of the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Defaulted Stapled Securities;
  - (iv) the disposal of any Small Holding of Stapled Securities;
  - (v) the restrictions on Stapled Securities that are Restricted Securities;
  - (vi) the Stapling of New Attached Securities to the Stapled Securities;
  - (vii) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (viii) the Unstapling of one or more Attached Securities;
  - (ix) the Restapling of an Unstapled Security;
  - (x) the Unstapling of the Stapled Securities; and
  - (xi) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with clause 9.
- (c) To effect any Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's:
  - (i) agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
  - (ii) proxy to vote at any meeting in favour of any resolution to effect a Stapling Matter.

- (d) Without limiting clause 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under clause 7, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
  - (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company, trust or managed investment scheme, to agree to become a member of that company, trust or managed investment scheme;
  - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under clause 7.
- (e) Without limiting clause 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under clause 9, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
  - (i) receive and apply the Amounts referred to in clause 9(c)(i) in the manner contemplated in clause 9;
  - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
  - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
  - (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under clause 9.
- (f) The Issuer may:
  - (i) appoint (and revoke the appointment of) one or more substitute attorneys to exercise one or more of the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this clause 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome of such exercise.

- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under clauses 2.3(e), 2.3(f), 9 and 10 may cause individual Investors considerable disadvantage (including possible adverse financial and Taxation consequences) but each Investor acknowledges that such a result is necessary to enable the requirements of clause 9 to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

### **3. DEALINGS IN STAPLED SECURITIES**

#### **3.1 Stapling**

- (a) Subject to clause 7, on and from the Stapling Commencement Date:
  - (i) each Attached Security must be Stapled to each other Attached Security to form a Stapled Security;
  - (ii) the Issuer must not:
    - (A) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the same person for each other Attached Security for issue or sale;
    - (B) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each other Attached Security;
    - (C) accept an application for an Attached Security if the applicant does not at the same time apply for each other Attached Securities or if each other Attached Security will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
    - (D) issue or sell an Attached Security to any person unless each other Attached Security is also issued or sold to the same person at the same time;
    - (E) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each other Attached Security are issued at the same time and to the same person;
    - (F) without the prior written consent of each Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
    - (G) permit a reinvestment by an Investor in an Attached Security unless at the same time the Investor acquires each other

Attached Security which, when issued or acquired, are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire each other Attached Security having regard to the application price of the Attached Securities.

- (b) Each Attached Security issued after the Stapling Commencement Date must be Stapled to each other Attached Security immediately upon the date of issue of each Attached Security.

### **3.2 Dealings in Attached Securities**

- (a) **(No Unstapling)** On and from the Stapling Commencement Date, the Issuer must not:
  - (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing, if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with clause 8.
- (b) **(Attached Securities)** Subject to clause 8, on and from the Stapling Commencement Date, the Issuer must not:
  - (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each other Attached Security; or
  - (iii) register any transfer of an Attached Security to any person unless each other Attached Security is also transferred to the same person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each other Attached Security.



- (e) **(Disposal)** The Issuer must not dispose of a Defaulted Attached Security unless at the same time each other Attached Security is also disposed of in the same manner and to the same person.
- (f) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each other Attached Security is also disposed of in the same manner and to the same person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.
- (g) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the same person.
- (h) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer or issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### **3.3 Consistency with the Constituent Documents**

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### **3.4 Joint quotation as Stapled Securities**

Until all Attached Securities are Unstapled in accordance with provisions of this Schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### **3.5 Joint certificates or joint holding statements**

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities .

### **3.6 Stapling and separate entities**

Notwithstanding any other provision of this Schedule each Stapled Entity will remain a separate legal entity and will be separately admitted to the official list of ASX notwithstanding that the Attached Securities are jointly quoted on ASX as Stapled Securities.

#### **4. ALLOCATION OF APPLICATION PRICE**

##### **4.1 Application Price**

- (a) Units issued as part of a Stapled Security to any person under the Public Offering at a price and on terms determined by Trustee provided that:

  - (i) the Trustee complies with any Listing Rules applicable to the issue and any applicable ASIC Relief;
  - (ii) the same persons are at the same time offered identical numbers of Attached Securities which will be Stapled to the Units offered;
  - (iii) the price is at least equal to Public Offer Price; and
  - (iv) where it is proposed to issue Stapled Securities at an application price less than the aggregate of the NAV Prices of the Unit and the Attached Securities, as the case may be, on a day not more than 5 Business Days prior to the date on which an Offer Document pursuant to which the offer is made is lodged with ASIC, the aggregate of the relevant application price and the application price of the Attached Securities is not less than 90% of the aggregate NAV Prices of the Unit and the Attached Securities as at a date not more than 5 Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with ASIC.
- (b) Subject to clause 4.1(d), while Units are Officially Quoted as part of a Stapled Security, the application price payable for any Unit is the Market Price of a Stapled Security minus the application price of each other Attached Security, or the amount determined by the Manager in accordance with clause 4.2.
- (c) Subject to clause 4.1(d), while the Units are not Officially Quoted but are Stapled, the application price payable for a Unit is the price calculated under clause 8.1(i) of the Constitution, and the application price of Stapled Securities is the sum of that amount and the application price of each other Attached Security.
- (d) The Trustee may determine a different application price for any Units (subject to the Corporations Act as modified by any applicable ASIC Relief and the Listing Rules) in the case of:

  - (i) offers made at substantially the same time to persons who were Investors on a date determined by the Trustee which is not more than 20 Business Days immediately before the offer, where:

    - (A) all Investors are offered Units at the same application price on a pro rata basis (whether or not the right to acquire those Units is renounceable); and
    - (B) either:

- (aa) where the Units are Officially Quoted as part of a Stapled Security, the application price is not less than 50% of the balance after subtracting the application price of the other Attached Securities from the Market Price for the Stapled Securities, calculated as at the last Business Day before the date of the Offer Document under which the offer is made; or
- (ab) where the Units are not Officially Quoted but are Stapled, the application price is not less than 50% of the price calculated in accordance with clause 8.1(i) of the Constitution.

Subject to the Corporations Act (as modified by any applicable ASIC Relief) and the Listing Rules, the Manager is not required to offer Units under this clause 4.1(d) to Foreign Investors;

- (ii) a distribution reinvestment, where the application price is determined in accordance with clause 4.3;
- (iii) a placement of Stapled Securities, where the application price is less than the balance after subtracting the application price of each other Attached Security from the Market Price for the Stapled Security, calculated as at the last Business Day on which sales were recorded before the date of the issue, but not less than 50% of that balance;
- (iv) a security purchase plan, where the application price is less than the balance after subtracting the application price of each other Attached Security from the Market Price for the Stapled Security, calculated as at the last Business Day on which sales were recorded before the day on which the offer was announced, but not less than 50% of that balance; and
- (v) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Relief.

#### 4.2 Apportionment of Application Price

- (a) Unless otherwise agreed between the Issuers, the application price for a Stapled Security (Stapled Security Price) will be allocated to the application price for each of the Attached Securities as follows:
  - (i) *first*, to the application price of any Attached Security that is an interest in a trust, being an amount which reflects the net assets (adjusted for the net market value of its investments) of the Stapled Entity which is a trust immediately prior to the issue of the Stapled Security. If there is more than one Stapled Entity which is a trust, then such amounts to be allocated between those trusts in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant trust immediately prior to the issue or acquisition of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net

market value of their investments) of those trusts at the end of the relevant period immediately prior to the issue of the Stapled Security;

(ii) *second*, to the application price of any Attached Security not covered by clause 4.1(a)(i), being the lesser of:

(A) any balance remaining after the allocation in clause 4.1(a)(i) ;  
or

(B) an amount which reflects the net assets (adjusted for the net market value of their investments) of the relevant Stapled Entities immediately prior to the issue of the Stapled Security;

such amounts to be allocated between the relevant Attached Securities issued by each of the Stapled Entities in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant Stapled Entity at the end of the relevant period immediately prior to the issue of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of those Stapled Entities at the end of the relevant period immediately prior to the issue of the Stapled Security.

(b) Where an option to acquire a Stapled Security is issued after the Stapling Commencement Date, the allocation of the issue price of the option must be determined in the same manner as under clause 4.1(a).

(c) The allocation of the application price for a Stapled Security under this clause 4.1 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

#### **4.3 Application Price if reinvestment applies**

(a) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Issuers may determine on behalf of the relevant Investor.

(b) Whenever money is held on behalf of an Investor for future reinvestment the money so held may in the discretion of the Issuer be aggregated and on each occasion on which the aggregated amount reaches the application price of a Stapled Security be applied in the subscription or transfer of a Stapled Security for the Investor.

#### **4.4 Redemption or buy-back**

In the case of a redemption or buy-back of Stapled Securities, the allocation of the price between Stapled Securities is to be based on the respective fair values of the Attached Securities as determined by agreement between the Issuers immediately prior to the redemption or buy-back of the Stapled Security.

#### **4.5 Price consistent**

Each allocation determined under clause 4 must be consistent for each Attached Security issued, redeemed, bought back or sold to or from each Investor at the same time.

### **5. CALLS AND DISPOSAL**

#### **5.1 Payment of Application Price by instalments**

The Issuer may determine at any time in consultation with each other Issuer that any Stapled Securities to be offered for sale or subscription is to be offered on terms that the application price is payable by instalments of such amounts and at such times as the Issuers determine (including by a single instalment).

#### **5.2 Variation or waiver of terms and conditions**

Subject to the Corporations Act, where Stapled Securities are offered for sale or subscription on specified terms and conditions, those terms and conditions may be varied or compliance with them waived only with the consent of each Issuer. The variation or waiver must not take effect during the currency of any Offer Document pursuant to which the Stapled Securities were offered for sale or subscription.

#### **5.3 Notice of instalments**

- (a) Subject to the Listing Rules if Attached Securities are Officially Quoted, Investors holding partly paid Attached Securities must be given at least 30 Business Days' notice (but not more than 40 Business Days' notice) of the time and date each instalment is due to be paid (**First Notice**).
- (b) The First Notice must contain such other information as is required by the Listing Rules and at least 4 Business Days before the date each instalment is due to be paid, a second notice must be sent to all new Investors and those Investors whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

#### **5.4 Payment of instalments**

- (a) The payment of an instalment in respect of an Attached Security may be revoked or postponed by the Issuer.
- (b) Subject to the Listing Rules an instalment shall be deemed to be due on the date determined by the Issuer.
- (c) Subject to the Listing Rules the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to an Investor, shall not affect the instalment being due.
- (d) Subject to the Corporations Act, the Listing Rules and clause 5.2 any liability of an Investor in respect of any monies unpaid on an Investors' partly paid Attached Securities may be extinguished in full or in part by the Issuer.

- (e) Subject to the Listing Rules any instalment which, by the terms of issue of the Attached Security, becomes payable on issue of the partly paid Attached Security or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment of which the Investors have received notice in accordance with clause 5.3. In the case of non-payment, all the provisions of this Schedule as to payment of interest, disposal or otherwise shall apply as if such notice had been given.

## **5.5 Failure to pay instalments**

- (a) If an Investor does not pay an instalment on a partly paid Attached Security by its due time for payment then interest is payable by the Investor on the unpaid amount from (and including) the date payment was due to (but excluding) the time of payment at a rate per annum equal to bank bill swap rate (as defined by the Australian Financial Markets Association) plus 3 per cent. Interest is calculated daily. Accrued interest is payable monthly. Accrued unpaid interest will be added to the amount owing and will itself bear interest at a rate per annum equal to bank bill swap rate plus 3 per cent. until paid in full. Subject to clause 5.2, payment of that interest may be waived in whole or part.
- (b) If an Investor fails to pay in full any instalment due on any partly paid Attached Security on or by the day specified for payment, subject to clause 5.3 and during such time as the instalment or any part of the instalment remains unpaid, a notice may be given to that Investor requiring payment of so much of the instalment as is unpaid, any interest owing under clause 5.5(a) and all reasonable expenses incurred by the Issuer as a result of the non-payment.
- (c) The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made.
- (d) The notice must also state that in the event of non payment on or by that specified time and day, the Defaulted Stapled Securities will be liable to be sold.

## **5.6 If requirements of any notice not complied with**

If the requirements of any notice issued under clause 5.5 are not complied with:

- (a) any Defaulted Stapled Security may, at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be disposed of by the Issuer so determining; and
- (b) subject to the Listing Rules, the Corporations Act and this Schedule, all voting rights, entitlements to the distribution of income and other rights in connection with each Defaulted Stapled Security are suspended until reinstated by the Issuer.

## 5.7 Disposal of Defaulted Attached Securities

- (a) If any Defaulted Attached Security is offered for sale pursuant to this clause 5.7 then the Issuer must procure that each other Attached Security is also offered for sale with the result that the whole Defaulted Stapled Security is offered for sale.
- (b) For the avoidance of doubt Attached Securities may be sold pursuant to this clause 5 even if they are fully paid in circumstances where there is default in payment of a call on a Defaulted Attached Security.
- (c) A Defaulted Stapled Security may be disposed of by the Issuers or their agents, at a price determined by the Issuers and in accordance with any applicable ASIC relief.
- (d) Any offer of Defaulted Attached Securities which are to be sold pursuant to clause 5.7(c) must be accompanied by a contemporaneous and corresponding offer of the other Attached Securities forming part of the Defaulted Stapled Security, which offer is capable of acceptance only if the recipient acquires an identical number of Defaulted Attached Securities and other Attached Securities forming part of the Defaulted Stapled Security.
- (e) Subject to the Listing Rules and the conditions of any applicable ASIC relief, the Issuer or their agent may sell or otherwise dispose of Defaulted Stapled Securities:
  - (i) in the ordinary course of trading on ASX; or
  - (ii) by private treaty or public auction.
- (f) The sale of Defaulted Stapled Securities will be on the basis that the person to whom the Defaulted Stapled Securities are sold (Transferee) is not liable to pay the outstanding call (but may be liable for all future calls). The Issuer may assign its rights under this clause 5 to a person who underwrites the payment of the call.
- (g) At any time before a sale or disposition of Defaulted Stapled Securities the Issuers may cancel the sale or disposition upon such terms as the Issuers think fit.
- (h) Without limiting clause 5.7(c), the Issuers may set a reserve price for a Defaulted Stapled Security at any auction subject to and in accordance with any applicable ASIC Relief (Reserve Price).
- (i) If the Issuers or their agents are unable to sell the Defaulted Stapled Securities for a price not less than the Reserve Price then the Issuers may sell or otherwise dispose of the Defaulted Stapled Securities. The Issuers are not obliged to offer the Defaulted Stapled Securities that have not been sold at auction to Investors before disposing of the Defaulted Stapled Securities.

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<sup>1</sup> ASIC Instrument of Relief 05/26.

## **5.8 Evidence of enforcement**

A statement signed by a duly authorised officer of the Issuer that a Defaulted Stapled Security has been duly disposed of on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Defaulted Stapled Security.

## **5.9 Consideration for sold Defaulted Stapled Securities**

- (a) Where a Defaulted Stapled Security is sold, a single Issuer nominated by all Issuers by agreement may:
  - (i) receive the consideration, if any, given for a Defaulted Stapled Security; and
  - (ii) execute a transfer of such Defaulted Stapled Security in favour of the Transferee.
- (b) Where a Defaulted Stapled Security is offered for sale under this clause 5, the obligations of the Issuers are subject to the requirements of any applicable law, the Listing Rules, any consent or other approval from any necessary authority and any other terms of the relevant Constituent Document.
- (c) The Issuers must then Register the Transferee as holder of that Stapled Security. On registration the Transferee is not obliged to ensure that any part of the money which the person has paid for the Defaulted Stapled Security is paid to the former holder of the Defaulted Stapled Security nor shall the person's title to that Defaulted Stapled Security be affected by any irregularity or invalidity in the proceedings in relation to the enforcement of lien or sale of that Defaulted Stapled Security.

## **5.10 Deductions from consideration for Defaulted Attached Securities**

- (a) The proceeds of the sale of a Defaulted Stapled Security must be applied to pay:
  - (i) *first*, the expenses incurred by the relevant Issuers, their agents and assignees in respect of the sale;
  - (ii) then, any expenses necessarily incurred in respect of the enforcement of the Issuers' rights;
  - (iii) then, the calls on the Attached Securities that are due and unpaid; and
  - (iv) then, any unpaid interest on the call and any other amounts payable.
- (b) The Issuers may retain the amounts so deducted, but the balance remaining (if any) must be paid to the Investor whose Defaulted Stapled Securities were sold. If there is a certificate that relates to the Attached Security or the other Attached Security forming part of the Defaulted Stapled Security, the balance does not have to be paid until the Investor delivers the certificate to the relevant Stapled Entity.



#### **5.11 The Holder of Default Stapled Securities**

- (a) The holder of a Defaulted Stapled Security which has been sold under this clause 5 ceases to be an Investor and ceases to hold a right or interest in the Stapled Entities and in particular ceases to be a member of each Stapled Entity that is a company or a managed investment scheme.
- (b) The former Investor has no claims or demands against the Issuers in respect of a Defaulted Stapled Security that has been sold, but remains liable to pay to the Issuers or any assignee of the Issuers all monies which at the date of sale were payable by the former Investor to the Issuers in respect of the sold Defaulted Stapled Security (including interest owing under clause 5.5 of this Schedule and expenses).
- (c) The former Investor's liability ceases if and when the Issuers or their assignees (if any) receive payment in full of all such money and, if applicable, interest in respect of the sold Defaulted Stapled Security.
- (d) Upon transfer of Defaulted Stapled Securities to a Transferee, the Stapled Securities so transferred will (unless otherwise agreed by the Transferee and the Issuers) no longer be Defaulted Stapled Securities and will be treated as fully paid.

#### **5.12 Liability of holder of Defaulted Stapled Securities to underwriter**

Where:

- (a) the Issuer has appointed an underwriter to underwrite the payment of a call in respect of any Stapled Securities;
- (b) in discharging its obligations, the underwriter has purchased Stapled Securities at a public auction or otherwise as contemplated by the relevant underwriting agreement at a price which is more than the Market Price of a Stapled Security (in respect of which the relevant call has been paid); and
- (c) the Issuer is liable or required to pay the underwriter in respect of each Stapled Security purchased in accordance with clause 5.12(b) an amount equal to the difference between the Market Price of a Stapled Security (in respect of which the relevant call has been paid) and the price paid by the underwriter for the Stapled Security, then the former holder of the Stapled Securities that were disposed of to the underwriter is liable to the Issuer in respect of the relevant Defaulted Stapled Securities and may be sued for:
  - (i) all monies payable by the Issuer to the underwriter as contemplated by clause 5.12(c) of this clause;
  - (ii) interest (as provided under this Schedule); and
  - (iii) all costs incurred by the Issuer in procuring payment from the former Investor.

For the purposes of this clause, the **Market Price** of a Stapled Security (in respect of which the relevant call has been paid) is the weighted average price at which such Stapled Securities traded on the ASX over the five Business Days immediately preceding the day of public auction, or, if there is no such price, then the last sale price of the Stapled Security on the ASX prior to that date.

**5.13 Assignment of right of action**

The Issuer must ensure that where the Issuer is liable to the underwriter as contemplated by clause 5.12, the Issuer's liability to the underwriter may be satisfied by the assignment of the Issuer's right of action against the former Investor in full satisfaction of such liability of the Issuer to the underwriter.

**6. SINGLE REGISTER**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the other Attached Securities are recorded.

**7. POWER TO ADD NEW ATTACHED SECURITIES**

- (a) Subject to clause 7(b), the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is an Attached Security (New Attached Security) and cause it to be Stapled to the existing Stapled Securities. A determination under this clause may be made on such terms and conditions as the Issuer considers appropriate.
- (b) A determination that a Security is a New Attached Security may only be made if:
  - (i) where the existing Stapled Securities are Officially Quoted:
    - (A) the New Attached Security is Officially Quoted or the ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
    - (B) ASX has indicated in writing that it will approve the addition of the New Attached Security to the existing Stapled Securities;
  - (ii) each Issuer (excluding the issuer of the New Attached Security) has agreed:
    - (A) to the Stapling of the New Attached Security to the Stapled Security; and
    - (B) that the Stapling of the New Attached Security is in the best interests of Investors as a whole and is consistent with the then investment objectives of the Group; and
  - (iii) the Constituent Documents of the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this Schedule);

- (iv) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (v) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, approval of the members of each existing Stapled Entity has been obtained; and
  - (vi) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this clause 7.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (Transfer).
  - (e) A transfer of a New Attached Security made under this clause 7 shall be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate (if any) for a New Attached Security in order for that Issuer to Register the transfer of that New Attached Security. Such transfer shall be evidenced by, and shall have full effect from, its Registration by the relevant Issuer in the Register.

## **8. UNSTAPLING**

### **8.1 Procedure for Unstapling**

Subject to this clause 8, from the Stapling Commencement Date each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### **8.2 Unstapling an Attached Security**

- (a) Subject to this clause 8.2(a), the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Issuer may determine that one or more Attached Securities are to be Unstapled from the Stapled Security.
- (b) A determination under clause 8.2(a) may only be made:
  - (i) if the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Securities from the Stapled Security and the remaining Attached Securities will remain Officially Quoted as a Stapled Security; and
  - (ii) if the Unstapling is approved by Ordinary Resolution of the holders of the Attached Security; and

- (iii) if each Issuer has agreed:
  - (A) to the Unstapling of an Attached Security from the Stapled Security; and
  - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole and is consistent with the investment objectives of the Group; and
- (iv) if the Stapling Provisions terminate in respect of the Attached Security on and from the time it is Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### **8.3 Restapling**

If an Issuer determines that its Attached Securities are to be Unstapled under clause 8.2(a), this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (**Restapling**).

### **8.4 Unstapling the Stapled Securities**

- (a) Subject to clause 8.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security will be Unstapled on the occurrence of an Unstapling Event affecting that Attached Security.
- (b) A determination under clause 8.4(a) may only be made if:
  - (i) where the Stapled Securities are Officially Quoted, the ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under clause 8.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

## **9. DESIGNATED FOREIGN INVESTORS**

- (a) Without limiting clause 8(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under clause 8, the provisions of this clause 9 apply.

- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:
- (i) the number of Foreign Investors in the foreign place;
  - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
- (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (Amounts) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to clause 9(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
- (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date;
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;

- (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and
  - (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Trustee and the other Issuers, the amount received for a Unit upon sale of a Stapled Security under clause 9(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Trustee.

## **10. DUTIES AND OBLIGATIONS OF PARTIES**

### **10.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief)<sup>2</sup> while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities issued by it.

### **10.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investors' rights and interests.

## **11. MEETINGS OF INVESTORS**

### **11.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **11.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the other Attached Securities which they hold.

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<sup>2</sup> Case by case relief is usually sought from ASIC when stapling is proposed.

### **11.3 Other attendees**

The auditor of each Stapled Entity and the representatives of the Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

## **12. GENERAL**

### **12.1 Other capacities**

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

- (a) deal with itself (as trustee of the Trust or in another capacity) and any Stapled Entity (or their associates); and
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or any Stapled Entity (or their associates) or retaining for its own benefit any profits or benefits derived from any such contract or transaction.

### **12.2 Apportionment of fees**

The Issuer may agree with any other Issuer to apportion between them any fees payable to any of them under any Constituent Document and/or the constituent document of any Subsidiary. In default of any agreement, fees must be apportioned between the Stapled Entities in accordance with the proportion their net asset value (calculated in accordance with their respective constitutions) bears to the combined net asset value of all Stapled Entities.

### **12.3 Agreements as to allocation between Stapled Entities**

An Issuer may agree with each other Issuer to:

- (a) any allocation of assets, property, liability, expenses or remuneration between the Stapled Entities; and
- (b) any other matter between the Stapled Entities that the Issuers consider to be necessary or appropriate in connection with the Stapling.

### **12.4 Small Holdings**

Where Stapling applies, a reference to a Small Holding in each Constituent Document is taken to be a reference an unmarketable parcel of Stapled Securities, within the meaning of the Listing Rules.

### **12.5 Financial assistance**

Without limiting clause 12.2, the Issuer may enter into loan arrangements (including Intra-Group Loans) with other Issuers for the purpose of allocating capital raised under issues of Stapled Securities to the extent that this is required.

## **12.6 Intra-Group Loans**

Without limiting the Constituent Documents, the Issuer may enter into any agreement, document or arrangement with any other Issuer, or do any other act, matter or thing at the request of any other Issuer, in respect of any of the following:

- (a) lending money or providing financial accommodation from one Stapled Entity (or any of its Subsidiaries) to any other Stapled Entity (or any of its Subsidiaries) (including, for the avoidance of doubt, the lending of money to or from any entity jointly owned by any of the Stapled Entities);
- (b) guaranteeing any loan or other financing facility or financial accommodation of any Stapled Entity or Subsidiary, including providing any security or indemnity to any person providing the loan facility or financial accommodation;
- (c) entering into any covenant, undertaking, restraint, or pledge at the request of another Issuer including, without limitation, a negative pledge on the obtaining of financial accommodation or the provision of any guarantee or Security in connection with any financial accommodation;
- (d) issuing redeemable preference shares or any other form of Securities to another Issuer;
- (e) paying any costs or expenses incurred by any other Stapled Entity (or any of its Subsidiaries);
- (f) entering into any joint borrowing or joint financial accommodation with any other Issuer or Subsidiary and providing any guarantee, security, indemnities and undertakings in connection with the joint borrowing or other joint financial accommodation; and
- (g) guaranteeing the obligations of or providing an indemnity or undertaking to a third party in respect of the obligations of any Stapled Entity or any Subsidiary.

## **12.7 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each other Stapled Entity written notice that the Stapled Entity is to be wound up.



**SIGNING PAGE**

Dated: 13 OCTOBER 2014

**SIGNED, SEALED AND DELIVERED** by  
**360 CAPITAL INVESTMENT MANAGEMENT LIMITED**  
(ACN 133 363 185) in accordance with  
section 127(1) of the Corporations Act 2001 (Cth):

(X)



Director sign here

(X)



Company Secretary sign here

(X) TONY PITT

Director print name here

(X) CHARISSE NORTJE


Company Secretary print name here

**360 CAPITAL TOTAL RETURN ACTIVE FUND**

<b>SECTION NUMBER</b>	<b>CONSTITUTION REFERENCE</b>
601GA(1)(a)	Clause 8
601GA(1)(b)	Clause 16
601GA(1)(c)	Clause 32
601GA(1)(d)	Clause 24, 25
601GA(2)	Clause 23
601GA(3)	Clause 16.2
601GA(4)	Clause 11
601GB	Clause 33.2

This is Annexure 1 of 3 pages  
referred to in Form 5101

CLAYTON UTZ

  
.....  
Director/Secretary Dated 30/3/15  
Tony Pitt

## Supplemental Deed

360 Capital Total Return Passive Fund  
ARSN 602 304 432

360 Capital Investment Management Limited  
ACN 133 363 185  
Responsible Entity

Clayton Utz  
Lawyers  
Level 15, 1 Bligh Street Sydney NSW 2000 Australia  
PO Box H3 Australia Square Sydney NSW 1215  
T + 61 2 9353 4000 F + 61 2 8220 6700

[www.claytonutz.com](http://www.claytonutz.com)

## **Supplemental Deed made on 30 March 2015**

**Party**                      **360 Capital Investment Management Limited ACN 133 363 185** of Level 8, 56 Pitt Street, Sydney NSW 2000 ("**Responsible Entity**")

### **Background**

- A.        By a deed dated 13 October 2014, the 360 Capital Total Return Passive Fund was established (the "**Trust**").
- B.        The constitution for the Trust referred to in Background A, as amended from time to time, is referred to in this Deed as the "**Constitution**".
- C.        There are currently no unitholders in the Trust.
- D.        Pursuant to section 601GC(1)(b), the Responsible Entity amends the Constitution as set out in the Deed.

### **Operative provisions**

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#### **1.        Operative provisions**

##### **1.1       Specific modifications**

Subject to clause 2, the Constitution is modified by:

- (a)       immediately prior to paragraph 8.1(a), inserting the following paragraph 8.1(aa):  
              "(aa)       in the case of the initial Units issued to Members pursuant to clause 24.1, at a price of \$1.00 per Unit;" and
- (b)       in clause 24.1, deleting the words "and the Trustee and issues those Units as part of the Restructure".

##### **1.2       Provisions not affected**

The provisions of the Constitution are not otherwise affected.

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#### **2.        Effective time**

The modifications to the Constitution pursuant to clause 1.1 of this Deed take effect upon lodgement of this Deed with the Australian Securities and Investments Commission.

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#### **3.        No resettlement**

Nothing in this deed constitutes a resettlement or redeclaration of the Trust.

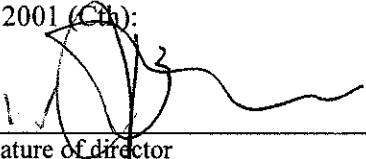
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#### **4.        Governing law**

This Deed is governed by and will be construed according to the laws of the State of New South Wales.


**Executed** as a deed.

**Executed by 360 Capital Investment  
Management Limited ACN 133 363 185** in  
accordance with section 127 of the Corporations  
Act 2001 (Cth):

  
\_\_\_\_\_  
Signature of director

**William John Ballhausen**

\_\_\_\_\_  
Full name of director

  
\_\_\_\_\_  
Signature of company secretary/director

**Tony Pitt**

\_\_\_\_\_  
Full name of company secretary/director

**C L I F F O R D  
C H A N C E**

**CLIFFORD CHANCE**

**360 CAPITAL INVESTMENT MANAGEMENT LIMITED  
(ACN 133 363 185)**

---

**360 CAPITAL TOTAL RETURN PASSIVE FUND  
UNIT TRUST CONSTITUTION  
DATED 13 OCTOBER 2014**

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## CONTENTS

Clause	Page
1. Definitions and Interpretation .....	1
2. The Trust .....	10
3. Assets held on Trust .....	10
4. Units .....	10
5. Options and Financial Instruments .....	12
6. Transfer and Transmission of Units .....	14
7. Partly Paid Units .....	17
8. Application Price for Units .....	21
9. Application Procedure .....	24
10. Redemption Price of Units .....	25
11. Redemption Procedures .....	26
12. Valuation of Assets .....	29
13. Accounts, Audit, and Register .....	30
14. Income and Distributions to Members .....	30
15. Payments .....	34
16. Powers of the Trustee .....	36
17. Retirement of the Trustee .....	37
18. Notices to Members .....	38
19. Meetings of Members .....	38
20. Rights and Liabilities of the Trustee .....	41
21. Limitation of Liability and Indemnity in favour of the Trustee .....	42
22. Liability of Members .....	43
23. Remuneration and Expenses of the Trustee .....	43
24. Duration of the Trust .....	48
25. Procedure on Termination .....	49
26. Amendments to this Trust Deed .....	50
27. Regulatory Provisions and Paramountcy .....	50
28. Stapling Provisions and Reorganisation Proposals .....	52
29. Restricted Securities .....	54
30. Small Holdings .....	55
31. Compliance Committee .....	56
32. Complaints .....	56
33. General .....	57
Schedule 1 Stapling Provisions .....	59

## DETAILS

Trustee	Name	360 Capital Investment Management Limited
	ACN	133 363 185
	Address	Level 8, 56 Pitt Street, Sydney NSW 2000
Date	See Signing page	

## GENERAL TERMS

**THIS DEED** poll is declared by 360 Capital Investment Management Limited (ACN 133 363 185) to be the constitution of the 360 Capital Total Return Passive Fund.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this constitution:

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

**Adjusted Operating Income** means Operating Income excluding paragraphs (e) and (f) of that definition.

**Application Price** means the Unit price calculated in accordance with clause 8.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Relief** means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

**Assets** means all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

**Attached Securities** has the same meaning as in Schedule 1.

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

**Business Day** means:

- (a) while Units are not Officially Quoted, a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Sydney; and
- (b) while Units are Officially Quoted, a day which is a Trading Day for the purposes of the Listing Rules.



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

**Consolidation or Division Proposal** means a proposal to consolidate, divide or convert Units in a ratio determined by the Trustee, including rounding of the number of Units as the Trustee determines.

**Class** means a class of Units.

**Control** has the meaning given in section 50AA of the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

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

**CS Facility Operator** means the operator of the CS Facility.

**Custodian** means a person holding or appointed to hold Assets as custodian for the Trustee.

**Disposal Price** means the proceeds of the sale or redemption of a Forfeited Unit (as the case requires).

**Distributable Income** means an amount determined to be distributed by the Trust for a period in accordance with clause 14.3.

**Distribution Calculation Date** means the last day of each Financial Year and such other days as the Trustee designates.

**Distribution Date** means each day that is 60 days after a Distribution Calculation Date.

**Distribution Entitlement** means has the meaning given in clause 14.4.

**Distribution Period** means:

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

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

**Exchange Proposal** means a proposal whereby a written offer to transfer or redeem some or all of their Units or Stapled Securities is made to Members or to specific Members in consideration of any or all of:

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

**Financial Instrument** has the meaning given in clause 5.6(a).

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

**Financial Year** means:

- (a) for the first financial year, the period from the establishment of the Trust to the next Financial Year Termination Date;
- (b) for the last financial year, the period from the day after the preceding Financial Year Termination Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on the day after the preceding Financial Year Termination Date to the next occurring Financial Year Termination Date.

**Financial Year Termination Date** means:

- (a) 30 June, or if the Trust is a member of a consolidated group (as defined in the Tax Act), the date of the financial year end of that consolidated group;
- (b) the day on which the Trust becomes a "subsidiary unit holder" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a "subsidiary unit holder" or a "consolidated group" or "consolidatable group" (as defined in the Tax Act).

**Financier** means a financier to the Trustee in its capacity as trustee of the Trust (or a person acting as agent, trustee or nominee for such a financier).

**Forfeited Unit** means a Partly Paid Unit which is forfeited pursuant to clause 7.4.

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

**Instalment** means, in relation to a Partly Paid Unit, each instalment of the Application Price of that Unit which is not paid on application for the Unit.

**Liabilities** means all present liabilities of the Trust including any provision taken into account in determining the liabilities of the Trust but not liabilities:

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

**Liquid** has the same meaning as in section 601KA(4) of the Corporations Act.

**Listed** means admitted to the Official List and Listing has a corresponding meaning.

**Listing Rules** means the listing rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Market Price of a Unit**, on a particular day, means:

- (a) the weighted average price per Unit for sales on ASX (excluding any special crossings) for the period of 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
  - (i) Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the Trustee's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit that an Approved Valuer determines to be the market price of the Unit on the relevant day, having regard to the market price of Units, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the Approved Valuer considers should be taken into account in the relevant circumstances, with such determination set out in a certificate in writing addressed to the Trustee stating that in the Approved Valuer's opinion such market price determination is fair or otherwise in the best interests of Members (and the reasons and factors taken into account in arriving at such determination).

**Market Value of an Asset** means:

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, at face value plus any accrued interest;

- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Trustee, unless:
- (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
  - (ii) the Trustee reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by an Approved Valuer approved by the Trustee at the expense of the Trust;
  - (iii) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the trust on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the trust is operated by the Trustee or a related body corporate of the Trustee, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the trust;
- (c) in the case of any other Asset, the value of the Asset determined in accordance with accounting standards or, if the Trustee is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer approved by the Trustee at the expense of the Trust.

**Member** means the person Registered as the holder of a Unit (including persons jointly Registered) and where required by the Corporations Act or the context includes the holder of an Option.

**NAV Price**, in respect of a Unit, means a price calculated in accordance with clause 8.1(i) and in respect of an Attached Security a price calculated in accordance with the equivalent provision of the Stapled Entity (if applicable).

**Net Asset Value** means the value of the Assets calculated in accordance with clause 12, less the Liabilities.

**Offer Document** means the first product disclosure statement or other offering document pursuant to which Stapled Securities are offered for subscription within a 6 month period following the Restructure, as amended, supplemented or replaced from time to time.

**Official List** means the official list of ASX as defined in the Listing Rules.

**Officially Quoted** means quoted on the Official List including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension and Official Quotation has a corresponding meaning.

**Operating Income** means the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to:

- (a) property outgoings;
- (b) repairs and maintenance;
- (c) interest and other borrowing costs;
- (d) fees paid to the Trustee;
- (e) any amount that the Trustee consider prudent or appropriate to allow for depreciation and amortisation in respect of the assets held by the Trust provided that the Trustee determines such an amount prior to the Distribution Calculation Date; and
- (f) any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust provided that the Trustee determines such an amount prior to the Distribution Calculation Date.

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

**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).

**Ordinary Resolution** means a Resolution where the required majority is a simple majority.

**Overdue Amount** has the meaning given to that term in clause 7.2(b).

**Paid-up Proportion** means the number obtained by multiplying the number of Partly Paid Units on issue as at the date of calculation by the fraction obtained by dividing the aggregate of all amounts paid in respect of all Partly Paid Units on issue as at the date of the calculations by the total of the Application Prices of those Partly Paid Units.

**Partly Paid Unit** means a Unit in respect of which any portion of its Application Price remains unpaid.

**Pricing Period** means the period of 10 consecutive Trading Days ending on the Trading Day determined by the Trustee.

**Public Offering** means the first public offering of Stapled Securities which involves the raising of capital for subscription under an Offer Document with the purpose of seeking Listing and quotation of the Stapled Securities.

**Public Offer Price** means an application price of at least \$1.15 per Stapled Security.

**Ratings Agency** means any recognised ratings agency as determined by the Trustee.

**Redemption Price** means the Unit price calculated in accordance with clause 10.

**Register** means the register of Members kept by the Trustee.

**Registered** means recorded in the Register.

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

**Registration** means recording in the Register.

**Restructure** means the restructure pursuant to which unitholders in the CVC Property Fund (formerly Officially Quoted under the ASX ticker: CJT) exchanged their units in the CVC Property Fund for an equivalent value of units in the Trust and the Attached Securities.

**Restructure Price** means the ratio of 100 units in the CVC Property Fund exchanged for 1 Stapled Security under the Restructure with a deemed price for the Stapled Security of \$1.15.

**Resolution** means:

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

Except where this constitution or any applicable law provides otherwise, the required majority is a simple majority.

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

**Small Holding** has the meaning given in clause 30, as modified by Schedule 1 (if applicable).

**Stapled Entity** has the same meaning as in Schedule 1.

**Stapled Security** has the same meaning as in Schedule 1.

**Stapling** has the same meaning as in Schedule 1.

**Stapling Provisions** means the provisions relating to Stapling in Schedule 1, including where these are applied under clause 28.2 and the provisions of the Stapling Deed.

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

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

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

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

**Transaction Costs** means an amount determined by the Trustee as appropriate to factor into the Application Price or the Redemption Price to avoid an adverse impact on other Members holding Units and arising from transaction expenses which would be incurred if an acquisition or disposal of Assets was carried out because of the issue or redemption of Units. Unless the Trustee otherwise determines, the amount is:

- (a) when calculating the Application Price of a Unit, the Trustee's verifiable estimate of the total transaction costs of acquiring the Assets afresh; and
- (b) when calculating the Redemption Price of a Unit, the Trustee's verifiable estimate of the total transaction costs of selling the Assets,

in each case reduced by the proportion that the Trusts' total borrowings bears to the value of the Assets, and adjusted if appropriate for any effect of assets being held through subsidiaries of the Trust or other investment vehicles.

**Trust** means the 360 Capital Total Return Passive Fund, which is constituted under and governed by this constitution.

**Trustee** means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the trustee of the Trust for the time being,

with the first trustee being Investment Management Limited (ACN 133 363 185).

**Unit** means, subject to any rights, obligations and restrictions attaching to any particular Unit or Class, an undivided share in the beneficial interest in the Trust as provided in this constitution.

**Valuation Time** means a time at which the Trustee calculates Net Asset Value.

## **1.2 Interpretation**

Unless the contrary intention appears, in this constitution:

- (a) a term or phrase defined in the Corporations Act will be accorded the same meaning when used in this constitution;
- (b) the singular includes the plural and vice versa;
- (c) the words **includes** or **including**, for example or **such as** when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (d) **amend** includes delete or replace;
- (e) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (f) a reference to any provision being subject to the Corporations Act only operates if the Corporations Act applies to affect that provision;
- (g) words importing a gender include any gender;
- (h) other parts of speech and grammatical forms of a word or phrase defined in this constitution have a corresponding meaning;
- (i) an expression importing a natural person includes any company, partnership, joint venture, association, corporation, other body corporate or authority;
- (j) a reference to any thing (including, without limitation, any right) includes a part of that thing;
- (k) a reference to a clause, party, or Schedule is a reference to a and clause of, and a party, and schedule to, this constitution and a reference to this constitution includes any Schedule;
- (l) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (m) a reference to law means, common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them);



- (n) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (o) a reference to a party to a document includes that party's successors and permitted assigns; and
- (p) a reference to a year (other than a Financial Year) or month means a calendar year or month respectively.

## **2. THE TRUST**

### **2.1 Name of Trust**

The Trust is called the 360 Capital Total Return Passive Fund or by such other name as the Trustee determines from time to time.

### **2.2 Change of name on change of Trustee**

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

### **2.3 Trustee**

The Trustee is and agrees to act as the trustee of the Trust on the terms and conditions of this constitution.

## **3. ASSETS HELD ON TRUST**

### **3.1 Trust**

The Trustee must hold the Assets on trust for Members.

### **3.2 Holding property separately**

The Assets vest in the Trustee, but must be clearly identified as property of the Trust and held separately from the assets of the Trustee and any other managed investment scheme if and to the extent that the Corporations Act so requires.

### **3.3 Assets may be held by a Custodian**

Subject to law, the Trustee may have one or more Assets held by a Custodian.

## **4. UNITS**

### **4.1 Nature of Units**

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Subject to the Terms of Issue of a Unit or the rights conferred on particular Classes, each fully paid Unit confers an equal undivided interest and, each Partly Paid Unit confers an interest of the same nature which is proportionate according to the amount paid up on the Unit.

- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

#### **4.2 Fractions of Units**

- (a) Fractions of a Unit may be issued by the Trustee, but while the Units are Officially Quoted, fractions of a Unit may not be issued.
- (b) If any fractions of Units are on issue at a time when the Trust is to be Listed, the Trustee may cancel the fractions with effect from the date of Listing.
- (c) Where any calculation performed under this constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (d) The provisions of the constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.
- (e) Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

#### **4.3 Consolidation and Division of Units**

- (a) Units may be consolidated or divided as determined by the Trustee.
- (b) The Unit structure may only be reconstructed:
  - (i) if the proportion of Units held by Members relative to each other immediately before the reconstruction is maintained; and
  - (ii) in accordance with this constitution.

#### **4.4 Joint Tenancy**

Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Trustee otherwise agrees.

#### **4.5 Classes**

The Trustee may from time to time without amending this constitution, issue Units in different Classes with different rights, obligations and restrictions attaching to them. The Trustee may from time to time prescribe other rights, obligations and restrictions pertaining to those Classes which are not inconsistent with the provisions of this constitution or, if the Trust is a Registered Scheme, contrary to the Corporations Act.

#### **4.6 Income entitlement of Units**

The Trustee may issue Units on terms that the Units:

- (a) participate fully for Distributable Amount in respect of the Distribution Period in which they are issued; or

- (b) do not entitle the holder of the Units to receive a distribution of Distributable Amount in respect of the Distribution Period in which the Units are issued; or
- (c) entitle the holders to receive Distributable Amount in respect of the Distribution Period in which the Units are issued which is not greater than the proportion of the Distributable Amount to which a Member holding a Unit during the whole of that Distribution Period would be entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

## **5. OPTIONS AND FINANCIAL INSTRUMENTS**

### **5.1 Creation of Options**

The Trustee may create and issue Options on such terms and conditions as the Trustee determines. Options may be issued with Units or separately.

### **5.2 Issue of Options**

Subject to this constitution, the Corporations Act (and the conditions of any applicable ASIC relief from it) and the Listing Rules, the Trustee may determine that Options will be issued:

- (a) for consideration or no consideration;
- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Trustee, provided that the exercise price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 99%; and
- (c) conferring on the holder of the Option such other entitlements under this constitution as the Trustee determines,

and otherwise on terms and conditions and with such entitlements as determined by the Trustee. The terms of issue of the Option may allow the Trustee to buy-back the Options.

### **5.3 Offers of Options**

Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC relief from it), if the Trustee is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Trustee is not required to offer Options to persons whose address on the Register is in a place other than Australia.

### **5.4 Exercise of Options**

On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.

## **5.5 Rights attaching to Options**

The holder of an Option holds the Option subject to the terms and conditions attaching to that Option.

## **5.6 Financial Instruments**

Subject to the Corporations Act and the Listing Rules:

- (a) the Trustee may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including Derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) (Financial Instruments); and
- (b) Financial Instruments may be issued:
  - (i) if the Financial Instrument does not constitute an interest in the Trust for the purposes of the Corporations Act – for consideration or no consideration;
  - (ii) if the Financial Instrument constitutes an interest in the Trust for the purposes of the Corporations Act – for consideration as specified in the terms of issue relating to the Financial Instrument;
  - (iii) 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 Trustee determines.

## **5.7 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 Trust.
- (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 Trust.
- (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 Trustee 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).
- (d) Subject to the terms of the Option or Financial Instrument and the Corporations Act, an Option Holder or a person to whom a Financial Instrument has been issued who is not a Member is entitled to attend any

meeting of Members but is not entitled to receive notice of or speak or vote at such a meeting.

- (e) Subject to the terms of the Option or Financial Instrument and the Corporations Act, a Holder or a person to whom a Financial Instrument has been issued who is not a Member is not entitled to any other rights of a Member.

## **6. TRANSFER AND TRANSMISSION OF UNITS**

### **6.1 Transfer**

Units may be transferred subject to their terms, this clause 6 and clause 29.

### **6.2 Transfer of Units if not Officially Quoted**

If Units are not Officially Quoted:

- (a) Members may transfer Units;
- (b) transfers must be in a form approved by the Trustee and be presented for Registration duly stamped;
- (c) the Trustee may refuse to record any transfer in the Register without giving any reason for the refusal; and
- (d) the Trustee must ensure that no transfer of Units is recorded in the Register unless and until the transferee has entered into or acceded to any Unitholders Agreement that is effective immediately prior to the transfer.

### **6.3 Transfer if Officially Quoted**

Subject to this constitution and the Listing Rules, if a Unit is Officially Quoted, it is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

If a duly completed instrument of transfer:

- (c) is used to transfer a Unit in accordance with clause 6.3(b); and
- (d) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Trustee properly requires to show the right of the transferor to make the transfer,

the Trustee must, subject to the Trustee's powers, register the transferee as the Member.

**6.4 When a transfer is effective**

Except as provided by any applicable Operating Rules of a CS Facility, a transfer is not effective until Registered.

**6.5 Transfer to a financial institution**

Except if the Units are Officially Quoted and despite any provision to the contrary in this constitution, the Trustee must not refuse to record any transfer in the Register:

- (a) where such transfer is in favour of a Financier and the transfer is as contemplated by, or pursuant to, any mortgage, charge or security interest of Units in favour of the Financier; or
- (b) where such transfer is by or on behalf of a Financier in favour of any third party upon disposal or realisation of Units following a Financier having become entitled to exercise or enforce its rights under any such mortgage, charge or security interest,

and a certificate by any officer of a Financier that the relevant transfer is within clause 6.5(a) or 6.5(b) is conclusive evidence of that fact.

**6.6 Trustee may request holding lock or refuse to register transfer**

If the Units are Officially Quoted, and if permitted to do so by the Listing Rules, the Trustee may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to Register a transfer of other Units to which a holding lock described in clause 6.6(a) does not apply.

**6.7 Trustee must request holding lock or refuse to register transfer**

If the Corporations Act or Listing Rules require the Trustee to do so or a transfer is in breach of clause 29, the Trustee must:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to Register any transfer of Units to which a holding lock described in clause 6.7(a) does not apply.

**6.8 Notice of holding locks and refusal to register transfer**

If, in the exercise of its rights under clauses 6.6 or 6.7, the Trustee requests the application of a holding lock to prevent a transfer of Units or refuses to Register a

transfer of Units, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

- (a) the holder of the Units;
- (b) the purported transferee; and
- (c) the broker lodging the transfer, if any.

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

#### **6.9 Transmission on death**

If a holder of Units, who does not hold them jointly, dies, the Trustee will recognise only the personal representative of the holder as being entitled to the holder's interest in the Units.

#### **6.10 Information given by personal representative**

If the personal representative gives the Trustee the information it reasonably requires to establish the representative's entitlement to be registered as a holder of the Units:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Trustee, elect to be registered as the holder of the Units; or
  - (ii) by giving a completed transfer form to the Trustee, transfer the Units to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the Units, to the same rights as the previous holder.

On receiving an election under clause 6.10(a)(i), the Trustee must register the personal representative as the holder of the Units.

A transfer under clause 6.10(a)(ii) is subject to the clauses that apply to transfers generally.

#### **6.11 Death of joint owner**

If a holder of Units, who holds them jointly, dies, the Trustee will recognise only the survivor as being entitled to the holder's interest in the Units. The estate of the holder is not released from any liability in respect of the Units.

#### **6.12 Transmission on bankruptcy**

If a person entitled to Units because of the bankruptcy of a holder of Units gives the Trustee the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, the person may:

- (a) by giving a written and signed notice to the Trustee, elect to be registered as the holder of the Units; or

- (b) by giving a completed transfer form to the Trustee, transfer the Units to another person.

On receiving an election under clause 6.12(a), the Trustee must register the person as the holder of the Units.

A transfer under clause 6.12(b) is subject to the clauses that apply to transfers generally.

This clause has effect subject to the Bankruptcy Act 1966 (Cth).

#### **6.13 Transmission on mental incapacity**

If a person entitled to Units because of the mental incapacity of a holder of Units gives the Trustee the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units:

- (a) the person may:
  - (i) by giving a written and signed notice to the Trustee, elect to be registered as the holder of the Units; or
  - (ii) by giving a completed transfer form to the Trustee, transfer the Units to another person; and
- (b) the person is entitled, whether or not registered as the holder of the Units, to the same rights as the previous holder.

On receiving an election under clause 6.13(a)(i), the Trustee must register the person as the holder of the Units.

A transfer under clause 6.13(a)(ii) is subject to the clauses that apply to transfers generally.

### **7. PARTLY PAID UNITS**

#### **7.1 Issue of Partly Paid Units**

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units the Application Price of which is payable by one or more Instalments of such amounts and at such times as set out in the Terms of Issue or as the Trustee determines, provided that the aggregate amount of the Instalments equals the Application Price.
- (b) The Terms of Issue of any Partly Paid Units may provide that the whole of the unpaid Application Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- (c) A holder of a Partly Paid Unit must pay the Instalments of the Application Price in accordance with the Terms of Issue of the Partly Paid Unit and in accordance with this constitution.



- (d) Unless the Trustee determines otherwise in respect of all Partly Paid Units, a Partly Paid Unit will not be credited or deemed to be fully paid until the Trustee has received all moneys unpaid in relation to that Unit.
- (e) The provisions of clauses 7.2 to 7.8 (inclusive) apply in relation to Partly Paid Units except to the extent they are excluded by the Terms of Issue of such Partly Paid Units.

## **7.2 Failure to pay Instalment on Partly Paid Unit**

- (a) The Trustee must serve each Member holding a Partly Paid Unit with a notice not later than one calendar month before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise specify a due date. The omission to give such notice by the Trustee or the non-receipt of such notice by the Member holding a Partly Paid Unit does not in any way whatsoever affect the obligation of the Member to pay the Instalment.
- (b) If a Member holding Partly Paid Units does not pay an Instalment in full on the due date, that Member must pay the aggregate of the following (**Overdue Amount**):
  - (i) so much of the Instalment as is unpaid;
  - (ii) interest which accrues daily and may be capitalised monthly or at such other intervals as the Trustee determines on so much of the Instalment as is unpaid from time to time, from the date when the Instalment falls due to the date of actual payment:
    - (A) if the Trustee has fixed a rate, at the rate so fixed; or
    - (B) in any other case, at the rate prescribed in respect of unpaid judgements in the Supreme Court of New South Wales; and
    - (C) any costs and expenses incurred by the Trustee in relation to the non-payment or late payment of the Instalment.

## **7.3 Forfeiture of Units**

- (a) If a Member holding Partly Paid Units fails to pay the whole of an Instalment when it falls due, the Trustee may serve a notice on that Member:
  - (i) requiring payment of the Overdue Amount;
  - (ii) naming a further date (at least 5 Business Days after the date of service of the notice) by which, and a place at which, the Overdue Amount is to be paid; and
  - (iii) stating that in the event of non-payment of the whole of the Overdue Amount by the time and at the place named, the Unit in respect of which the Instalment was due will be forfeited.

- (b) A Partly Paid Unit is forfeited and the Trustee may redeem such Forfeited Unit or offer that Forfeited Unit for sale if payment in full is not received by the due date specified in the notice issued under clause 7.3(b).
- (c) A forfeiture under clause 7.3(b) will include all distributions, interest and other money payable to the Member in respect of their Forfeited Units and not actually paid before the forfeiture.
- (d) Where a Partly Paid Unit has been forfeited:
  - (i) notice of the forfeiture must be given to the Member who held the Forfeited Unit immediately before the forfeiture; and
  - (ii) an entry of the forfeiture, with the date, must be made in the Register.
- (e) Failure to give the notice or make the entry required under clause 7.3(b) does not invalidate the forfeiture.

#### **7.4 Disposal of Forfeited Unit**

- (a) The Trustee may:
  - (i) offer a Forfeited Unit for sale as agent for the person in whose name the Forfeited Unit was registered immediately before its forfeiture and in any manner that the Trustee determines and, while the Trust is a Registered Scheme, in accordance with any applicable ASIC Relief; or
  - (ii) redeem the Forfeited Unit at the amount paid up on that Unit at the time of forfeiture.
- (b) The Trustee is not liable to the Member for any loss suffered by that Member as a result of any sale or redemption as contemplated by clause 7.4(a).
- (c) A person whose Partly Paid Units have been forfeited ceases to be the holder of those Partly Paid Units, but remains liable to pay, and must immediately pay, to the Trustee, all Instalments, interest costs and expenses owing in respect of the Partly Paid Units at the time of the forfeiture.
- (d) The Trustee may:
  - (i) exempt a Partly Paid Unit from all or any part of this clause 7.4;
  - (ii) waive or compromise all or any part of any payment due to the Trustee (as trustee of the Trust); and/or
  - (iii) before a Forfeited Unit has been redeemed, sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as it thinks fit.

#### **7.5 Income and Capital of a Forfeited Unit**

Any distribution of income and capital under clause 14:

- (a) payable in respect of a Forfeited Unit; and
- (b) which has not been paid before forfeiture,

must be applied in accordance with clause 7.8 as if it formed part of the Disposal Price of a Forfeited Unit.

#### **7.6 Cancellation of Forfeiture**

The Trustee must cancel the forfeiture of a Partly Paid Unit, if before a sale or redemption, the full amount of the Instalment due in respect of the Forfeited Unit together with interest on that Instalment calculated in accordance with clause 7.2(b) and any other Overdue Amount in respect of the forfeiture, is received by the Trustee from or on behalf of the person who was the holder of the Forfeited Unit immediately before it was forfeited.

#### **7.7 Consequences of disposal and continuing liability**

- (a) On completion of a sale or redemption of a Forfeited Unit, the Member holding the Forfeited Unit ceases to be the holder of that Unit but remains liable to the Trustee for the total Overdue Amount payable under clause 7.2(b).
- (b) The Member's liability under this clause ceases as soon as the Trustee receives:
  - (i) payment in full of the Overdue Amount;
  - (ii) the costs and expenses associated with the forfeiture; and
  - (iii) the costs and expenses of all proceedings instituted against the Member to recover the amount due.
- (c) A statement signed by a director or secretary of the Trustee setting out:
  - (i) that a Partly Paid Unit has been forfeited; and
  - (ii) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale or redemption of the Forfeited Unit the Trustee must apply the Disposal Price in accordance with clause 7.8.
- (e) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must register the transferee as the holder of the Forfeited Unit.

- (f) The transferee of the Forfeited Unit is not required to verify the application of the Disposal Price and is not liable to pay any of the Overdue Amount (but may be liable for all future Instalments).
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or redemption of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the transferee.

## **7.8 Proceeds of sale of Forfeited Unit**

- (a) Upon the sale or redemption of a Forfeited Unit, the Trustee must apply the Disposal Price in the following order and manner:
  - (i) by paying any costs and expenses incurred by the Trustee in relation to the sale or redemption of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (ii) by paying any costs and expenses incurred by the Trustee in relation to the forfeiture or any proceedings brought against the former holder of the Forfeited Unit;
  - (iii) by holding as an Asset, the interest accrued in respect of the outstanding Instalments calculated under clause 7.2(b);
  - (iv) by holding as an Asset, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (v) by paying any balance to the former Member whose Units are forfeited.
- (b) If there is a sale or redemption of more than one Forfeited Unit, the Trustee must pay the costs and expenses listed in clauses 7.8(a)(i) and 7.8(a)(ii) *pro rata* to the number of Forfeited Units being sold or redeemed.

## **8. APPLICATION PRICE FOR UNITS**

### **8.1 Application Price for Units**

Subject to this constitution (including the Stapling Provisions), and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be issued at an Application Price:

- (a) in the case of Units issued to Members under the Restructure, at the Restructure Price;
- (b) in the case of Units issued under the Public Offering, in accordance with clause 8.3;
- (c) units issued on the exercise of an Option, in accordance with clause 5.2(b);

- (d) in the case of a proportionate offer (including a rights issue), in accordance with clause 8.4;
- (e) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 8.6;
- (f) in the case of reinvestment of distributions while Units are Officially Quoted, in accordance with clause 14.15;
- (g) subject to clauses 8.1(b) to 8.1(f), in all other cases while Units are Officially Quoted, the Market Price of Units;
- (h) subject to clause 8.1(a), while the Units are not Officially Quoted and the Trust is not a Registered Scheme, agreed by the Members and notified to the Trustee by the Members in writing;
- (i) subject to clause 8.1(a), while the Units are not Officially Quoted and the Trust is not Registered Scheme, calculated in accordance with the following formula:

$$\frac{\text{NAV} + \text{TC}}{\text{U} + \text{PP}}$$

where:

NAV is the Net Asset Value;

TC is the Transaction Costs;

U is the aggregate number of fully paid Units on issue; and

PP is the Paid-up Proportion; or

- (j) in the case of Partly Paid Units, in accordance with clause 7.1.

## 8.2 Time of Calculation

Each of the variables in clause 8.1 must be determined as at the next Valuation Time after:

- (a) the Trustee receives the application for Units; or
- (b) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee,

whichever happens later.

## 8.3 Post Restructure Public Offering

The Trustee may at any time issue Units to any person under the Public Offering at a price and on terms determined by it, provided that:

- (a) the Trustee complies with any Listing Rules applicable to the issue and any applicable ASIC Relief;
- (b) the price is at least equal to the Public Offer Price.

#### **8.4 Pro rata issues**

While the Trust is Listed and subject to the Listing Rules and terms of any applicable ASIC Relief, the Trustee may offer Units for subscription at a price determined by the Trustee to those persons who were Members on a date determined by the Trustee not being more than 20 Business Days immediately prior to the date of the offer if,

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
- (b) the Application Price of the Units is not less than 50% of the average Market Price of the Units calculated as at the last Business Day before the date of the Offer Document under which the offer is made.

Subject to the Listing Rules and the conditions of any applicable ASIC Relief, the Trustee is not required to offer Units under this clause 8.4 to persons whose address on the Register is in a place other than Australia or New Zealand.

#### **8.5 Terms or pro rata issues**

- (a) Any offer made under clause 8.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the number of their respective Unit holdings on the date determined by the Trustee under clause 8.4. The Trustee may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, The Trustee must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 8.4 which are not subscribed for within the period for acceptance set by the Trustee may be offered for subscription by the Trustee to any person. The Application Price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription under clause 8.4, the underwriter may take up any Units not subscribed for by the Member.

#### **8.6 Placements and other issues**

While the Trust is Listed, the Trustee may at any time issue Units to any person, whether by way of a placement or otherwise:

- (a) at the average Market Price of a Unit on the day the Units are offered; or
- (b) at a price and on terms determined by it, provided that the Trustee complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC Relief.

## **8.7 Rounding**

The Application Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1 per cent. of the Application Price. Any excess application money or property which results from rounding becomes an Asset.

## **9. APPLICATION PROCEDURE**

### **9.1 Application Form**

An applicant for Units must complete a form approved by the Trustee if the Trustee so requires. The form may be transmitted electronically if approved by the Trustee.

### **9.2 Payment**

- (a) Payment in a form acceptable to the Trustee, or a transfer of property of a kind acceptable to the Trustee and able to be vested in the Trustee or a custodian appointed by it (accompanied by a recent valuation of such property, if the Trustee requires), must:
  - (i) accompany the application;
  - (ii) be received by or made available to the Trustee or the custodian within such period before or after the Trustee receives the application form, as the Trustee determines from time to time; or
  - (iii) comprise a reinvestment of distribution in accordance with clause 14.8.
- (b) If the Trustee accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the applicant either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Trustee decides.
- (c) The Trustee may, if it considers it appropriate, accept a promissory note in full satisfaction of the obligation of an applicant to pay the subscription monies for Units.

### **9.3 Trustee May Reject**

The Trustee may reject an application in whole or in part without giving any reason for the rejection.

### **9.4 Minimum Amounts**

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

#### **9.5 Issue Date**

- (a) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (b) Except in the case of a reinvestment of distributions in accordance with this constitution, in all other cases Units are taken to be issued when:
  - (i) the Trustee accepts the application; or
  - (ii) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee,whichever happens later.

#### **9.6 Uncleared Funds**

Units issued against application money paid other than in cleared funds or in consideration of a transfer of property are void if the funds are not subsequently cleared or the property does not vest in the Trustee within 1 month of receipt of the application.

### **10. REDEMPTION PRICE OF UNITS**

#### **10.1 Redemption Price**

Subject to clause 7.4(a)(ii), 11.12 and 11.14, and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be redeemed at a Redemption Price:

- (a) while the Units are not Officially Quoted and the Trust is not a Registered Scheme, agreed by the Members and notified to the Trustee by the Members in writing; or
- (b) calculated in accordance with the following formula:

$$\frac{\text{NAV} - \text{TC}}{\text{U} + \text{PP}}$$

where:

NAV is the Net Asset Value;

TC is the Transaction Costs;

U is the aggregate number of fully paid Units on issue; and

PP is the Paid-up Proportion.



## **10.2 Time of Calculation**

Each of the variables in clause 10.1 must be determined:

- (a) while:
  - (i) the Trust is a Registered Scheme and is Liquid; and
  - (ii) at all times when the Trust is not a Registered Scheme,  
as at the next Valuation Time after the Trustee receives the redemption request or determines that the Units are to be redeemed, whichever is the earlier; or
- (b) while the Trust is a Registered Scheme and is not Liquid, at the time the withdrawal offer closes.

## **10.3 Rounding**

Subject to the Listing Rules, the Redemption Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1 per cent. of the Redemption Price. Any excess which results from rounding becomes an Asset.

## **10.4 Redemption Price may represent Distributable Income**

The Trustee may in its absolute discretion determine that the whole or any part of an amount paid as Redemption Price represents a distribution of Distributable Income for a Distribution Period to which a Member is presently entitled.

# **11. REDEMPTION PROCEDURES**

## **11.1 While Officially Quoted**

While Units are Officially Quoted:

- (a) clauses 11.10 and 11.11 (providing for the Trustee to make a withdrawal offer subject to the Corporations Act and the Listing Rules on the basis the Trust is not Liquid) apply only to the extent set out in clause 11.12 so that the Redemption Price is calculated in accordance with clause 10.1 and 10.2(b);
- (b) clauses 11.7 and 11.13 to 11.16 apply (relating, inter alia, to the source of redemption funding, on market buy backs and sums owed to the Trustee); and
- (c) clauses 11.2 to 11.9 do not apply and therefore a Member has no rights to withdraw from the Trust.

If the Stapling Provisions apply and Units comprise part of a Stapled Security that is Officially Quoted, clauses 11.12 and 11.14 apply with any necessary modifications.

## **11.2 Request for Redemption**

- (a) Subject to clause 11.1(c), clause 11.3 and clause 11.11, a Member may make a request for the redemption of some or all of their Units by giving the Trustee notice in writing specifying the number or value of Units to be redeemed and

sufficient details to identify the Member, or in any other manner approved by the Trustee. Subject to any preferred, deferred or other special rights, obligations or restrictions required by the terms of issue of any Class issued from time to time, the Trustee is not obliged to give effect to a redemption request.

- (b) A Member may not withdraw a redemption request unless the Trustee agrees.

### **11.3 When Trust is Liquid or not a Registered Scheme**

Clauses 11.4 to 11.9 apply only while:

- (a) the Trust is a Registered Scheme and Liquid at the time the redemption request is received by the Trustee and at a time when the Redemption Price is to be paid; or
- (b) the Trust is not a Registered Scheme.

### **11.4 Trustee must redeem**

Subject to the Corporations Act and the Listing Rules, the Trustee must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 10. The payment must be made within 21 days of receipt of the request or such longer period as allowed by clause 11.5.

### **11.5 Delayed payment**

If the Trustee has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control (such as restricted or suspended trading in the market for an Asset), the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.

### **11.6 Minimum application or holding amounts**

If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price less than the current minimum holding amount, the Trustee may treat the redemption request as relating to the balance of the Members holding.

### **11.7 Payment from the Assets**

The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.

### **11.8 Discretionary Redemption**

The Trustee may redeem some or all of the Units which are the subject of a redemption request.

### **11.9 Power to compulsorily redeem Units**

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

- (a) if the Member has breached its obligations to the Trustee or breached a term of this constitution;
- (b) to satisfy any amount of money due to the Trustee (as trustee of the Trust) by the Member including, without limiting clause 7.3, in relation to any Instalment due on Partly Paid Units held by the Member;
- (c) if this constitution otherwise allows (for example, where a Member does not have a minimum holding);
- (d) where the Trustee reasonably believes that the law prohibits the person from being a Member or the person being a Member would cause the Trustee to breach a law;
- (e) where the Trustee determines it is in the best interests of Members; or
- (f) where the Trustee determines it is appropriate or necessary for administrative or other reasons.

### **11.10 When Trust is Not Liquid**

If the Trust is a Registered Scheme, clause 11.11 applies while the Trust is not Liquid.

### **11.11 Withdrawal offers**

- (a) While the Trust is not Liquid, or, if Liquid at the time a redemption request is made, is not Liquid at the time for payment of the redemption amount, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- (b) If the Trustee receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.
- (c) The Trustee is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
  - (i) publishing it by any means (for example in a newspaper or on the internet) that gives Members a fair opportunity to be aware of the offer; or
  - (ii) giving a copy to all Members.

#### **11.12 Withdrawal offers while Listed**

While the Units are Officially Quoted the Trustee may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 11.11, in which case the Redemption Price must to be calculated in accordance with clause 10.1 and 10.2(b).

#### **11.13 Clauses Applicable Whether or Not the Trust is Liquid**

Clauses 11.14 to 11.16 apply whether or not the Trust is Liquid.

#### **11.14 On-market buy-backs**

While the Units are Officially Quoted, the Trustee may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units. Where the Units comprise part of Stapled Securities the Trustee may only buy-back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Trustee must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

#### **11.15 Sums Owed to the Trustee**

The Trustee may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member. While the Trust is Liquid or not a Registered Scheme, the Trustee may, without a redemption request, redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

#### **11.16 When Units are redeemed**

Units are taken to be redeemed at the time that the redemption is recorded or required to be recorded in the Register and the applicable Redemption Price has been calculated. From that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

### **12. VALUATION OF ASSETS**

#### **12.1 Periodic Valuations**

- (a) The Trustee may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act. The Assets must be valued in a manner which is consistent with the nature of the Asset being valued and consistent with normal commercial practice for valuing such Asset.
- (b) The Trustee may determine Net Asset Value at any time, including more than once on each day. Unless the Trustee determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

## **12.2 Valuation Methods**

Subject to clause 12.1, the Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.

## **13. ACCOUNTS, AUDIT, AND REGISTER**

### **13.1 Accounts**

While the Trust is not a Registered Scheme, the Trustee:

- (a) must arrange the preparation and maintenance of such accounts and reports as the Trustee, reasonably exercising its discretion, considers appropriate having regard to the nature of the Trust and its Assets, with a view to ensuring that the financial position of the Trust at any time is accurately recorded; and
- (b) will determine at its discretion whether or not to have the Trust's accounts audited (but will arrange for such an audit if so directed by a Resolution).

### **13.2 Register**

While the Trust is not a Registered Scheme, the Trustee must set up and maintain the Register. The Register must show, for each Member, the Member's name and address, the number of Units held and such other information as determined by the Trustee.

## **14. INCOME AND DISTRIBUTIONS TO MEMBERS**

### **14.1 Determination of income and reserves**

The Trustee may determine whether an item is income or capital and the extent to which reserves or provisions need to be made. Any such determination must be made on or before the Distribution Calculation Date and in a manner consistent with the Accounting Standards.

### **14.2 Distribution of income**

- (a) For each Distribution Period the Trustee must calculate and distribute each Member's Distribution Entitlement.
- (b) The Trustee may at any time distribute to Members income or capital of the Trust.
- (c) For each Distribution Period, the Trustee:
  - (i) may determine the Distributable Income for the Distribution Period in accordance with clause 14.31.1(a); and
  - (ii) must calculate and distribute each Member's Distribution Entitlement.

#### **14.3 Distributable Income**

- (a) The Trustee may determine the Distributable Income for a Distribution Period in its absolute discretion. Any such determination must be made on or before the Distribution Calculation Date.
- (b) If the Trustee makes no determination pursuant to clause 14.31.1(a) on or before the Distribution Calculation Date, the Distributable Income shall be the greater of:
  - (i) the net income of the Trust as defined in section 95(1) of the Tax Act for the that period excluding any non cash amounts such as franking credits; and
  - (ii) \$1.
- (c) In making a determination under clause 14.1 or 14.3(a), the Trustee:
  - (i) does not have to take into consideration the Accounting Standards or generally accepted accounting principles and practices that apply to trusts; and
  - (ii) has the discretion to determine whether any receipt, outgoing, gain or loss is regarded as being on account of capital or income or partly on account of one and partly on account of the other.

#### **14.4 Distribution Entitlement**

Subject to the terms of issue for any Class, each Member's Distribution Entitlement is to be determined in accordance with the following formula:

$$DE = DI \times \frac{UH}{UI}$$

where:

- DE** is the Distribution Entitlement;
- DI** is the Distributable Income (however will exclude any Distributable Income allocated in accordance with clause 10.4);
- UH** is the aggregate of the number of fully paid Units held by the Member and the Paid-up Proportion of any holding of Partly Paid Units held by the Member at the close of business on the Distribution Calculation Date
- UI** is the aggregate number of Units on issue in the Trust at the close of business on the Distribution Calculation Date.

#### **14.5 Distribution of Distribution Entitlement**

- (a) The Trustee must pay to each Member its Distribution Entitlement on or before the Distribution Date.
- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution Period, the persons who are Members on the Distribution Calculation Date for that Distribution Period have an absolute, vested and indefeasible interest in the Distributable Amount of that Distribution Period.
- (c) The Trustee must retain from each Member's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Member an amount in or towards satisfaction of any amount payable by the Member to the Trustee under this constitution or are required to be deducted by law.

#### **14.6 Categories and sources of income**

For any category or source of income the Trustee may keep separate accounts and allocate the income from any category or source to any Member.

#### **14.7 Distribution reinvestment arrangements**

The Trustee may advise Members from time to time in writing that Members may participate in an arrangement under which Members may request that all or a portion of specified distributions due to them be satisfied by the issue of further Units.

#### **14.8 Deemed application if reinvestment applies**

If reinvestment applies, the Trustee is deemed to have received and accepted an application to reinvest the distribution after the deduction of any Tax which the Trustee is required to deduct on the date upon which the distribution is to be paid.

#### **14.9 Money held for future reinvestment**

- (a) Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment, the money so held may at the discretion of the Trustee be aggregated.
- (b) On each occasion on which the aggregated amount reaches the Application Price of a Unit, the aggregated amount may be applied in the subscription for a new Unit for issue to the Member.

#### **14.10 Units issued on reinvestment**

Units issued under clauses 14.7 to 14.10 are to participate fully for income in respect of the Distribution Period in which they are issued.

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

A person registered as a Member on a Distribution Calculation Date is to receive the Distributable Amount for the distribution period notwithstanding a transfer or transmission of Units after the Distribution Calculation Date.

#### **14.12 Position on transfer of Assets**

- (a) The Trustee may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units. If the Trustee wishes to do so, it must effect the distribution to all Members in the same way. The Assets transferred to each Member must be of the same type, have the same rights and be fully paid. The Assets transferred may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Trustee:
  - (i) to act as their agent to agree to obtain the Assets; and
  - (ii) where the Assets comprise shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme.
- (b) The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer and must be valued in a manner which is consistent with the nature of Asset being transferred having regard to ordinary commercial practice).
- (c) If the Trustee requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.

#### **14.13 Deductions from distributable income**

The Trustee may deduct from any Distributable Amount or other distribution payable to a Member any sums of money presently payable by the Member to the Trustee on account of an instalment due in respect of Units or otherwise.

#### **14.14 Change in Tax Act**

Notwithstanding clauses 11.4 and 11.5, if in any Financial Year the Trustee in its capacity as trustee of the Trust becomes taxable as if it were a company under the Tax Act the following provisions shall apply and shall override the provisions of clauses 14.2 to 14.5 to the extent that they are inconsistent:

- (a) the Trustee must provide for, and pay from the Assets of the Trust where appropriate, all taxation attributable to the income of the Trust;
- (b) the Members will not have a present entitlement at the end of a Distribution Period to the income of the Trust;



- (c) distributions to Members may be from pre-tax income or post-tax income of the Trust as the Trustee in its absolute discretion determines from time to time;
- (d) the respective entitlements of the Members to distributions pursuant to clause 14.14(c) shall be calculated based on their respective holdings, using the same principle to determine their relative entitlements as is set out in clause 14.4;
- (e) when distributions are being made to Unitholders pursuant to clause 14.14(c) from income of the Trust, the Trustee may calculate the level of the franking credit balance at the time of the distribution, and take all necessary or desirable steps in relation thereto, including the franking of the distributions; and
- (f) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to public trading trusts;

#### **14.15 Reinvestment price while Officially Quoted**

- (a) If reinvestment applies while the Units are Officially Quoted, the application price for each additional Unit issued or transferred upon reinvestment is the weighted average price per Unit for the Pricing Period for the relevant Distribution Period (DRP Price) less any discount not exceeding 20% as the Trustee determines. However, if the Trustee believes that the DRP Price does not provide a fair reflection of the market price of the Units during the relevant period, an Approved Valuer will determine the market price to be used in the calculation of the Application Price of each additional Unit in accordance with paragraph (b)(ii) of the definition of Market Price of a Unit.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

### **15. PAYMENTS**

#### **15.1 Trustee Discretion**

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

#### **15.2 Unpresented Cheques**

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

#### **15.3 Unsuccessful Payment**

- (a) Where the Trustee attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the

Trustee must use its reasonable commercial endeavours to contact the relevant Member and effect the transfer in some other agreed manner.

- (b) If, after using its reasonable endeavours, the Trustee is unable to contact the relevant Member, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after failure of the third attempt to transfer funds by electronic means.

#### **15.4 No Fractions**

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

#### **15.5 Discharge of the Trustee**

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

#### **15.6 Deductions**

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

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

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

#### **15.7 Transfer of Assets**

The Trustee may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution of income or capital, or on winding up of the Trust, either:

- (a) with the consent of the Member; or
- (b) if the Trustee reasonably considers the transfer of Assets rather than cash is in the best interests of Members, without the consent of the Member.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer and must be valued in a manner which is consistent with the nature of Asset being transferred having regard to ordinary commercial practice). If clause 15.7(a) applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

For the purposes of this clause 15.7, the Trustee will be taken to have transferred Assets to a Member or former Member where the Trustee has done everything

reasonably necessary on its part to convey the Assets to the Member or former Member.

## **16. POWERS OF THE TRUSTEE**

### **16.1 General Powers**

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

### **16.2 Contracting Powers**

Without limiting clause 16.1, the Trustee in its capacity as trustee of the Trust has power to:

- (a) borrow or raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodations and debt facilities);
- (b) lend or advance money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodations and debt facilities);
- (c) enter into all forms of hedging arrangements and derivatives; and
- (d) incur all types of obligations and liabilities including guarantees and indemnities.

### **16.3 Investment Powers**

Without limiting clause 16.1, the Trustee may in its capacity as the Trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

### **16.4 Power of Delegation**

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

### **16.5 Exercise of Discretion**

Subject to clause 16.6, the Trustee may in its absolute discretion decide how and when to exercise its powers.

#### **16.6 Discretion Limited**

The Trustee may not exercise its powers in a manner or to an extent that would cause the Trust to be subject to entity taxation as a non-fixed trust.

### **17. RETIREMENT OF THE TRUSTEE**

#### **17.1 Voluntary Retirement**

- (a) While the Trust is a Registered Scheme, the Trustee may retire as the responsible entity of the Trust as permitted by law.
- (b) While the Trust is not a Registered Scheme, the Trustee may retire on not less than 1 month's notice to Members. On retirement, the Trustee may appoint in writing another person to be the Trustee.

#### **17.2 Compulsory Retirement**

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

#### **17.3 New Trustee**

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

#### **17.4 Release**

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

#### **17.5 Retirement Benefit**

In consideration for the proper performance of its duties as Trustee, the Trustee is entitled, subject to any approval required by law, to agree with the incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to:

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

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

## **18. NOTICES TO MEMBERS**

### **18.1 Notices to Members**

- (a) Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Trustee determines, and be delivered or sent to the Member at the Member's physical, fax or email address last advised to the Trustee for delivery of notices.
- (b) A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.
- (c) In the case of joint Members, the physical, fax or email address of the Member means the physical, fax or email address of the Member first named in the Register.
- (d) A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act, the Trustee may determine the time at which other forms of communication will be taken to be received.

### **18.2 Notices to the Trustee**

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

## **19. MEETINGS OF MEMBERS**

### **19.1 Corporations Act**

The Trustee may at any time convene a meeting of Members, and must do so if required by the Corporations Act.

### **19.2 Member's Request for Meeting**

- (a) While the Trust is not a Registered Scheme:
  - (i) the Trustee must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 20 per cent. of the votes that may be cast on the resolution; and

- (ii) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in clause 19.2(a)(i) as if the Trust were a Registered Scheme.

- (b) While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

### **19.3 Notice Period**

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

### **19.4 Trustee May Determine**

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

### **19.5 Quorum**

The quorum for a meeting of Members is at least 2 Members present in person or by proxy together holding at least 10 per cent. of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

### **19.6 No Quorum**

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

### **19.7 Chairman**

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

## **19.8 Adjournment**

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

## **19.9 Resolutions Binding**

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

## **19.10 Proxies and Voting while the Trust is a Registered Scheme**

While the Trust is a Registered Scheme:

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

## **19.11 While the Trust is not a Registered Scheme**

While the Trust is not a Registered Scheme, the remaining clauses 19.12 to 19.15 apply.

## **19.12 Voting**

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

## **19.13 Poll**

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

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

#### **19.14 Proxies**

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

#### **19.15 Variation of Class rights**

The rights attaching to a Class must not be varied without the written consent of all Members holding Units of that Class or by a special resolution of Members holding Units of that Class.

#### **19.16 Class or Option Holder meetings**

Meetings of Members holding Units of a Class or of Option Holders are to be convened and conducted in the same manner as meetings of Members generally under this constitution.

### **20. RIGHTS AND LIABILITIES OF THE TRUSTEE**

#### **20.1 Holding Units**

The Trustee and its associates may hold Units in any capacity.

#### **20.2 Other Capacities**

Subject to the Corporations Act and other applicable law, nothing in this constitution restricts the Trustee (or its associates) from:

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

#### **20.3 Trustee May Rely**

The Trustee may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;



- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Trustee believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely,

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

## **21. LIMITATION OF LIABILITY AND INDEMNITY IN FAVOUR OF THE TRUSTEE**

### **21.1 Limitation on the Trustee's Liability**

- (a) While the Trust is a Registered Scheme, the Trustee is not liable in contract, tort or otherwise to Members for any loss suffered in any way, relating to the Trust except to the extent that the Corporations Act imposes such liability.
- (b) While the Trust is not a Registered Scheme, if the Trustee acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- (c) Subject to the Corporations Act, the liability of the Trustee to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as the Trustee of the Trust or in relation to any Assets) is limited to the Trustee's ability to be indemnified from the Assets.

### **21.2 Indemnity in Favour of the Trustee**

- (a) The Trustee is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- (b) To the extent permitted by the Corporations Act, (if the Corporations Act applies, and otherwise without limitation), the indemnity under this clause 21.2 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Trustee.
- (c) This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Trustee retires or is removed as the Trustee of the Trust.

### **21.3 Right of indemnity not affected by unrelated breach of Trust**

Where a Liability is incurred pursuant to a proper exercise of the Trustee's powers under this constitution or at law, the Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any

creditor of the Trustee (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust any have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Trustee or by any person or entity acting on behalf of the Trustee.

## **22. LIABILITY OF MEMBERS**

### **22.1 Liability Limited**

- (a) Subject to paragraph (clauses 22.1(c) and 22.2) the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- (b) In the absence of separate agreement with a Member, a Member need not indemnify the Trustee if there is a deficiency in the Assets to meet the claim of any creditor of the Trustee in respect of the Trust.
- (c) The Trustee is entitled to be indemnified by a Member or former Member to the extent that the Trustee incurs any liability for Tax as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which clause 22.3 applies.

### **22.2 Recourse**

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

### **22.3 Restrictions on Members**

A Member:

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

## **23. REMUNERATION AND EXPENSES OF THE TRUSTEE**

### **23.1 Fees**

The Trustee is entitled to charge or be paid or retain as remuneration for the proper performance and services as Trustee under the terms of this Constitution the following fees out of the Trust Fund:

- (a) a Management Fee;

- (b) a Performance Fee;
- (c) an Asset Acquisition Fee; and
- (d) an Asset Disposal Fee; and

All fees as stated are exclusive of GST,

### 23.2 Management Fee

The Management Fee is a monthly fee equal to one twelfth of 0.65% of the Gross Asset Value calculated as at the end of the previous month and payable on the first Business Day of each month provided that the Management Fee will be not be less than the lower of:

- (a) \$12,500 per month; and
- (b) one twelfth of 1.625% of the Gross Asset Value at the end of the previous month.

For the purposes of this clause 23.2, the Gross Asset Value means the aggregate of the Market Value of the Assets of the Trust.

### 23.3 Performance Fee

- (a) The Performance Fee is the amount calculated at each Determination Date in accordance with the following formula:

**Performance Fee = 20% x (Closing Market Capitalisation + Distributions - Hurdle Amount)**

Where:

**Closing Market Capitalisation** means, on any given Determination Date, the Market Price of a Stapled Security multiplied by the total number of Stapled Securities on issue on that Determination Date.

**Determination Date** means:

- (i) 30 June in each year;
- (ii) if the date of termination of the Trust occurs during the year, the date of termination of the Trust; and
- (iii) the date on which the person who was the Trustee at the Inclusion Date ceases to be the Trustee of the Trust.

**Distributions** means all distributions from any Stapled Entity whether by way of dividend or capital, paid during the Performance Fee Period.

**Hurdle Amount** means, on any given Determination Date, the aggregate of the following amounts:

- (i) an amount equal to the price per Stapled Security required to give a 12% per annum increase in the Market Price of a Stapled Security since the previous Determination Date, multiplied by the total number of Stapled Securities on issue on that previous Determination Date.; plus
- (ii) if there has been an issue (a New Issue) of Stapled Securities (each a New Stapled Security) since the previous Determination Date, an amount equal to the price per New Stapled Security required to give a 12% per annum increase on the issue price of a New Stapled Security, multiplied by the total number of New Stapled Securities issued in the New Issue; minus
- (iii) if there has been a redemption or buy back (Redemption) of Stapled Securities (each a Redeemed Stapled Security) since the previous Determination Date, an amount equal to the price per Redeemed Stapled Security required to give a 12% per annum increase on the redemption price of a New Stapled Security, multiplied by the total number of Redeemed Stapled Securities.

**Inclusion Date** means the later of the date the right to this Performances Fee was included in this Constitution and the date the Trust was admitted to the Official List.

**Market Price of a Stapled Security** has the meaning given to that term in Schedule 1.

**Performance Fee Period** means:

- (i) for the first Performance Fee Period, the period from the Inclusion Date up to and including the first Determination Date; and
  - (ii) for each subsequent Performance Fee Period, the period starting on the day immediately after the last Determination Date and ending on the earlier of the following Determination Date and the date of termination of the Trust.
- (b) The Trustee as at each Determination Date, must determine whether a Performance Fee is payable which shall be the case if the Performance Fee is greater than zero.
  - (c) If a Performance Fee is payable, it must be paid to the Trustee within 1 month after the Determination Date.

Example Performance Fee calculations are attached as an appendix to the Constitution.

#### 23.4 Asset Acquisition Fee

On completion of the acquisition of any investment by the Trust which was located or introduced by the Trustee or any of its associates, the Trustee is entitled to receive an Asset Acquisition Fee of up to 1 % of the total purchase price of the investment.

### **23.5 Asset Disposal Fee**

On completion of the sale or disposal of any Trust investment, the Trustee is entitled to receive an Asset Disposal Fee of up to 1% of the total sale price.

### **23.6 Lower or Deferred Fees**

The Trustee may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

### **23.7 Expenses**

All expenses incurred by the Trustee in connection with the Trust are payable or reimbursable out of the Assets, but while the Trust is a Registered Scheme such reimbursement or payment is only available to the extent that the amounts are incurred in the proper performance of the Trustee's duties as responsible entity and only to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation and registration (if applicable) of the Trust;
- (b) the preparation, review, distribution and promotion of any prospectus or offer document in respect of Units or other promotion of the Trust;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities;
- (f) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (g) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (h) Tax, including any amount charged by a supplier of goods or services, or both, to the Trustee by way of or as a reimbursement for GST;
- (i) financial institution fees;
- (j) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Trustee;
- (k) preparation and audit of the Tax returns and accounts of the Trust;
- (l) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;

- (m) costs of the admission of the Trust to the Official List and compliance with the Listing Rules;
- (n) any court proceedings, arbitration or other dispute concerning the Trust or its Assets or Liabilities, including proceedings against the Trustee, except to the extent that the Trustee is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 23.7(m) must be repaid;
- (o) any compliance or other committee established by the Trustee in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (p) while the Trust is a Registered Scheme but there is no compliance committee, any costs and expenses associated with the board of directors of the Trustee carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (q) the preparation, implementation, amendment and audit of any compliance plan;
- (r) complying with any law, and any request or requirement of ASIC or ASX;
- (s) any Stapling of Units to Attached Securities;
- (t) in connection with any Consolidation or Division Proposal, Stapling Proposal, Exchange Proposal or any other reorganisation relating to Units or Stapled Securities; and
- (u) having the Trust rated by a Ratings Agency.

#### **23.8 GST**

- (a) If the Trustee 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 amount or consideration payable to the Trustee in respect of the supply, the Trustee is entitled to be paid out of the Assets an additional amount on account of GST, such amount 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. This clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this constitution.
- (b) In relation to any fee that is expressed as GST inclusive in this constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by  $(1 + n)$  where  $n$  is the new prevailing rate of GST (expressed as a decimal).

- (c) In the event that the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Trustee is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax.

#### **23.9 Amendment of fee provisions is contemplated**

Without limiting clause 27.1, the Trustee has power to amend any part of this clause 23 with the effect of increasing or decreasing any amount of fees due to it, or introducing new types of fees, or to otherwise amend, delete or replace any of the provisions of this clause 23.9, if:

- (a) while the Trust is a Registered Scheme, the Trustee complies with any applicable requirements of the Corporations Act relating to:
  - (i) amending the constitution of a Registered Scheme, and
  - (ii) increasing fees or charges in relation to a Registered Scheme; or
- (b) while the Trust is not a Registered Scheme, the Trustee obtains the written consent of the sole Member or, if there is more than one Member, gives at least five Business Days' prior notice to Members of the amendment.

#### **23.10 Sums Owed to the Trustee**

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

### **24. DURATION OF THE TRUST**

#### **24.1 Commencement**

The Trust commences when the first applicant is issued with Units and the Trustee and issues those Units as part of the Restructure.

#### **24.2 Termination**

The Trust terminates on the earliest of:

- (a) while the Trust is a Registered Scheme:
  - (i) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
  - (ii) a date determined by the Trustee and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
- (b) while the Trust is not a Registered Scheme, the date specified by the Trustee as the date of termination of the Trust in a notice given to Members; and

- (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law.

#### **24.3 Restriction on issue and redemption of Units**

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

### **25. PROCEDURE ON TERMINATION**

#### **25.1 Realisation of Assets**

- (a) Unless otherwise required by law, the Trustee is responsible for the winding up of the Trust.
- (b) The Trustee must convert the Assets to money, deduct all proper costs and then divide the balance amongst the Members in accordance with clause 25.3. The Trustee may make interim distributions (i.e. income or capital) during the winding up process as it sees fit.
- (c) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Members to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (d) If there is, or, in the reasonable opinion of the Trustee, there will be, a deficiency after making allowance for all Liabilities of the Trust (actual and anticipated) the Trustee must make calls in accordance with relevant terms of issue of Partly Paid Units (if any).
- (e) The Trustee may retain money from the proceeds of realisation of the Assets:—
  - (i) to meet future payment obligations which the Trustee reasonably believes will fall due after a distribution is made to Members pursuant to this Constitution, and
  - (ii) to pay its own remuneration and expenses for work to be done following the realisation of the Assets.

#### **25.2 Auditor and liquidator**

- (a) If, at the time it is to be wound up, the Trust is a Registered Scheme, and to the extent that ASIC policy so requires, the Trustee must arrange for an audit of the final accounts of the Trust by a registered company auditor with a copy to be sent to Members within 30 days after receipt of the audit by the Trustee.
- (b) If the Trust is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Trustee to meet Liabilities from the Assets as and when they fall due, the Trustee may appoint an appropriately qualified liquidator to carry out the winding up and delegate to the liquidator



the powers of the Trustee under this Constitution as necessary to facilitate the winding up.

### **25.3 Distribution Following Termination**

The net proceeds of realisation, after making allowance for all Liabilities (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, including expenses referred to in clause 25.1(d), must be distributed to the Members *pro rata* according to the number of fully paid Units plus the number obtained by multiplying the number of Partly Paid Units held by the proportion to which those Units are paid up, as at a time decided by the Trustee. The Trustee may distribute proceeds of realisation in instalments. The Trustee may also determine whether any portion of the distribution under this clause 25.3 is income of the Trust.

### **25.4 Constitution applies until date of final distribution**

The provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 25.3, but during that period the Trustee may not accept any applications for Units from a person who is not an existing Member and the Trustee is under no obligation to consider or process redemption requests received after the date of termination.

## **26. AMENDMENTS TO THIS TRUST DEED**

- (a) While the Trust is a Registered Scheme, this constitution may be amended, if the Corporations Act allows:
  - (i) by Resolution; or
  - (ii) by deed executed by the Trustee.

If the constitution is amended by Resolution, the Trustee may give effect to the amendments by executing a supplemental deed.

- (b) While the Trust is not a Registered Scheme, the Trustee may by deed amend this constitution.

## **27. REGULATORY PROVISIONS AND PARAMOUNTCY**

### **27.1 Listing Rules**

While the Trust is included in the Official List:

- (a) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act 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 taken to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains the provision, this constitution is taken not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.

## **27.2 Corporations Act and ASIC Relief**

If:

- (a) the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Trustee has determined it wishes to rely on which is expressly applicable to the Trust and the Trustee requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply (**Required Provisions**); or
- (b) any part of this constitution (a **Required Part**) is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes,

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

The Members:

- (i) authorise the Trustee to make the amendments referred to in this clause 27.2 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

## **27.3 Application of Corporations Act and Listing Rules**

In this constitution:

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

#### **27.4 ASIC Class Orders**

In accordance with ASIC Class Order [CO 98/1808] or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this constitution because of the operation of clause 27.2 that is covered by such instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 27.4 applies are made pursuant to the power in clause 24 but in respect of such changes the requirements of clause 24 are to be read subject to this clause 27.4.

#### **27.5 Paramountcy of provisions**

Subject to the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:

- (a) first, clauses 27.1 and 27.2 and provisions taken to be included or amended under them;
- (b) then, the Stapling Provisions set out in Schedule 1 and the provisions in clause 28 regarding Stapling and the Stapling Provisions; and
- (c) then, the Reorganisation Proposals set out in clause 28.3 to 28.7,

provided that clauses 27.5(b) and 27.5(c) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

### **28. STAPLING PROVISIONS AND REORGANISATION PROPOSALS**

#### **28.1 Stapling**

The Trustee may determine:

- (a) that the Stapling Provisions will take effect in accordance with clause 28.2; and
- (b) the Stapling Commencement Date.

#### **28.2 Stapling Provisions**

If the Trustee determines, the Stapling Provisions take effect on and from the Stapling Commencement Date until they cease to apply in accordance with this constitution.

On and from the Stapling Commencement Date:

- (a) subject to clause 27, the Stapling Provisions apply and this constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act, the Listing Rules or any other law; and

- (b) provisions of this constitution, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

### **28.3 Power to enter into Reorganisation Proposals**

Without limiting clause 16 the Trustee may enter into:

- (a) without reference to or approval from Members:
  - (i) a Consolidation or Division Proposal;
  - (ii) a Stapling Proposal; or
- (b) any Exchange Proposal or other reorganisation of Units or Stapled Securities, which is in each case approved by Ordinary Resolution.

It is a term of issue of each Unit, that the Unit may be subject to a Reorganisation Proposal as provided in this clause 28.3. Each Member by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

### **28.4 Power to give effect to the Stapling Provisions and Reorganisation Proposals**

- (a) In order to effect an initial or subsequent Stapling of securities to the Units as contemplated by clause 28.1 and Schedule 1, the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions.
- (b) If the Trustee determines to enter into a, Consolidation or Division Proposal, a Stapling Proposal or Exchange Proposal other reorganisation proposal which has been approved by Ordinary Resolution in accordance with clause 28.3, then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (c) If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 28.3(b), then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

### **28.5 Specific Powers**

Without limiting clause 28.4, to give effect to a Stapling and the Stapling Provisions, a Consolidation or Division Proposal, Stapling Proposal or Exchange Proposal or other reorganisation proposal which been approved by an Ordinary Resolution in accordance with clause 28.3(b), the Trustee has power to:

- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;

- (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body;
- (c) issue Units;
- (d) transfer Assets; and
- (e) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

#### **28.6 Appointment of Trustee as agent and attorney**

Without limiting clause 28.4, to give effect to a Stapling and the Stapling Provisions, a Consolidation or Division Proposal, a Stapling Proposal or Exchange Proposal or other reorganisation proposal which has been approved by an Ordinary Resolution in accordance with clause 28.3(b), the Trustee is irrevocably appointed the agent and attorney of each Member to:

- (a) apply any proceeds referred to in clause 28.5(a) on behalf of the Member;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;
- (c) execute a transfer of Assets to a Member; and
- (d) execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the Stapling or relevant transaction or proposal.

The Trustee is authorised to execute these documents and to do these things without needing further authority or approval from Members.

#### **28.7 Liability of Trustee**

The Trustee has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling or any Reorganisation Proposal.

#### **28.8 Paramountcy of provision**

The provisions of this clause 27.1 prevail over other provisions of this constitution in the case of any inconsistency to the extent provided in clause 27.

### **29. RESTRICTED SECURITIES**

#### **29.1 Disposal of Restricted Securities**

If the Listing Rules require, Restricted Securities cannot be disposed of during the Escrow Period and the Trustee must not register a transfer of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

## **29.2 Restriction on distributions and voting rights**

During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Restricted Securities.

## **30. SMALL HOLDINGS**

### **30.1 Application of this Clause**

This clause 30 applies while the Units are Officially Quoted.

### **30.2 Trustee may sell or redeem**

Subject to the provisions of this clause 30, the Trustee may sell or redeem any Units held by a Member without request by the Member where the Units comprise less than a marketable parcel as provided in the Listing Rules (a **Small Holding**). The Trustee may only sell or redeem Units comprising a Small Holding on one occasion in any 12 month period. Subject to clause 30.6, if the Units are redeemed, the Redemption Price must be the amount calculated under clause 10.1.

### **30.3 Trustee must notify**

The Trustee must notify the Member in writing of its intention to sell or redeem a Small Holding under this clause 30, and give the Member at least 6 weeks from the date of the notice in which to notify the Trustee that the Member wishes to retain the Small Holding.

### **30.4 Timing**

The Trustee will not sell or redeem the relevant Small Holding:

- (a) before the expiry of 6 weeks from the date of the notice given by the Trustee under clause 30.3; or
- (b) if, within the 6 weeks allowed by clause 30.4(a):
  - (i) the Member notifies the Trustee that the Member wishes to retain the Small Holding; or
  - (ii) the market value of the Small Holding held by the Member increases to at least a marketable parcel as provided in the Listing Rules.

### **30.5 Takeover**

The power to sell a Small Holding lapses following the announcement of a takeover of the Trust, but the procedure may be started again after the close of the offers made under the takeover.

### **30.6 Costs of sale**

The Trustee or the purchaser of the Small Holding must pay the costs of the sale or redemption as the Trustee decides.

### **30.7 Certificate**

The proceeds of the sale or redemption will not be sent to the Member until the Trustee has received any certificate relating to the Small Holding, or is satisfied that the certificate has been lost or destroyed.

### **30.8 Trustee as Member's attorney**

To effect the sale or redemption of Units under this clause 30, the Member appoints the Trustee as the Member's attorney to do all acts and things and execute all documents which the Trustee considers necessary, desirable or reasonably incidental or appropriate to effect the sale or redemption of a Small Holding.

## **31. COMPLIANCE COMMITTEE**

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

## **32. COMPLAINTS**

### **32.1 Wholesale clients**

While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Member who is a wholesale client (complainant) submits to the Trustee a complaint alleging that the Member has been adversely affected by the Trustee's conduct in its management or administration of the Trust, the Trustee:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must, where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) must, where there is no compliance committee, consider the complaint;
- (d) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (e) may in its discretion give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;

- (ii) an apology; or
  - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (f) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Trustee of the complaint:
- (i) the determination of the compliance committee (or if clause 32.1(c), the Trustee);
  - (ii) the remedies (if any) available to the Member; and
  - (iii) information regarding any further avenue for complaint.

## **32.2 Retail clients**

The Trustee, as an Australian Financial Services Licensee will comply with the dispute resolution system requirements in section 912A(2) of the Corporations Act for the purposes of handing complaints against the Trustee made by retail clients in connection with the provision of all financial services covered by its Australian Financial Services Licence.

## **33. GENERAL**

### **33.1 Other documents**

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

### **33.2 Constitution legally binding**

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

### **33.3 Severance**

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

### **33.4 Governing law**

This constitution is governed by the law of the State of New South Wales.

### **33.5 Other obligations excluded**

Except as required by the Corporations Act, all obligations of the Trustee which might otherwise be implied or imposed by law or equity are expressly excluded to the extent



permitted by law, including without limitation any obligation of the Trustee in its capacity as the Trustee of the Trust arising under any statute.

**EXECUTED** as a deed.

## **SCHEDULE 1 STAPLING PROVISIONS**

The following provisions take effect on and from the Stapling Commencement Date apply unless and until they cease to apply in accordance with the relevant Constituent Document.

On and from the Stapling Commencement Date:

- (a) the Stapling Provisions apply and the relevant Constituent Document is to be read subject to the Stapling Provisions; and
- (b) subject to the articles of the Issuer's Constitution titled "Replaceable rules do not apply", "Official Quotation", "Application of Listing Rules" and "Paramountcy of Provisions" in the relevant Constituent Document, the Stapling Provisions prevail over all other provisions of the relevant Constituent Document including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law.

The Stapling Provisions apply to the Issuer in respect of its respective Stapled Entity and its Attached Securities. Unless the contrary intention appears, in this Schedule a reference to a clause is a reference to a clause of this Schedule.

### **1. INTERPRETATION**

#### **1.1 Defined Terms**

Unless the contrary intention appears, capitalised terms not defined in this Schedule have the same meaning as given to them in the Constitution.

**360 Capital Total Return Active Fund** means the fund so entitled.

**Accession Deed** means the deed of that name between each Issuer and:

- (a) the responsible entity of any new trust; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Stapling Deed.

**Amounts** has the meaning given in clause 9(c).

**Approved Valuer** means any person, independent of the Issuer (and not an associate of the Issuer), who is duly qualified and experienced to conduct a valuation.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security and Attached Security will be construed accordingly. For the avoidance of doubt, on and from the date on which the first Member is issued with Units and units in the 360 Capital Total Return Active Fund as part of the Restructure, the Units and the units in the 360 Capital Total Return Active Fund are Attached Securities.

**Constitution** means the constitution of the Trust and includes any amendment or replacement of it.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of an Attached Security.

**Defaulted Attached Security** means a partly paid Attached Security on which an instalment is due and payable but unpaid or in respect of which, a valid call has been made but has not paid in the time specified in the call.

**Defaulted Stapled Security** means a Stapled Security where one or more Attached Securities is a Defaulted Attached Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with clause 9(b).

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist,

or any other arrangement having similar effect to any of the foregoing.

**entity** has the meaning given to it in section 9 of the Corporations Act.

**First Notice** has the meaning given in clause 5.3(a).

**Foreign Investor** means an Investor whose address on the Register is in a place other than Australia, and such other jurisdictions (if any) as the Issuer may determine.

**Group** means the Stapled Entities and any Subsidiary of a Stapled Entity.

**Intra-Group Loan** means any of the actions set out in clause 12.6.

**Investor** means a person entered in the Register as a holder of a Stapled Security.

**Issuer** means an issuer of an Attached Security. For the avoidance of doubt, on and from the date on which the first Member is issued with Units and units in the 360 Capital Total Return Active Fund as part of the Restructure, each of the Trustee (in its capacity as trustee of the trust) and the Trustee (in its capacity as trustee of the 360 Capital Total Return Active Fund) are Issuers.

**Market Price of a Stapled Security** on a particular day is:

- (a) the weighted average price per Stapled Security for sales on ASX (excluding any special crossings) for the period of 15 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
  - (i) Stapled Securities have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security that an Approved Valuer determines to be the market price of the Stapled Security on the relevant day, having regard to the market price of Stapled Securities, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the valuer believes should be taken into account.

**New Attached Security** has the meaning given in clause 7(a).

**Register** means the register of Investors kept by the Stapled Entities under clause 6 and the Corporations Act.

**Registrar** means the person appointed to maintain the Register.

**Reorganisation** means the consolidation, division or conversion of the Attached Securities in the ratio determined by the Issuer from time to time and **Reorganise** is to be construed accordingly.

**Restapling** has the meaning given in clause 8.3.

**Reserve Price** has the meaning given in clause 5.7(h).

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee is entered in the Register in respect of those Stapled Securities, and will receive the New Attached Securities pursuant to the Stapling and sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in clauses 9(c) and (d).

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Securities** has the meaning given to the term "securities" in section 92 of the Corporations Act.

**Small Holding** means a holding of securities which comprises less than a marketable parcel, as provided in the Listing Rules.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Stapling Deed or an Accession Deed.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Security Price** has the meaning given in clause 4.2(a).

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the other Attached Security(ies) and, where the Attached Securities are Listed, so that the Attached Securities are quoted on ASX jointly. **Stapled** has a corresponding meaning.

**Stapling Commencement Date** means the most recent date on which the Issuer determines that the Stapling of Attached Securities commences. For the avoidance of doubt, the Issuer has determined that the Stapling Commencement Date for the Stapling of Units and units in the 360 Capital Total Return Active Fund is the date on which the first Member is issued with Units and units in the 360 Capital Total Return Active Fund as part of the Restructure.

**Stapling Deed** means the deed of that name between the Trustee and each other Issuer, and as amended from time to time and includes for the avoidance of doubt the co-operation deed entered into between the Trustee (in its capacity as trustee of the Trust) and the 360 Capital Total Return Active Fund (in its capacity as trustee of the 360 Capital Total Return Active Fund) dated on or about the date of the Constitution.

**Stapling Matter** means a matter specified in clause 2.3.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Security Price** has the meaning given in clause 4.2(a).

**Subsidiary** of an entity means a company which is a subsidiary of the first entity within the meaning of Part 1.2 Div 6 of the Corporations Act or another entity which is controlled by the first entity within the meaning of control under section 50AA of the Corporations Act.

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group from time to time, and any amending or supplemental

agreements to those documents and any other document that the Issuers consider necessary or desirable for or in connection with the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and the achievement of the investment objectives of the Group from time to time and includes, without limitation, the Co-operation Deed.

**Transfer** has the meaning given in clause 7(d).

**Transferee** has the meaning given in clause 5.7(f).

**Unstapled Security** means a Security which is not Stapled.

**Unstapling** means the process that results in the Attached Securities no longer being Stapled to each other. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

## **1.2 Interpretation**

Unless the contrary intention appears, the interpretation provisions in clause 1.2 of the Constitution apply to this Schedule.

## **2. STAPLING - GENERAL INTENTION**

### **2.1 Stapled Securities - general intention**

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Date. Subject to clause 8 of this Schedule it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each other Attached Security;
- (b) as far as the law permits, the Attached Securities shall be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each other Attached Security is issued at the same time to the same person.

## **2.2 Transaction Documents**

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

## **2.3 Stapling matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor by subscribing for, taking a transfer of, or otherwise acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including without limitation:
  - (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation of the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Defaulted Stapled Securities;
  - (iv) the disposal of any Small Holding of Stapled Securities;
  - (v) the restrictions on Stapled Securities that are Restricted Securities;
  - (vi) the Stapling of New Attached Securities to the Stapled Securities;
  - (vii) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (viii) the Unstapling of one or more Attached Securities;
  - (ix) the Restapling of an Unstapled Security;
  - (x) the Unstapling of the Stapled Securities; and
  - (xi) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with clause 9.
- (c) To effect any Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's:
  - (i) agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
  - (ii) proxy to vote at any meeting in favour of any resolution to effect a Stapling Matter.

- (d) Without limiting clause 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under clause 7, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
  - (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company, trust or managed investment scheme, to agree to become a member of that company, trust or managed investment scheme;
  - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under clause 7.
- (e) Without limiting clause 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under clause 9, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
  - (i) receive and apply the Amounts referred to in clause 9(c)(i) in the manner contemplated in clause 9;
  - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
  - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
  - (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under clause 9.
- (f) The Issuer may:
  - (i) appoint (and revoke the appointment of) one or more substitute attorneys to exercise one or more of the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this clause 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome of such exercise.



- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under clauses 2.3(e), 2.3(f), 9 and 10 may cause individual Investors considerable disadvantage (including possible adverse financial and Taxation consequences) but each Investor acknowledges that such a result is necessary to enable the requirements of clause 9 to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

### 3. DEALINGS IN STAPLED SECURITIES

#### 3.1 Stapling

- (a) Subject to clause 7, on and from the Stapling Commencement Date:
  - (i) each Attached Security must be Stapled to each other Attached Security to form a Stapled Security;
  - (ii) the Issuer must not:
    - (A) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the same person for each other Attached Security for issue or sale;
    - (B) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each other Attached Security;
    - (C) accept an application for an Attached Security if the applicant does not at the same time apply for each other Attached Securities or if each other Attached Security will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
    - (D) issue or sell an Attached Security to any person unless each other Attached Security is also issued or sold to the same person at the same time;
    - (E) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each other Attached Security are issued at the same time and to the same person;
    - (F) without the prior written consent of each Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
    - (G) permit a reinvestment by an Investor in an Attached Security unless at the same time the Investor acquires each other

Attached Security which, when issued or acquired, are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire each other Attached Security having regard to the application price of the Attached Securities.

- (b) Each Attached Security issued after the Stapling Commencement Date must be Stapled to each other Attached Security immediately upon the date of issue of each Attached Security.

### **3.2 Dealings in Attached Securities**

- (a) **(No Unstapling)** On and from the Stapling Commencement Date, the Issuer must not:
  - (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing,  
if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with clause 8.
- (b) **(Attached Securities)** Subject to clause 8, on and from the Stapling Commencement Date, the Issuer must not:
  - (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each other Attached Security; or
  - (iii) register any transfer of an Attached Security to any person unless each other Attached Security is also transferred to the same person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each other Attached Security.

- (e) **(Disposal)** The Issuer must not dispose of a Defaulted Attached Security unless at the same time each other Attached Security is also disposed of in the same manner and to the same person.
- (f) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each other Attached Security is also disposed of in the same manner and to the same person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.
- (g) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the same person.
- (h) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer or issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### 3.3 Consistency with the Constituent Documents

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### 3.4 Joint quotation as Stapled Securities

Until all Attached Securities are Unstapled in accordance with provisions of this Schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### 3.5 Joint certificates or joint holding statements

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities .

### 3.6 Stapling and separate entities

Notwithstanding any other provision of this Schedule each Stapled Entity will remain a separate legal entity and will be separately admitted to the official list of ASX notwithstanding that the Attached Securities are jointly quoted on ASX as Stapled Securities.

#### **4. ALLOCATION OF APPLICATION PRICE**

##### **4.1 Application Price**

- (a) Units issued as part of a Stapled Security to any person under the Public Offering at a price and on terms determined by Trustee provided that:

  - (i) the Trustee complies with any Listing Rules applicable to the issue and any applicable ASIC Relief;
  - (ii) the same persons are at the same time offered identical numbers of Attached Securities which will be Stapled to the Units offered;
  - (iii) the price is at least equal to Public Offer Price; and
  - (iv) where it is proposed to issue Stapled Securities at an application price less than the aggregate of the NAV Prices of the Unit and the Attached Securities, as the case may be, on a day not more than 5 Business Days prior to the date on which an Offer Document pursuant to which the offer is made is lodged with ASIC, the aggregate of the relevant application price and the application price of the Attached Securities is not less than 90% of the aggregate NAV Prices of the Unit and the Attached Securities as at a date not more than 5 Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with ASIC.
- (b) Subject to clause 4.1(d), while Units are Officially Quoted as part of a Stapled Security, the application price payable for any Unit is the Market Price of a Stapled Security minus the application price of each other Attached Security, or the amount determined by the Manager in accordance with clause 4.2.
- (c) Subject to clause 4.1(d), while the Units are not Officially Quoted but are Stapled, the application price payable for a Unit is the price calculated under clause 8.1(i) of the Constitution, and the application price of Stapled Securities is the sum of that amount and the application price of each other Attached Security.
- (d) The Trustee may determine a different application price for any Units (subject to the Corporations Act as modified by any applicable ASIC Relief and the Listing Rules) in the case of:

  - (i) offers made at substantially the same time to persons who were Investors on a date determined by the Trustee which is not more than 20 Business Days immediately before the offer, where:

    - (A) all Investors are offered Units at the same application price on a pro rata basis (whether or not the right to acquire those Units is renounceable); and
    - (B) either:

- (aa) where the Units are Officially Quoted as part of a Stapled Security, the application price is not less than 50% of the balance after subtracting the application price of the other Attached Securities from the Market Price for the Stapled Securities, calculated as at the last Business Day before the date of the Offer Document under which the offer is made; or
- (ab) where the Units are not Officially Quoted but are Stapled, the application price is not less than 50% of the price calculated in accordance with clause 8.1(i) of the Constitution.

Subject to the Corporations Act (as modified by any applicable ASIC Relief) and the Listing Rules, the Manager is not required to offer Units under this clause 4.1(d) to Foreign Investors;

- (ii) a distribution reinvestment, where the application price is determined in accordance with clause 4.3;
- (iii) a placement of Stapled Securities, where the application price is less than the balance after subtracting the application price of each other Attached Security from the Market Price for the Stapled Security, calculated as at the last Business Day on which sales were recorded before the date of the issue, but not less than 50% of that balance;
- (iv) a security purchase plan, where the application price is less than the balance after subtracting the application price of each other Attached Security from the Market Price for the Stapled Security, calculated as at the last Business Day on which sales were recorded before the day on which the offer was announced, but not less than 50% of that balance; and
- (v) any of the other circumstances set out in the Corporations Act; as modified by any applicable ASIC Relief.

#### 4.2 Apportionment of Application Price

- (a) Unless otherwise agreed between the Issuers, the application price for a Stapled Security (Stapled Security Price) will be allocated to the application price for each of the Attached Securities as follows:
  - (i) *first*, to the application price of any Attached Security that is an interest in a trust, being an amount which reflects the net assets (adjusted for the net market value of its investments) of the Stapled Entity which is a trust immediately prior to the issue of the Stapled Security. If there is more than one Stapled Entity which is a trust, then such amounts to be allocated between those trusts in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant trust immediately prior to the issue or acquisition of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net

market value of their investments) of those trusts at the end of the relevant period immediately prior to the issue of the Stapled Security;

(ii) *second*, to the application price of any Attached Security not covered by clause 4.1(a)(i), being the lesser of:

(A) any balance remaining after the allocation in clause 4.1(a)(i) ;  
or

(B) an amount which reflects the net assets (adjusted for the net market value of their investments) of the relevant Stapled Entities immediately prior to the issue of the Stapled Security;

such amounts to be allocated between the relevant Attached Securities issued by each of the Stapled Entities in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant Stapled Entity at the end of the relevant period immediately prior to the issue of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of those Stapled Entities at the end of the relevant period immediately prior to the issue of the Stapled Security.

(b) Where an option to acquire a Stapled Security is issued after the Stapling Commencement Date, the allocation of the issue price of the option must be determined in the same manner as under clause 4.1(a).

(c) The allocation of the application price for a Stapled Security under this clause 4.1 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

#### **4.3 Application Price if reinvestment applies**

(a) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Issuers may determine on behalf of the relevant Investor.

(b) Whenever money is held on behalf of an Investor for future reinvestment the money so held may in the discretion of the Issuer be aggregated and on each occasion on which the aggregated amount reaches the application price of a Stapled Security be applied in the subscription or transfer of a Stapled Security for the Investor.

#### **4.4 Redemption or buy-back**

In the case of a redemption or buy-back of Stapled Securities, the allocation of the price between Stapled Securities is to be based on the respective fair values of the Attached Securities as determined by agreement between the Issuers immediately prior to the redemption or buy-back of the Stapled Security.

#### **4.5 Price consistent**

Each allocation determined under clause 4 must be consistent for each Attached Security issued, redeemed, bought back or sold to or from each Investor at the same time.

### **5. CALLS AND DISPOSAL**

#### **5.1 Payment of Application Price by instalments**

The Issuer may determine at any time in consultation with each other Issuer that any Stapled Securities to be offered for sale or subscription is to be offered on terms that the application price is payable by instalments of such amounts and at such times as the Issuers determine (including by a single instalment).

#### **5.2 Variation or waiver of terms and conditions**

Subject to the Corporations Act, where Stapled Securities are offered for sale or subscription on specified terms and conditions, those terms and conditions may be varied or compliance with them waived only with the consent of each Issuer. The variation or waiver must not take effect during the currency of any Offer Document pursuant to which the Stapled Securities were offered for sale or subscription.

#### **5.3 Notice of instalments**

- (a) Subject to the Listing Rules if Attached Securities are Officially Quoted, Investors holding partly paid Attached Securities must be given at least 30 Business Days' notice (but not more than 40 Business Days' notice) of the time and date each instalment is due to be paid (First Notice).
- (b) The First Notice must contain such other information as is required by the Listing Rules and at least 4 Business Days before the date each instalment is due to be paid, a second notice must be sent to all new Investors and those Investors whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

#### **5.4 Payment of instalments**

- (a) The payment of an instalment in respect of an Attached Security may be revoked or postponed by the Issuer.
- (b) Subject to the Listing Rules an instalment shall be deemed to be due on the date determined by the Issuer.
- (c) Subject to the Listing Rules the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to an Investor, shall not affect the instalment being due.
- (d) Subject to the Corporations Act, the Listing Rules and clause 5.2 any liability of an Investor in respect of any monies unpaid on an Investors' partly paid Attached Securities may be extinguished in full or in part by the Issuer.

- (e) Subject to the Listing Rules any instalment which, by the terms of issue of the Attached Security, becomes payable on issue of the partly paid Attached Security or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment of which the Investors have received notice in accordance with clause 5.3. In the case of non-payment, all the provisions of this Schedule as to payment of interest, disposal or otherwise shall apply as if such notice had been given.

#### **5.5 Failure to pay instalments**

- (a) If an Investor does not pay an instalment on a partly paid Attached Security by its due time for payment then interest is payable by the Investor on the unpaid amount from (and including) the date payment was due to (but excluding) the time of payment at a rate per annum equal to bank bill swap rate (as defined by the Australian Financial Markets Association) plus 3 per cent. Interest is calculated daily. Accrued interest is payable monthly. Accrued unpaid interest will be added to the amount owing and will itself bear interest at a rate per annum equal to bank bill swap rate plus 3 per cent. until paid in full. Subject to clause 5.2, payment of that interest may be waived in whole or part.
- (b) If an Investor fails to pay in full any instalment due on any partly paid Attached Security on or by the day specified for payment, subject to clause 5.3 and during such time as the instalment or any part of the instalment remains unpaid, a notice may be given to that Investor requiring payment of so much of the instalment as is unpaid, any interest owing under clause 5.5(a) and all reasonable expenses incurred by the Issuer as a result of the non-payment.
- (c) The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made.
- (d) The notice must also state that in the event of non payment on or by that specified time and day, the Defaulted Stapled Securities will be liable to be sold.

#### **5.6 If requirements of any notice not complied with**

If the requirements of any notice issued under clause 5.5 are not complied with:

- (a) any Defaulted Stapled Security may, at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be disposed of by the Issuer so determining; and
- (b) subject to the Listing Rules, the Corporations Act and this Schedule, all voting rights, entitlements to the distribution of income and other rights in connection with each Defaulted Stapled Security are suspended until reinstated by the Issuer.



## **5.7 Disposal of Defaulted Attached Securities**

- (a) If any Defaulted Attached Security is offered for sale pursuant to this clause 5.7 then the Issuer must procure that each other Attached Security is also offered for sale with the result that the whole Defaulted Stapled Security is offered for sale.
- (b) For the avoidance of doubt Attached Securities may be sold pursuant to this clause 5 even if they are fully paid in circumstances where there is default in payment of a call on a Defaulted Attached Security.
- (c) A Defaulted Stapled Security may be disposed of by the Issuers or their agents, at a price determined by the Issuers and in accordance with any applicable ASIC relief.
- (d) Any offer of Defaulted Attached Securities which are to be sold pursuant to clause 5.7(c) must be accompanied by a contemporaneous and corresponding offer of the other Attached Securities forming part of the Defaulted Stapled Security, which offer is capable of acceptance only if the recipient acquires an identical number of Defaulted Attached Securities and other Attached Securities forming part of the Defaulted Stapled Security.
- (e) Subject to the Listing Rules and the conditions of any applicable ASIC relief<sup>1</sup>, the Issuer or their agent may sell or otherwise dispose of Defaulted Stapled Securities:
  - (i) in the ordinary course of trading on ASX; or
  - (ii) by private treaty or public auction.
- (f) The sale of Defaulted Stapled Securities will be on the basis that the person to whom the Defaulted Stapled Securities are sold (Transferee) is not liable to pay the outstanding call (but may be liable for all future calls). The Issuer may assign its rights under this clause 5 to a person who underwrites the payment of the call.
- (g) At any time before a sale or disposition of Defaulted Stapled Securities the Issuers may cancel the sale or disposition upon such terms as the Issuers think fit.
- (h) Without limiting clause 5.7(c), the Issuers may set a reserve price for a Defaulted Stapled Security at any auction subject to and in accordance with any applicable ASIC Relief (Reserve Price).
- (i) If the Issuers or their agents are unable to sell the Defaulted Stapled Securities for a price not less than the Reserve Price then the Issuers may sell or otherwise dispose of the Defaulted Stapled Securities. The Issuers are not obliged to offer the Defaulted Stapled Securities that have not been sold at auction to Investors before disposing of the Defaulted Stapled Securities.

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<sup>1</sup> ASIC Instrument of Relief 05/26.

#### **5.8 Evidence of enforcement**

A statement signed by a duly authorised officer of the Issuer that a Defaulted Stapled Security has been duly disposed of on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Defaulted Stapled Security.

#### **5.9 Consideration for sold Defaulted Stapled Securities**

- (a) Where a Defaulted Stapled Security is sold, a single Issuer nominated by all Issuers by agreement may:
  - (i) receive the consideration, if any, given for a Defaulted Stapled Security; and
  - (ii) execute a transfer of such Defaulted Stapled Security in favour of the Transferee.
- (b) Where a Defaulted Stapled Security is offered for sale under this clause 5, the obligations of the Issuers are subject to the requirements of any applicable law, the Listing Rules, any consent or other approval from any necessary authority and any other terms of the relevant Constituent Document.
- (c) The Issuers must then Register the Transferee as holder of that Stapled Security. On registration the Transferee is not obliged to ensure that any part of the money which the person has paid for the Defaulted Stapled Security is paid to the former holder of the Defaulted Stapled Security nor shall the person's title to that Defaulted Stapled Security be affected by any irregularity or invalidity in the proceedings in relation to the enforcement of lien or sale of that Defaulted Stapled Security.

#### **5.10 Deductions from consideration for Defaulted Attached Securities**

- (a) The proceeds of the sale of a Defaulted Stapled Security must be applied to pay:
  - (i) *first*, the expenses incurred by the relevant Issuers, their agents and assignees in respect of the sale;
  - (ii) then, any expenses necessarily incurred in respect of the enforcement of the Issuers' rights;
  - (iii) then, the calls on the Attached Securities that are due and unpaid; and
  - (iv) then, any unpaid interest on the call and any other amounts payable.
- (b) The Issuers may retain the amounts so deducted, but the balance remaining (if any) must be paid to the Investor whose Defaulted Stapled Securities were sold. If there is a certificate that relates to the Attached Security or the other Attached Security forming part of the Defaulted Stapled Security, the balance does not have to be paid until the Investor delivers the certificate to the relevant Stapled Entity.

#### **5.11 The Holder of Default Stapled Securities**

- (a) The holder of a Defaulted Stapled Security which has been sold under this clause 5 ceases to be an Investor and ceases to hold a right or interest in the Stapled Entities and in particular ceases to be a member of each Stapled Entity that is a company or a managed investment scheme.
- (b) The former Investor has no claims or demands against the Issuers in respect of a Defaulted Stapled Security that has been sold, but remains liable to pay to the Issuers or any assignee of the Issuers all monies which at the date of sale were payable by the former Investor to the Issuers in respect of the sold Defaulted Stapled Security (including interest owing under clause 5.5 of this Schedule and expenses).
- (c) The former Investor's liability ceases if and when the Issuers or their assignees (if any) receive payment in full of all such money and, if applicable, interest in respect of the sold Defaulted Stapled Security.
- (d) Upon transfer of Defaulted Stapled Securities to a Transferee, the Stapled Securities so transferred will (unless otherwise agreed by the Transferee and the Issuers) no longer be Defaulted Stapled Securities and will be treated as fully paid.

#### **5.12 Liability of holder of Defaulted Stapled Securities to underwriter**

Where:

- (a) the Issuer has appointed an underwriter to underwrite the payment of a call in respect of any Stapled Securities;
- (b) in discharging its obligations, the underwriter has purchased Stapled Securities at a public auction or otherwise as contemplated by the relevant underwriting agreement at a price which is more than the Market Price of a Stapled Security (in respect of which the relevant call has been paid); and
- (c) the Issuer is liable or required to pay the underwriter in respect of each Stapled Security purchased in accordance with clause 5.12(b) an amount equal to the difference between the Market Price of a Stapled Security (in respect of which the relevant call has been paid) and the price paid by the underwriter for the Stapled Security, then the former holder of the Stapled Securities that were disposed of to the underwriter is liable to the Issuer in respect of the relevant Defaulted Stapled Securities and may be sued for:
  - (i) all monies payable by the Issuer to the underwriter as contemplated by clause 5.12(c) of this clause;
  - (ii) interest (as provided under this Schedule); and
  - (iii) all costs incurred by the Issuer in procuring payment from the former Investor.

For the purposes of this clause, the **Market Price** of a Stapled Security (in respect of which the relevant call has been paid) is the weighted average price at which such Stapled Securities traded on the ASX over the five Business Days immediately preceding the day of public auction, or, if there is no such price, then the last sale price of the Stapled Security on the ASX prior to that date.

**5.13 Assignment of right of action**

The Issuer must ensure that where the Issuer is liable to the underwriter as contemplated by clause 5.12, the Issuer's liability to the underwriter may be satisfied by the assignment of the Issuer's right of action against the former Investor in full satisfaction of such liability of the Issuer to the underwriter.

**6. SINGLE REGISTER**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the other Attached Securities are recorded.

**7. POWER TO ADD NEW ATTACHED SECURITIES**

- (a) Subject to clause 7(b), the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is an Attached Security (**New Attached Security**) and cause it to be Stapled to the existing Stapled Securities. A determination under this clause may be made on such terms and conditions as the Issuer considers appropriate.
- (b) A determination that a Security is a New Attached Security may only be made if:
  - (i) where the existing Stapled Securities are Officially Quoted:
    - (A) the New Attached Security is Officially Quoted or the ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
    - (B) ASX has indicated in writing that it will approve the addition of the New Attached Security to the existing Stapled Securities;
  - (ii) each Issuer (excluding the issuer of the New Attached Security) has agreed:
    - (A) to the Stapling of the New Attached Security to the Stapled Security; and
    - (B) that the Stapling of the New Attached Security is in the best interests of Investors as a whole and is consistent with the then investment objectives of the Group; and
  - (iii) the Constituent Documents of the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this Schedule);

- (iv) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (v) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, approval of the members of each existing Stapled Entity has been obtained; and
  - (vi) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this clause 7.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (Transfer).
  - (e) A transfer of a New Attached Security made under this clause 7 shall be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate (if any) for a New Attached Security in order for that Issuer to Register the transfer of that New Attached Security. Such transfer shall be evidenced by, and shall have full effect from, its Registration by the relevant Issuer in the Register.

## **8. UNSTAPLING**

### **8.1 Procedure for Unstapling**

Subject to this clause 8, from the Stapling Commencement Date each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### **8.2 Unstapling an Attached Security**

- (a) Subject to this clause 8.2(a), the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Issuer may determine that one or more Attached Securities are to be Unstapled from the Stapled Security.
- (b) A determination under clause 8.2(a) may only be made:
  - (i) if the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Securities from the Stapled Security and the remaining Attached Securities will remain Officially Quoted as a Stapled Security; and
  - (ii) if the Unstapling is approved by Ordinary Resolution of the holders of the Attached Security ; and

- (iii) if each Issuer has agreed:
  - (A) to the Unstapling of an Attached Security from the Stapled Security; and
  - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole and is consistent with the investment objectives of the Group; and
- (iv) if the Stapling Provisions terminate in respect of the Attached Security on and from the time it is Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### **8.3 Restapling**

If an Issuer determines that its Attached Securities are to be Unstapled under clause 8.2(a), this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (Restapling).

### **8.4 Unstapling the Stapled Securities**

- (a) Subject to clause 8.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security will be Unstapled on the occurrence of an Unstapling Event affecting that Attached Security.
- (b) A determination under clause 8.4(a) may only be made if:
  - (i) where the Stapled Securities are Officially Quoted, the ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under clause 8.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

## **9. DESIGNATED FOREIGN INVESTORS**

- (a) Without limiting clause 8(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under clause 8, the provisions of this clause 9 apply.

- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:
- (i) the number of Foreign Investors in the foreign place;
  - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
- (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (Amounts) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to clause 9(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
- (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date;
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;

- (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and
  - (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Trustee and the other Issuers, the amount received for a Unit upon sale of a Stapled Security under clause 9(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Trustee.

## **10. DUTIES AND OBLIGATIONS OF PARTIES**

### **10.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief)<sup>2</sup> while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities issued by it.

### **10.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investors' rights and interests.

## **11. MEETINGS OF INVESTORS**

### **11.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **11.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the other Attached Securities which they hold.

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<sup>2</sup> Case by case relief is usually sought from ASIC when stapling is proposed.



### **11.3 Other attendees**

The auditor of each Stapled Entity and the representatives of the Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

## **12. GENERAL**

### **12.1 Other capacities**

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

- (a) deal with itself (as trustee of the Trust or in another capacity) and any Stapled Entity (or their associates); and
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or any Stapled Entity (or their associates) or retaining for its own benefit any profits or benefits derived from any such contract or transaction.

### **12.2 Apportionment of fees**

The Issuer may agree with any other Issuer to apportion between them any fees payable to any of them under any Constituent Document and/or the constituent document of any Subsidiary. In default of any agreement, fees must be apportioned between the Stapled Entities in accordance with the proportion their net asset value (calculated in accordance with their respective constitutions) bears to the combined net asset value of all Stapled Entities.

### **12.3 Agreements as to allocation between Stapled Entities**

An Issuer may agree with each other Issuer to:

- (a) any allocation of assets, property, liability, expenses or remuneration between the Stapled Entities; and
- (b) any other matter between the Stapled Entities that the Issuers consider to be necessary or appropriate in connection with the Stapling.

### **12.4 Small Holdings**

Where Stapling applies, a reference to a Small Holding in each Constituent Document is taken to be a reference to an unmarketable parcel of Stapled Securities, within the meaning of the Listing Rules.

### **12.5 Financial assistance**

Without limiting clause 12.2, the Issuer may enter into loan arrangements (including Intra-Group Loans) with other Issuers for the purpose of allocating capital raised under issues of Stapled Securities to the extent that this is required.

## **12.6 Intra-Group Loans**

Without limiting the Constituent Documents, the Issuer may enter into any agreement, document or arrangement with any other Issuer, or do any other act, matter or thing at the request of any other Issuer, in respect of any of the following:

- (a) lending money or providing financial accommodation from one Stapled Entity (or any of its Subsidiaries) to any other Stapled Entity (or any of its Subsidiaries) (including, for the avoidance of doubt, the lending of money to or from any entity jointly owned by any of the Stapled Entities);
- (b) guaranteeing any loan or other financing facility or financial accommodation of any Stapled Entity or Subsidiary, including providing any security or indemnity to any person providing the loan facility or financial accommodation;
- (c) entering into any covenant, undertaking, restraint, or pledge at the request of another Issuer including, without limitation, a negative pledge on the obtaining of financial accommodation or the provision of any guarantee or Security in connection with any financial accommodation;
- (d) issuing redeemable preference shares or any other form of Securities to another Issuer;
- (e) paying any costs or expenses incurred by any other Stapled Entity (or any of its Subsidiaries);
- (f) entering into any joint borrowing or joint financial accommodation with any other Issuer or Subsidiary and providing any guarantee, security, indemnities and undertakings in connection with the joint borrowing or other joint financial accommodation; and
- (g) guaranteeing the obligations of or providing an indemnity or undertaking to a third party in respect of the obligations of any Stapled Entity or any Subsidiary.

## **12.7 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each other Stapled Entity written notice that the Stapled Entity is to be wound up.

**SIGNING PAGE**

Dated: 13 OCTOBER 2014


**SIGNED, SEALED AND DELIVERED** by  
**360 CAPITAL INVESTMENT MANAGEMENT LIMITED**  
(ACN 133 363 185) in accordance with  
section 127(1) of the Corporations Act 2001 (Cth):

(X) 

Director sign here

(X) TONY PITT

Director print name here

(X) 

Company Secretary sign here

(X) CHARISSE NORTJE

Company Secretary print name here

**360 CAPITAL TOTAL • RETURN PASSIVE FUND**

<b>SECTION NUMBER</b>	<b>CONSTITUTION REFERENCE</b>
601GA(1)(a)	Clause 8
601GA(1)(b)	Clause 16
601GA(1)(c)	Clause 32
601GA(1)(d)	Clause 24, 25
601GA(2)	Clause 23
601GA(3)	Clause 16.2
601GA(4)	Clause 11
601GB	Clause 33.2