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# Consolidated Constitution Macquarie Office Trust

Manager: Macquarie Office  
Management Limited (formerly  
Macquarie Property Management  
Limited)  
(ACN 006 765 206)

This document is a consolidated copy of the trust deed dated 8 October 1993 for Macquarie Office Trust (“Original Constitution”) adopted at the time of Managed Investments Act transition, as amended by the Supplemental Deeds dated 22 May 2000, 22 November 2001, 20 December 2002, the two Supplemental Deeds dated 29 July 2004, the Supplemental Deed dated 11 October 2005, the Supplemental Deed dated 9 May 2006, the Supplemental Deed dated 13 December 2006, the Supplemental Deed dated 21 December 2006, the Supplemental Deed dated 22 November 2007, the Supplemental Deed dated 11 December 2008, the Supplemental Deed dated 19 June 2009 and the Supplemental Deed dated 30 June 2009.

This is not a legally binding document. Reference should be made to the Original Constitution and each amending deed for the operative provisions. Section headings, indices and the provisions in square brackets do not form part of the text.

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# Consolidated Constitution of the Macquarie Office Trust

Date: 8 October 1993

## 1 Name of Trust

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- 1.1 The Trust is called the Macquarie Office Trust or by such other name as the Manager determines from time to time<sup>1</sup>.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

## 2 Assets held on trust

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- 2.1 The Trustee declares that it will hold the Trust Fund upon trust for the Unit Holders and act in the interests of the Unit Holders on and subject to the terms and conditions of this deed.<sup>2</sup>
- 2.2 Any Assets held by the Manager as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Law so requires<sup>3</sup>.

## 3 Units

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### Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any rights, obligations or restrictions attaching to any particular Unit, each Unit confers an equal undivided interest.
- 3.3 Subject to the rights, obligations or restrictions attaching to any particular Unit, 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.

### Rights attaching to Units

- 3.4 A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.

### Fractions of Units

- 3.5 Fractions of a Unit (calculated to 2 decimal places) may be issued by the Manager.

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

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

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

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- 3.6 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.

#### **Consolidation and division of Units**

- 3.7 Units may be consolidated or divided as determined by the Manager<sup>4</sup>.

#### **Transfer of Units**

- 3.8 Subject to clause 3.9, Members may transfer Units.
- 3.9 While Units are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- 3.10 Subject to the rules applicable while the Trust is admitted to an uncertificated trading system, transfers must be in a form approved by the Manager and, if the Manager requires, be presented for Registration duly stamped.
- 3.11 A transfer is not effective until Registered.
- 3.12 Subject to the Listing Rules while the Listing Rules apply<sup>5</sup>, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while Units are Officially Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.9.

#### **Joint tenancy**

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

#### **Death, legal disability of Member**

- 3.14 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units Registered in the Member's name.
- 3.15 A person who becomes entitled to a Unit because of the death, bankruptcy, insanity or other disability of a Member is entitled to receive and may give a discharge for all money payable in respect of the Unit but is not entitled to receive notices of or to attend or vote at any meetings of Members until that person is Registered as the holder of the.

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

- 3.16 The Manager may in its discretion issue Units on terms that such Units:

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<sup>4</sup> Refer Listing Rules, Chapter 7 - reorganisations of capital.

<sup>5</sup> Listing Rule 8.10 restricts the Manager's ability to prevent proper SCH transfers, but allows for a holding lock in certain specified circumstances.

- (a) participate fully for Net Income of the Trust in respect of the Distribution Period in which they are issued; or
- (b) do not entitle the holder of such Units to receive a distribution of Net Income of the Trust in respect of the Distribution Period in which such Units are issued; or
- (c) entitle the holder of such Units to receive a distribution of Net Income of the Trust in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Net Income of the Trust to which a Member holding a Unit during the whole of that Distribution Period is 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.<sup>6</sup>

**Manager may request holding lock or refuse to register transfer**

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

- (a) request any applicable 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 paragraph (a) does not apply.

**Manager must request holding lock or refuse to register transfer**

3.18 The Manager must:

- (a) request any applicable 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 paragraph (a) does not apply,

if the Corporations Act or Listing Rules require the Trust to do so or the transfer is in breach of clause 3.9.

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

3.19 If, in the exercise of its rights and discretions under clauses 3.17 and 3.18, the Manager requests 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;

<sup>6</sup> See income clause 9.9  
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- (b) the transferee; and
- (c) the broker lodging the transfer, if any.

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

## 4 Application Price for Units<sup>7</sup>

- 4.1 Subject to clause 20.1, a Unit must only be issued at an Application Price calculated as:
- (a) in the case of a proportionate offer (including a rights issue), in accordance with clause 4.4;
  - (aa) in the case of an issue of Units as consideration for an off-market bid, in accordance with clause 4.4A;
  - (b) in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 4.6;
  - (c) in the case of reinvestment of income, in accordance with clauses 4.7 and 4.8;
  - (ca) In the case of an issue consequent upon the Conversion of RePS, in accordance with clause 4.9.
  - (d) subject to paragraphs (a), (aa), (b), and (c) in all other cases while Units are Officially Quoted, at the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated; and
  - (e) while Units are not Officially Quoted, in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue}}$$

- 4.2 Each of the variables in clause 4.1(e) must be determined as at the next Valuation Time after:
- (a) the Manager receives the application for Units; or
  - (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager

whichever happens later.

- 4.3 The Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset of the Trust.

<sup>7</sup> Required to be included by Section 601GA(1)(a)  
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## Pro rata rights issues

- 4.4 The Manager may (subject to the terms of any applicable ASIC relief instrument) offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 20 Business Days immediately prior to the date of the offer, provided that:
- (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) either:
    - (i) where Units are not Officially Quoted, the Application Price is not less than 50% of the price calculated in accordance with clause 4.1(e) as at the date of offer; or
    - (ii) where Units are Officially Quoted, the Application Price is not less than 50% of the Market Price as at the date not more than 5 Business Days prior to the date on which the prospectus under which the offer is made is lodged with ASIC.

but, subject to the Listing Rules and any applicable ASIC relief, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia<sup>8</sup>.

## Issue of Units as Bid Consideration

### 4.4A

- (a) The Manager may issue Units as consideration, or part of the consideration, to acquire securities or financial products of a target entity under an off-market bid made in accordance with Chapter 6 of the *Corporations Act* (“**Bid Consideration**”).
- (b) The Manager may issue a Unit which is, or forms part of, the Bid Consideration at an Application Price which is equal to the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which or as at which the public announcement of the off-market bid, or any revised off-market bid, for securities or financial products of the target entity is first made by the Manager or by an associate of the Manager in relation to the off-market bid.
- (c) If the Manager accepts the transfer of securities or financial products of the target entity, which are the subject of an acceptance of an offer under the off-market bid (“**Offer**”), then such transfer shall be taken to be in satisfaction of the obligation to make payment or transfer property for either:
  - (i) the application price for Units, in the event that only Units comprise the Bid Consideration; or

<sup>8</sup> Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.  
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- (ii) the application price for Units, after deducting the value of the other consideration under the Offer which has been accepted, where the Bid Consideration comprises Units and other consideration.

### **Terms of pro rata issues**

#### 4.5

- (a) Any offer made under clause 4.4 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 4.4, provided that the Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager 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 4.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person, provided that the Application Price payable in relation to such further offer is not less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 4.4, such underwriter may take up any Units not subscribed for by Members.

### **Placements**

4.6 While Units are Officially Quoted, and not suspended from quotation, the Manager may at any time issue Units to any person by way of a placement:

- (a) at the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which the Units are offered; or
- (b) at a price which is not less than 85% of the weighted average market price as referred to in clause 4.1(d) and on terms determined by the Manager; but
- (c) in the case of an issue to any underwriter or sub-underwriter of a distribution reinvestment plan or any persons nominated by them at a price per Unit equal to the price at which Units are issued pursuant to that distribution reinvestment plan in accordance with clause 4.7.

provided that the Manager complies with the Listing Rules applicable to the issue and any applicable ASIC relief.

### **Reinvestment**

4.7 While the Units are officially quoted the Application Price payable for each additional Unit on re-investment of Distributions (if any) is the simple average of the daily weighted

average traded price of Units on each of the 15 Business Days from and including the second Business Day after the Distribution Calculation Date for the relevant distribution less such discount, if any, not exceeding 10% as the Manager may determine.

- 4.8 While Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment is the Application Price on the first Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the distribution relates.

### **Conversion of RePS**

- 4.9 If Units are issued consequent upon a Conversion of RePS the Application Price for the Units is to be determined as follows according to the circumstances in which Conversion applies:
- (a) If the applicant, being the person who held the RePS immediately prior to the time of Conversion, is to receive in accordance with the RePS Terms of Issue the Minimum Conversion Number the Application Price is the sum of \$100 divided by the Minimum Conversion Number. Until otherwise determined by an amendment to this constitution the Minimum Conversion Number is to be 75 subject to adjustment in accordance with clauses 3.10, 3.11 and 3.13 of the RePS Terms of Issue; or
  - (b) If the applicant, being the person who held the RePS immediately prior to the time of Conversion, is to receive in accordance with the RePS Terms of Issue more than the Minimum Conversion Number of Units (as adjusted in accordance with the RePS Terms of Issue) the Application Price to be the sum of \$100 divided by the number of Units to be issued to the applicant on Conversion in accordance with the RePS Terms of Issue.

## **5 Application procedure**

### **Application form**

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

### **Payment**

- 5.2 Without limiting the operation of clause 4.4A, payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
- (a) accompany the application;
  - (b) be received by or made available to the Manager or the custodian within such period before or after the Manager

receives the application form as the Manager determines from time to time; or

- (c) comprise a reinvestment of distribution in accordance with clause 9.21.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable by the Member concerned.

### **Manager may reject**

- 5.3 The Manager may reject an application in whole or in part without giving any reason for the rejection<sup>9</sup>.

### **Minimum amounts**

- 5.4 The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time<sup>10</sup>.

### **Issue date**

- 5.5 Units are taken to be issued when:
- (a) the Manager accepts the application; or
- (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,

whichever happens later.

### **Uncleared funds**

- 5.6 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 Manager within 1 month of receipt of the application.

## **6 Redemption Price of Units<sup>11</sup>**

### **Redemption Price**

- 6.1 While the Units are not Officially Quoted, a Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units in issue}}$$

- 6.2 Each of the variables in clause 6.1 must be determined:
- (a) while the Trust is Liquid, as at the close of business on the day before payment of the Redemption Price; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

<sup>9</sup> Refer Listing Rule 10.11 - restriction on issue of Units to related parties.

<sup>10</sup> While Units are Officially Quoted, see clause 26 regarding the sale of small holdings.

<sup>11</sup> Required to be included by Section 601GA(4) if a right of redemption is to be offered.

- 
- 6.3 The Redemption Price must be rounded down to the nearest whole cent.
- 6.4 While the Units are Officially Quoted, the Redemption Price pursuant to a withdrawal offer is the average of the Daily VWAP for each of the 10 Business Days immediately prior to the date upon which the withdrawal offer is announced by the Manager. For this purpose the Daily VWAP is the volume weighted average of the prices for that Business Day for all sales of Units recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Units.
- 6.5 The Manager may (subject to the terms of any applicable ASIC relief instrument) purchase a Unit under clause 7.16 provided that the purchase price does not exceed 105% of the average market price (as “market price” is defined in the Listing Rules on 31 August 2007) of Units calculated over the last 5 days in which Units were traded on the ASX before the day on which the Units were purchased.

## 7 Redemption procedures<sup>12</sup>

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- 7.1A While Units are Officially Quoted, none of the provisions of this clause 7 apply except this clause and clauses 7.10 to 7.16<sup>13</sup>.

### Request for redemption

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

### When Trust is Liquid<sup>14</sup>

- 7.3 Clauses 7.4 to 7.10 apply only while the Trust is Liquid<sup>15</sup>.
- 7.4 The Manager must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 6. The payment must be made within 60 days of receipt of the request or such longer period as allowed by clause 7.5. The day of receipt of the redemption request is:

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<sup>12</sup> These procedures must be fair to all Members: Section 601GA(4)

<sup>13</sup> Refer Listing Rule 1.1 condition 5.

<sup>14</sup> Required to be included by Section 601GA(4)(b)

<sup>15</sup> For definition of a liquid scheme see Section 601KA

- 
- (a) the day of actual receipt if the redemption request is received before 3.00 pm on a Business Day; or
  - (b) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00 pm on a Business day.
- 7.5 If the Manager has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset, the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.
- 7.6 The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.
- 7.7 The Manager is not obliged to pay any part of the Redemption Price out of its own funds.
- 7.8 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.
- 7.9 If the Manager increases the minimum holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

### **Discretionary redemption**

- 7.10 Subject to the Corporations Law and the Listing Rules, if the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request<sup>16</sup>.

### **When Trust is not Liquid<sup>17</sup>**

- 7.11 While the Trust is not Liquid<sup>18</sup>, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Law regulating offers of that kind<sup>19</sup>. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

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<sup>16</sup> See section 601FC(1)(d) and Chapter 5C.6.

<sup>17</sup> Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

<sup>18</sup> For definition of a liquid scheme see Section 601KA(1)

<sup>19</sup> Refer sections 601KB to 601KE

- 7.12 The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by:
- (a) publishing it by any means (for example in a newspaper or on the internet); or
  - (b) giving a copy to all Members.
- 7.13 If the Manager 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.

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

- 7.14 Clause 7.15 applies whether or not the Trust is Liquid.

#### **Sums owed to Manager**

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

#### **Buy-back of Units**

- 7.16 While Units are Officially Quoted the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules, purchase Units at a price that complies with clause 6.5 and cause the Units to be cancelled. No Redemption Price is payable upon cancellation of the Units.

## **8 Valuation of assets**

### **Periodic valuations**

- 8.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Law.<sup>20</sup>
- 8.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 8.3 The Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value<sup>21</sup>.
- 8.4 While Units are not Officially Quoted, where the Manager values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Manager must be capable of resulting in a calculation of the Application Price or Redemption Price that is independently verifiable.

<sup>20</sup> See section 601FC(j) for Manager's obligations concerning valuation

<sup>21</sup> ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.



## 9 Income and distributions to Members<sup>22</sup>

### Collection of Income

- 9.1 The Manager must receive and collect all income of the Trust.

### Nature of Receipts

- 9.2 The Manager may determine whether any receipt, profit, gain (whether realised or unrealised), payment, loss, outgoing, provision or reserve or any sum of money or investment in a Distribution Period is or is not to be treated as being on income or capital account and whether and the extent to which any provisions and reserves need to be made for the Distribution Period.

### Determination of Net Income

- 9.3 The Manager must determine the Net Income for each Distribution Period.

### Net Income

- 9.4 If no determination is made or to the extent to which no determination is made under clause 9.3 prior to the end of a Distribution Period, then the Net Income for that Distribution Period is calculated in the same manner as the Taxable Period Income provided always that where in calculating the Taxable Period Income for a Distribution Period it is necessary to gross up any amount of income or to make any deemed deductions, or include any amount of deemed assessable income or to make any deemed deductions, the grossing up or deemed assessable income (excluding net capital gains included in assessable income) or deemed deductions must not be included in calculating the net income of the Trust for the Distribution Period unless the Manager determines before the end of the Distribution Period that the grossing up or deemed assessable income or deemed deductions should be included in calculating the Net Income.

### Accounting standards

- 9.4A Notwithstanding that the Net Income of the Trust may, in accordance with clause 9.4, be calculated in the same manner as the Taxable Period Income, the accounts of the Trust are to be prepared in accordance with applicable accounting standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Net Income of the Trust pursuant to clause 9.3.

### Entitlement

- 9.5 At the end of each Distribution Period the Members are presently entitled to the Net Income together with any further amount which the Manager determines in accordance with clause 9.14 or clause 9.29 to distribute to the Members in respect of that Distribution Period.

<sup>22</sup> Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

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**Apportionment**

- 9.6 The Manager is empowered but not bound to make an apportionment or keep separate accounts of the different categories and sources of income that relate to different types of investments of the Trust and the costs, charges and expenses attributable to each of those types of income. The Manager may allocate to a Member all or part of the Net Income to which the Member is entitled from a particular category or source of income in which case the Manager must advise the Member of the extent to which income allocated to the Member consists of income from a particular category and/or source.

**Distribution Account**

- 9.7 The Net Income in respect of a Distribution Period is to be transferred to a special account in the name of the Manager and designated a Distribution Account. Any amount in the Distribution Account does not form part of the Trust but must be held by the Manager, subject to clause 9.11, on trust for distribution among the persons who are Members as at the close of business on the last Business Day of the Distribution Period. The Manager may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Manager shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets of the Trust. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly. If the Manager has exercised its power under clause 9.6 the separate categories and sources of income must be shown in the Distribution Account.

**Postponement of distribution**

- 9.8 In determining the Net Income for a Distribution Period (but not the Taxable Period Income) if any income is received in a Distribution Period when, in the opinion of the Manager, it is not practicable to distribute it in the distribution for that Distribution Period, it may be treated by the Manager as having accrued during the next following Distribution Period and be distributed accordingly.

**Interim distributions**

- 9.9 The Manager may determine to make interim distributions to Members of the estimated net income for the Quarters ending 31 March and 30 September. If the Manager of the Trust determines to make a distribution in respect of such a Quarter the estimated Net Income in respect of that Quarter is to be transferred to the Distribution Account and the provisions of this clause 9 will apply in relation to the distribution of that income to the Members as at the end of that Quarter in the same manner as Net Income is distributed in relation to a Distribution Period. If an amount is transferred to the Distribution Account pursuant to this clause 9.9 there is to be an equivalent reduction in the amount required to be transferred to the Distribution Account pursuant to clause 9.7 in respect of the relevant Distribution Period and the provisions of clause 9.10 will apply in relation to

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the balance of the Net Income of the Trust transferred to the Distribution Account.

**Participation in distribution of income**

9.10 Subject to clauses 9.11 and 25 a Member is entitled to receive a distribution of the Net Income credited to the Distribution Account in accordance with the following formula:

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

where:

- A = the amount credited to the Distribution Account in respect of the relevant Distribution Period calculated to one decimal place of one cent and rounded down to the nearest cent;
- B = the amount (if any) of additional United States of America withholding tax which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on issue held by any Member;
- C = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds at the close of business on the last Business Day of the Distribution Period Units issued during that Distribution Period which have a proportionate income entitlement in accordance with clause 3.16, the aggregate number of such Units held by that Member multiplied by the relevant proportion;
- D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate income entitlement in accordance with clause 3.16, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on that last Business Day of that Distribution Period; and
- E = the amount (if any) of additional United States of America withholding tax which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Distribution Period as a consequence of the characteristics of the Member including the number or percentage of Units in issue held by the Member.

## **Deduction of Tax**

- 9.11 The deduction of the following amounts from the part of the Distribution Account to which a particular Member is entitled is authorised:
- (a) Tax which is paid or anticipated to be payable by the Manager on account of or in respect of the Member on the amount of the Net Income otherwise distributable to that Member;
  - (b) if it is determined by the Manager, a charge made by a person on account of Tax imposed on the deposit in an account of the Trust or of the Manager of all amounts received from that Member during the relevant Distribution Period or any Tax imposed on the Manager in respect of the receipt by the Manager of those amounts;
  - (c) if it is determined by the Manager, a charge made by a person on account of Tax imposed on or in respect of the debiting in an account of the Trust of the amount of Net Income of the Trust otherwise distributable to that Member; and
  - (d) any other amount required to be deducted by law,

and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Manager for the payment of the Tax to the person or authority entitled to it.

## **Distribution of income**

- 9.12 Subject to any deductions made under clause 9.11 and provided that a Member has not given notice to the Manager that the Member's entitlement to income for each Unit is to be reinvested under clause 9.21 at the end of the then current Distribution Period, the Manager must distribute to that Member the Member's entitlement to the Net Income in accordance with clause 9.10 within two months of the last Business Day of the Distribution Period.

## **Fractions**

- 9.13 If the Member's entitlement to Net Income includes a fraction of a cent the entitlement is to be adjusted to the nearest cent below the amount of the Member's entitlement and the fraction of the cent becomes an Asset of the Trust.

## **Taxable income greater than Net Income**

- 9.14 Subject to this constitution the Manager may transfer capital to the Distribution Account for the purpose of enabling a distribution to Members of a total amount up to the Taxable Annual Income in instances where the Taxable Annual Income exceeds the Net Income for a year of income. The sum transferred to the Distribution Account is to be distributed to Members in the same manner as Net Income.

## **Treatment of tax credits or rebates**

- 9.15 A transfer under clause 9.14 may not be made to the extent that the excess of the Taxable Annual Income over the Net Income

for a year of income is due to the grossing up of any amount of income of the Trust in respect of any tax credit or unless the Manager is of the opinion that tax is likely to become payable by the Manager if it does not make the transfer or unless the benefit of a tax credit or rebate cannot be made available to Members. If a transfer is not made for this reason the excess Taxable Annual Income and the benefit of any tax credit is deemed to have been distributed to Members pro rata to their entitlement to any Net Income of the category or source of income in respect of which the credit or rebate applied.

### **Reserves and bonus issues**

- 9.16 If so determined by the Manager, any net realised and unrealised capital gains or losses of the Trust may be separated from the other receipts, profits and gains of the Trust and credited to the Reserve Account.

### **Distributions from Reserve Account**

- 9.17 The Manager may distribute to the Member from time to time by way of cash or other Assets of the Trust as at a date determined by the Manager an amount equal to so much of the net realised capital gains credited to the Reserve Account as the Manager may determine. The Manager must adjust the Reserve Account for the amount so distributed.

### **Calculation of distributions from Reserve Account**

- 9.18 The distribution of cash or other Assets to each Member under clause 9.17 is to be calculated in accordance with the following formula or in any other manner determined by the Manager:

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

where:

- A = the amount of cash or the value of Assets (determined by the Manager) to be distributed;
- B = the aggregate of the number of Units held by the Member as at the close of business on the date of calculation; and
- C = the aggregate of the total number of Units in issue as at the close of business on the date of calculation.

### **Capitalisation**

- 9.19 Any amount standing to the credit of a capital reserve account may be capitalised by a determination of the Manager. Subject to clause 9.20, the capitalisation is to be effected by dividing the number of Units held by Members by a proportion determined by the Manager which takes into account the number of Units held by the Member, the amount to be capitalised and other matters in relation to the particular Member determined by the Manager. Following the capitalisation:
- (a) the number of Units in issue will increase accordingly;

- (b) the Manager must cause the Register to be amended and take any other steps which the Manager considers necessary to amend the records of the Trust to reflect the capitalisation;
- (c) the Manager may ignore fractions and round each Member's entitlement to the nearest whole Unit;
- (d) the sum capitalised must be debited to the Reserve Account and thereafter be treated in the same manner as funds subscribed by Members of the Trust; and
- (e) the additional Units created will rank for distribution of income and for all other purposes from a date determined by the Manager.

9.20 The number of additional Units created under clause 9.19 must not be less than the number calculated in accordance with the following formula:

$$\frac{A}{B}$$

where:

A = the amount standing to the credit of the Reserve Account which is to be capitalised; and

B = the Application Price applicable on the day upon which the capitalisation is to take place,

and each Unit created upon the capitalisation must be issued at the same price which may be less than the Application Price on that date.

### **Member reinvestment**

- 9.21 The Manager may in its discretion from time to time by notice to all Members confer upon Members of the Trust the right of reinvestment of income in further Units during such period as the Manager may determine. This right if conferred by the Manager may be exercised by the Member by giving notice in writing to the Manager (in the form determined by the Manager from time to time) to request that the Manager retain and reinvest in Units the money or part of the money to be distributed to the Member under clauses 9.9, 9.10, 9.14 and 9.29.
- 9.22 A Member may by notice in writing to the Manager (in the form determined by the Manager from time to time) received not later than the last day of the relevant Distribution Period cancel any notice given under clause 9.21. The Member is entitled to give a further notice under clause 9.21 at any time in respect of any subsequent Distribution Period.
- 9.23 In the event that a notice under clause 9.21 has been given to the Manager by a Member no later than the last day of the relevant Distribution Period and has not been cancelled under clause 9.22 the Manager is entitled, but not obliged, out of any money to be distributed to the relevant Member at the date of distribution, to

retain all or part of the amount specified in accordance with the notice and reinvest that money on behalf of the Member in additional Units in the Trust. The additional Units are to be issued at an Application Price determined in accordance with clause 4.7.

9.24 If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Member unless the Member has cancelled any previous notice under clause 9.21 in which case the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the current Distribution Period.

9.25 Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit the amount will be applied in the purchase of a new Unit for issue to the Member.

9.25A Units issued under clauses 9.21 to 9.25 inclusive are to participate fully for Net Income in respect of the Distribution Period in which they are issued.

### **Notice of reinvestment**

9.26 Where a Member has made a request under clause 9.21, the Member is to be provided by the Manager with a notice to the effect that the whole or part (as the case may be) of the distribution to which the Member would otherwise have been entitled has been reinvested on the Member's behalf and the amount of any Tax withheld by the Manager. The notice is to be given by the Manager upon the issue of the additional Units.

9.27 For all purposes the Net Income to be distributed to a Member is deemed to have been received by the Member on a reinvestment of that income in additional Units under the terms of this clause 9.

### **Liability**

9.28 The Manager does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 9 or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power notwithstanding any error or miscalculation in any provision made for Tax.

### **Distributions of capital**

9.29 The Manager may determine to distribute capital to Members in addition to any other distributions to be made to Members in respect of a Distribution Period. The Manager must transfer capital to the Distribution Account for this purpose of enabling a

distribution to Members. The sum transferred to the Distribution Account is to be distributed to Members in the same manner as Net Income.

## 10 Payments

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- 10.1 Money payable by the Manager to a Member may be paid in any manner the Manager decides.
- 10.2 Cheques issued by the Manager 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 held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 10.3 Where the Manager attempts to make a payment by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money may be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.
- 10.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 10.5 A payment to any one of joint Members will discharge the Manager in respect of the payment.
- 10.6 The Manager may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

## 11 Powers of the Manager

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### General powers

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

### Contracting powers<sup>23</sup>

- 11.2 Without limiting clause 11.1 but subject to clause 11.3, the Manager in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on security) and to incur all types of obligations and liabilities<sup>24</sup>.

### Borrowings

- 11.3 The Manager must not incur a Borrowing in respect of the Trust if to do so would, at the time of incurring the Borrowing, cause the total Borrowings of the Trust to exceed the Borrowing Limit.

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<sup>23</sup> Required to be included by Section 601GA(3)

<sup>24</sup> Refer Listing Rule 13.2 - the total liabilities of a listed trust must not exceed 60% of its total tangible assets.



**Investment powers**

- 11.4 Without limiting clause 11.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.<sup>25</sup>

**Power of delegation<sup>26</sup>**

- 11.5 The Manager 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 Manager's power, including the power to appoint in turn its own agent or delegate.
- 11.6 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.
- 11.7 The agent or delegate may be an associate of the Manager.<sup>27</sup>

**Exercise of discretion**

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

**Underwriting**

- 11.9 Subject to the Corporations Law, the Manager may enter into an arrangement with a person (including an associate of the Manager) to underwrite the subscription or purchase of Units on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary intention, the underwriter will not be an agent or delegate of the Manager.

**Principal Investment Policy**

- 11.10 The principal investment policy of the Manager in relation to the Trust is that advised to the Members from time to time. The Manager must not vary the principal investment policy of the Trust unless notice is given to Members within such period before the variation takes effect as is adequate in the reasonable opinion of the Manager to enable Members to dispose of their Units if they see fit.

**12 Retirement of Manager<sup>28</sup>****Voluntary retirement**

- 12.1 The Manager may retire as the responsible entity of the Trust as permitted by law<sup>29</sup>.

**Compulsory retirement**

- 12.2 The Manager must retire as the responsible entity of the Trust when required by law<sup>30</sup>.

<sup>25</sup> Subject to Section 601FC(4)

<sup>26</sup> See also Section 601FB.

<sup>27</sup> Subject to Part 5C.7

<sup>28</sup> Refer to Listing rule 3.16.2(a)

<sup>29</sup> See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

**New responsible entity**

- 12.3 Any replacement Manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

**Release**

- 12.4 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.<sup>31</sup>

**Retirement benefit**

- 12.5 The Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager 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 manager as its replacement; or
  - (b) its retirement as Manager

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

**13 Notices to Members<sup>32</sup>**

- 13.1 Subject to the Corporations Law, a notice or other communication required to be given to a Member or in connection with the Trust must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.
- 13.2 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<sup>33</sup>.
- 13.3 In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.
- 13.4 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 law<sup>34</sup>, the

<sup>30</sup> See Section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

<sup>31</sup> See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

<sup>32</sup> While Units are Officially Quoted, notices to Members must be copied to ASX - refer Listing Rule 3.17.

<sup>33</sup> See Clause 16.3(c)

<sup>34</sup> See Section 601FC(1)(d)

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Manager may determine<sup>35</sup> the time at which other forms of communication will be taken to be received.

## 14 Notices to the Manager

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- 14.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 14.2 The notice is effective only at the time of receipt.
- 14.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member<sup>36</sup> unless the Manager dispenses with this requirement.

## 15 Meetings of Members

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### Corporations Law

- 15.1 The Manager may at any time convene a meeting of Members, and must do so if required by the Corporations Law.<sup>37</sup>

### Manager may determine

- 15.2 Subject to this clause 15, the Corporations Law<sup>38</sup> and the Listing Rules, the Manager 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<sup>39</sup>.
- 15.2A A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

### Quorum

- 15.3 The quorum for a meeting of Members is 2 Members present in person or by proxy together holding at least 10% 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.

### No quorum

- 15.4 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Members - dissolved; or

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<sup>35</sup> See Section 252G(4)

<sup>36</sup> See Clause 16.3(c)

<sup>37</sup> Refer Part 2G.4

<sup>38</sup> Refer Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 25 - restricted securities

<sup>39</sup> Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

- (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

### **Chairman**

- 15.5 Subject to the Corporations Law<sup>40</sup> the Manager may appoint a person to chair a meeting of Members.
- 15.6 The decision of the chairman on any matter relating to the conduct of the meeting is final.

### **Adjournment**

- 15.7 The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at such place and time as the chairman thinks fit.
- 15.7A In exercising this discretion, the chairman may, but need not, seek the approval of Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.
- 15.7B Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### **Notice of adjourned meeting**

- 15.7C It is not necessary to give any notice of any adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **Proxies and voting**

- 15.8 Subject to clause 15.10, the provisions of the Corporations Law governing proxies and voting for meetings of members of registered managed investment schemes apply to the Trust<sup>41</sup>.
- 15.9 The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Law<sup>42</sup>.
- 15.10 A poll may be demanded by Members present in person or by proxy holding at least 20,000 Units.

### **Resolutions binding**

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

<sup>40</sup> Refer Part 2G.4 and Section 601FC(1)

<sup>41</sup> This provision is included for completeness - the law operates of its own force.

<sup>42</sup> Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

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

**Non-receipt**

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

**Postponement or cancellation**

- 15.14 The chairman has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chairman thinks fit.

**Notice of Cancellation or postponement of meeting**

- 15.15 Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:
- (a) to each Member individually; and
  - (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

**Contents of notice or postponement of meeting**

- 15.16 A notice of postponement of a meeting of Members must specify:
- (a) the postponed date and time for the holding of the meeting;
  - (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
  - (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

**Number of clear days for postponement of meeting**

- 15.17 The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Corporations Act.

**Business at postponed meeting**

- 15.18 The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

**Proxy, attorney or representative at postponed meeting**

- 15.19 Where:
- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of

Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and

- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by force of this clause 15.19, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Manager notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

## 16 Rights and liabilities of Manager

### Holding Units

- 16.1 The Manager and its associates may hold Units in the Trust in any capacity<sup>43</sup>.

### Other capacities

- 16.2 Subject to the Corporations Law<sup>44</sup>, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity) or with any Member;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) 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.

### Manager may rely

- 16.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, 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 Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person

<sup>43</sup> See Section 601FG, Section 253E and Part 5C.7

<sup>44</sup> Refer Part 5C.7, and see also Listing Rule 10.1

to act as their agent for any purpose connected with the Trust;  
and

- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

and the Manager 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.

## 17 Limitation of liability and indemnity in favour of Manager

### Limitation on Manager's liability

- 17.1 The Manager 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 Law imposes such liability.
- 17.2 Subject to the Corporations Law, the liability of the Manager to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

### Indemnity in favour of Manager

- 17.3 The Manager 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<sup>45</sup>.
- 17.4 To the extent permitted by the Corporations Law<sup>46</sup>, the indemnity under clause 17.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 17.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

### Indemnity unaffected by unrelated breach of trust

- 17.6 The Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Manager (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Manager or by any delegate or agent appointed by the Manager.

<sup>45</sup> See Section 601GA(2)

<sup>46</sup> See Sections 601FB(2) and 601GA(2)

## 18 Liability of Members

### Liability limited

- 18.1 Subject to clauses 18.3 and 18.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 18.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.
- 18.3 The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's or former Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- 18.4 Joint Members are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 18.3 applies.

### Recourse

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

### Restrictions on Members

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

## 19 Remuneration and expenses of Manager

### Base fee

- 19.1 As from 1 March 2000, the Manager's entitlement to fees for managing the Trust is calculated on a half yearly basis as at 30 June and 31 December in each year as a percentage per annum of the value of all Assets of the Trust at the end of the relevant Half Year in accordance with the following scale:

First \$1 billion of Assets	0.45% p.a.
Excess above \$1 billion	0.40% p.a.

The Manager was entitled to fees up to 29 February 2000 in accordance with previous provisions of this constitution. For the period from 1 March 2000 to 30 June 2000 the fee will be calculated as provided in this clause 19.1 but pro rata according to the number of days in the period 1 March 2000 to 30 June 2000 compared with the period from 1 January 2000 to 30 June 2000.



- 19.2 The fee under clause 19.1 is payable to the Manager at the end of each Quarter . Payments in respect of the Quarters ending 31 March and 30 September will be based on the value of all assets at the end of the previous Half Year and will represent a part payment on account for the fee for the current Half Year.

#### Waiver of fees

- 19.3 The Manager 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.

#### Manager's Performance Units

- 19.4 Subject to clause 19.4A, the Manager, in addition to its remuneration under clause 19.1, will be entitled to have a certain number of Units issued to it in respect of each Half Year if the performance of the Trust for the Half Year exceeds a stated benchmark. The formula for determining the number of Units (if any) to be issued to the Manager in respect of a Half Year is set out below. If the TR (as defined below) for the Trust for a Half Year is negative, the Performance Units (if any) to which the Manager would have been entitled will not be issued to the Manager until the end of the first succeeding Half Year in which the TR is positive:

**Number of Performance Units to be issued to the Manager =**

$$\frac{(\mathbf{PF} + \mathbf{EPF})}{\mathbf{Pc}}$$

where

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

**EPF** (Tier 2 Performance Fee) =  $(\text{NPc} - \text{EPb}) \times \text{MCo} \times 15\%$  but equals zero if NPc is not greater than EPb;

**NPc** = TR-BM;

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

**TR** (Trust Return percentage) =  $\frac{(\text{Tc} - \text{To})}{\text{To}} \times \frac{100}{1}$

where

Tc = Trust Index at the close of the Half Year; and

To = Opening Trust Index being the Trust Index at close of the prior Half Year or if  $\text{NPo} < 0$  then To = the Trust Index used as the opening Trust Index (To) for the previous period;

**BM** (Benchmark Return percentage) =  $\frac{(\text{Bc} - \text{Bo})}{\text{Bo}} \times 100$

Bo 1

where

**Bc** = Benchmark Index at the end of the Half Year; and

**Bo** = Opening Benchmark Index being the Benchmark Index at close of the prior Half Year or if  $NPo < 0$  the **Bo** = the Benchmark Index used as the opening Benchmark Index (**Bo**) for the previous period;

**MCo** (Market capitalisation) =  $Po \times Uo$

where

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

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

**EPb** (Tier 2 Performance Benchmark ) = 2% nominal per annum outperformance for the Half Year; and

**Pc** = the greater of the weighted trading price of all Units traded on the ASX during the ten trading days from and including the date upon which the Units trade ex the distribution entitlement for the relevant Half Year and the net tangible asset backing per Unit at the end of the Half Year. This will be the issue price of the relevant Performance Units.

If a Trigger Event occurs within a Half Year, the Manager is entitled to payment in cash in lieu of Units with the amount of the cash payment to be calculated in accordance with clause 19.5.

If and when Performance Units are issued to the Manager in respect of a Half Year where the Trust Index is below its historical Half Year end high achieved since the new fee structure was implemented on 29 February 2000, the Manager may not sell or otherwise dispose of the Performance Units until a time after the Trust Index equals or exceeds that prior peak and until the time the Manager is entitled to sell the Performance Units all distributions in respect of those Performance Units must, if a distribution reinvestment plan then applies, be reinvested pursuant to the distribution reinvestment plan and the Units received pursuant to the reinvestment will be subject to the same restriction on sale or disposal. The restriction on sale or disposal will cease if a Trigger Event occurs.

#### 19.4A

- (a) Except as provided in clause 19.4A(c) the maximum fees to be paid to the Manager in respect of any Financial Year including the Base Fee and the Performance Fee is to be an amount equal

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to 0.8% per annum of the value of all Assets of the Trust at the end of the Financial Year. In applying this limit, if a Performance Fee becomes payable in respect of the Half Year ending 31 December the maximum amount which may be paid in respect of that Half Year comprising both the Base Fee and the Performance Fee for that Half Year will be an amount equal to 0.4% of the value of all Assets of the Trust at the end of that Half Year and will represent a part payment on account of the total fees payable in respect of the Financial Year up to the limit for that Financial Year calculated in accordance with this clause 19.4A(a).

- (b) If the amount of the total fees for a Financial Year as calculated in accordance with clauses 19.1 and 19.4 exceeds the limit for the Financial Year specified in clause 19.4A(a) the Base Fee for that Financial Year shall be payable and only that number of Performance Units with an aggregate value, based on the issue price under clause 19.4, equal to the balance of the fees up to that limit will be issued to the Manager and the remaining Performance Units which would otherwise have been issued in respect of that Financial Year if the limit in clause 19.4A(a) did not apply (“Excess Performance Units”) will not be issued at that time. The number of Excess Performance Units and their issue price or issue prices determined in accordance with clause 19.4 must be recorded as a liability to the Manager and those Excess Performance Units shall be issued to the Manager in future Half Years if, and to the extent, that the total fees payable to the Manager in relation to any future Half Year are less than the limit referred to in clause 19.4A(a). The number of Excess Performance Units to be issued in relation to a Financial Year shall be that number having an aggregate value, based on the issue price or prices under clause 19.4, equal to the difference between the total fees for that Financial Year before the issue of Excess Performance Units and the limit for that Financial Year under clause 19.4A(a). In carrying forward Excess Performance Units into future Half Years to supplement the Manager’s total fees up to the limit under clause 19.4A(a) the Excess Performance Units shall be issued in the order in which they accrued as liabilities and their value for the purpose of calculating the number of Excess Performance Units which may be issued in any future period shall be calculated at the same rate at which they accrued as a liability.
- (c) If at the end of any Half Year there shall be any Excess Performance Units which accrued as a liability at least three years prior to the end of that Half Year and which have not been issued to the Manager those Excess Performance Units will be issued to the Manager, and disregarded for the purpose of calculating the limit under clause 19.4A(a) in relation to the Financial Year in which they are issued, if the accumulated return of the Trust for that three year period expressed as a percentage exceeds the movement in the Benchmark Index over that three year period expressed as a percentage. If Macquarie Office Management Limited ceases to be the

Manager of the Trust, Macquarie Office Management Limited shall be entitled to a cash payment in lieu of all Excess Performance Units which have not previously been issued to it on the date upon which it ceases to be the Manager or within seven days thereafter. If a Trigger Event occurs at a time when there are any Excess Performance Units which have not been issued then the Manager is entitled to a cash payment in lieu of those Excess Performance Units. These cash payments are to be based on the number of Excess Performance Units and their respective issue prices determined under clause 19.4. Any cash payment under this clause 19.4A(c) will be disregarded for the purposes of clause 19.4A(a).

### **Payment in lieu of Performance Units**

- 19.5 If Performance Units are required to be issued to the Manager pursuant to clauses 19.4 and/or 19.4A and those Performance Units may not be issued because of any restriction under the Listing Rules or for any other reason the Manager shall be entitled to a cash payment in lieu of the Performance Units such payment to be calculated based on the number of Performance Units (including Excess Performance Units) which would otherwise have been issued to the Manager and the relevant issue price of those Performance Units determined in accordance with clause 19.4. If a Trigger Event occurs, the Manager is entitled to be paid in addition to the Base Fee a cash payment calculated as follows in lieu of Performance Units which might otherwise have been issued to the Manager in respect of the Half Year in which the Trigger Event occurs, such payment to be made to the entity which was the Manager on the day upon which the Trigger Event occurred notwithstanding that the entity may have ceased to be the Manager or that the Trust has terminated:
- (a) the cash payment is to be equal to the Performance Fees calculated in accordance with clause 19.4 as if the end of the Half Year was the date of the occurrence of the Trigger Event but in determining the Trust Index at the close of the period there is to be substituted for the market price of the Units:
    - (i) in the case of a takeover bid, the price per Unit which would be payable for compulsory acquisition (including in the case of non-cash consideration the market value of that non-cash component on the date of the Trigger Event);
    - (ii) in the case of a scheme of arrangement, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the Members in relation to the scheme of arrangement or if there is no independent expert's report, the fair value of the consideration per Unit as determined by an independent accountant appointed by the Manager;
    - (iii) in the case of delisting, the weighted average market price of the Units traded on the Australian Stock

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Exchange during the 10 Business Days prior to the Date of Delisting; or

- (iv) in the case of termination of the Trust, the amount per Unit to be received by the Members after accruing the amount payable to the Manager for Performance Fees;
- (b) the cash payment is payable as soon as it can be calculated. If there has been any accrual of the Performance Fee from any prior Half Year whether due to the Trust Return (TR) being negative although exceeding the Benchmark Return (BM) or otherwise, the amount accrued shall be paid in cash rather than Units on the date of occurrence of the Trigger Event.

## Expenses

- 19.6 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust<sup>47</sup> are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Law. This includes the following and expenses connected with the following:
- (a) this constitution and the formation of the Trust;
  - (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum 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, including expenses in connection with the Register and any dealings with Units;
  - (f) the admission of the Trust to the official list of the ASX and compliance with the Listing Rules;
  - (g) underwriting of any subscription or purchase of Units, including underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
  - (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;

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<sup>47</sup> Refer Section 601GA(2)(b)  
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- (i) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and 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 Manager;
  - (k) preparation and audit of the taxation returns and accounts of the Trust;
  - (l) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
  - (m) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager 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 19.4(m) must be repaid;
  - (n) in relation to any real property, real estate agent fees;
  - (o) managing agents fees (whether any real property is managed by the Manager, an associate of the Manager or independent managing agent);
  - (p) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums<sup>48</sup> in respect of Compliance Committee Members;
  - (q) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager 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 whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Law;
  - (r) the preparation, implementation, amendment and audit of the compliance plan;
  - (s) the cost of the Manager employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
  - (t) complying with any law, and any request or requirement of the ASIC; and
  - (u) custodian fees.

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<sup>48</sup> See Section 601JG  
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**GST**

- 19.7 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, 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, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- 19.8 Any amount may only be paid or reimbursed out of the Assets under clauses 19.4 and 19.5 if it relates to the proper performance of the Manager's duties.

**20 Duration of the Trust****Initial settlement**

- 20.1 The Manager, immediately upon demand being made by the Trustee after the deed has been approved by the Commission, must lodge with the Trustee the sum of \$100 for investment by the Trustee (so far as it extends) in Authorised Investments of the Trust. The beneficial interest in the Trust Fund as constituted by the settlement of the sum of \$100 shall be divided into 100 Units which shall be issued to the Manager<sup>49</sup>.

**Termination**

- 20.2 The Trust terminates on the earliest of:
- (a) [intentionally deleted];
  - (b) a date which the Members determine by special resolution; and
  - (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law<sup>50</sup>.

**Restriction on issue and redemption of Units**

- 20.2A Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th 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.
- 20.3 If at any time legislation is enacted the result of which is that the Manager is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Trust other than income not distributed to Members, the Manager

<sup>49</sup> Clause 20.1 contains terminology no longer used in this constitution because it has been preserved in its original form. The Trust in fact commenced on 8 October 1993.

<sup>50</sup> See Part 5C.9 on winding up

may summon a meeting of the Members to consider winding up the Trust and if by special resolution the meeting so decides, the Trust shall be wound up.

## 21 Procedure on termination

### Realisation of Assets

- 21.1 Following termination, the Manager must realise the Assets of the Trust. This must be completed in 180 days if practical and in any event as soon as possible after that.

### Audit of winding up

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

### Distribution following termination

- 21.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) including income entitlements of Members and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members in accordance with the following formula:

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

Where:

- A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 21.3;
- B = the number of Units held by the Member as at termination; and
- C = the total number of Units in issue as at termination.

The Manager may distribute the proceeds of realisation in instalments.

- 21.4 Subject to the Corporations Law and this constitution, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 21.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

## 22 Amendments to this constitution

### Manager may amend

- 22.1 If the Corporations Law allows<sup>51</sup>, this constitution may be amended:
- (a) by Resolution<sup>52</sup>; or

<sup>51</sup> See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC



- (b) by deed executed by the Manager.

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

### Statutory requirements

22.2 If:

- (a) the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Manager has determined it wishes to rely or which is expressly applicable to the Trust and the Manager 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 automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement; and the Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

22.2A The Members:

- (a) authorise the Manager to make the amendments referred to in clause 22.2 in a deed made for that purpose and, if required, to lodge it with ASIC; and
- (b) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to any right that would be adversely affected by the operation of clause 22.2.

22.2B Where clause 22.2 and clause 22.2A operate to automatically amend this constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

22.3 If the Manager is of the opinion that as a result of clause 22.2 the Assets of the Trust or any part of it are to be invested or deposited otherwise than freely in accordance with the discretions given to the Manager by this constitution or if as a result of any law it appears to the Manager to be in the interest of the Members so to do, the Manager may terminate the Trust.

### Listing Rules

22.4 While Units are Officially Quoted:

- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;

<sup>52</sup> The required majority for such a resolution under section 601GC(1)(a) is 75%.  
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- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
  - (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
  - (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
  - (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.
- 22.5 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 22.4 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 Law.

## 23 Compliance committee

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If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Law<sup>53</sup>.

## 24 Complaints

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If and for so long as the Corporations Law or ASIC policy requires, a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager must:

- (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 ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;

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<sup>53</sup> See section 601JF  
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- (d) may in its discretion give any of the following remedies to the complainant:
    - (i) information and explanation regarding the circumstances giving rise to the complaint;
    - (ii) an apology; or
    - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
  - (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
    - (i) the determination in relation to the complaint;
    - (ii) the remedies (if any) available to the Member; and
    - (iii) information regarding any further avenue for complaint.

## 25 Restricted Securities

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- 25.1 Clause 25.2 only operates:
  - (a) while Units are Officially Quoted and the Listing Rules require this constitution to contain a provision to the effect of clause 25.2; and
  - (b) to the extent that it is not inconsistent with the Corporations Law.
- 25.2 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 Units.

## 26 Small holdings

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- 26.1 Subject to the provisions of this clause 26, the Manager may in its discretion from time to time sell or redeem any Units held by a Member without request by the Member where:
  - (a) the market value of Units held by a Member is less than \$2000; or.
  - (b) while Units are Officially Quoted, the Units held by a Member comprise less than a marketable parcel as provided in the Listing Rules. In this case, the Manager may only sell or redeem Units on one occasion in any 12 month period.
- 26.2 The Manager must notify the Member in writing of its intention to sell or redeem Units under this clause 26.

- 26.3 The Manager will not sell or redeem the relevant Units:
- (a) before the expiry of 6 weeks from the date of the notice given under clause 26.2; or
  - (b) if, within the 6 weeks allowed by clause 26.3(a):
    - (i) the Member advises the Manager that the Member wishes to retain the Units; or
    - (ii) the market value of the Units held by the Member increases to \$2000 or more.
- 26.4 The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- 26.5 The Manager or the purchaser of the Units must pay the costs of the sale or redemption as the Manager decides.
- 26.6 The proceeds of the sale or redemption will not be sent to the Member until the Manager has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.
- 26.7 The Manager is entitled to execute on behalf of a Member any transfer of Units under this clause 26.

## 27 Interpretation

### Definitions

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

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

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

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

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount to which a Member is presently entitled.

**ASX:** Australian Stock Exchange Limited.

**Authorised Investment:** has the meaning as it was set out in this deed at the time the Trust commenced.

**Base Fee:** the fees payable to the Manager pursuant to clause 19.1.

**Benchmark Index:** the accumulation index based on the volume weighted average prices recorded on ASX over the 10 Business Days after the Trust goes ex-distribution for the relevant period created from the ASX listed entities that have a principal focus on the office property sector, as

calculated by the ASX, or other suitable body as determined by the Manager from time to time and notified to Members, using closing market price series data. The index will commence at 100 on 29 February 2000. This index does not include Macquarie Office Trust. If the market capitalisation of the Trust becomes greater than 40% of the aggregate market capitalisation of the trusts or other entities (including a stapled entity) included in the Benchmark Index and Macquarie Office Trust, then the Benchmark Index will be replaced by the S & P/ASX 200 Property Accumulation Index with appropriate transitional adjustments, determined by an independent person appointed by the Manager, to reflect the position of the index as at the time of substitution so as to provide an equivalent benchmark. If the Benchmark Index or any substitute, whether the S & P/ASX 200 Property Accumulation Index or another index, ceases to be calculated or published or, in the Manager's reasonable opinion, to provide a relevant benchmark consistent with the purpose under this constitution, the Manager acting in good faith may substitute the most appropriate available index.

**Borrowing:** raising or borrowing any sum or sums of money or obtaining credit, accommodation or finance for the purposes of the Trust and any corporation or managed investment scheme in relation to which the Trust is entitled to exercise more than one half of the voting rights.

**Borrowing Limit:** 60% of the value of the Assets calculated in accordance with clause 8. For the purposes of calculating the Borrowing Limit, all trade credit and similar current liabilities incurred in the ordinary course of business are to be disregarded.

**Business Day:** a day which is a business day for the purposes of the Listing Rules.

**Commission:** ASIC or its predecessor at the relevant time.

**Commonwealth:** the Commonwealth of Australia.<sup>54</sup>

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

**Conversion:** the redemption of RePS and the application of the redemption proceeds to subscribe for Units in accordance with the RePS Terms of Issue.

**Corporation:** has the meaning contained in the Corporations Law and includes corporations formed or incorporated outside the Commonwealth and not recognised in the Commonwealth.<sup>55</sup>

**CS Facility:** has the same meaning as in the Corporations Act.

**CS Facility Operator:** the operator of a prescribed CS Facility.

**Date of Delisting:** whichever is the first to occur of the following:

- (a) the date upon which the Manager receives notification from the ASX of the removal of the Trust from the official list of the ASX; or
- (b) where the Units are suspended from trading by the ASX for a continuous period of 60 days, the day following the expiration of that 60 day period.

**Distribution Account:** the account established in accordance with clause 9.7.

<sup>54</sup> Principal Investment Policy and definition of Corporation

<sup>55</sup> Principal Investment Policy

**Distribution Calculation Date:** the last day of June and December of each year or such other days as the Manager designates.

**Distribution Period:**

- (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.

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

**Half Year:** a period of six months ending 30 June or 31 December. The first Half Year is the period from 1 March 2000 to 30 June 2000 and in relation to the calculations for that initial Half Year, the expression “last day of the prior Half Year” means the day prior to the commencement of that Half Year.

**Liabilities:** all present liabilities of the Trust including any provision which the Manager decides should be taken into account in accordance with accounting principles in determining the liabilities of the Trust, but excluding any amount representing Members’ capital, undistributed profits (except distributable income to which the Members have obtained a present entitlement), interest attributable to Members accruing on Members’ capital, capital reserves or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

**Liquid:** has the same meaning as in the Corporations Law<sup>56</sup>.

**Listing Rules:** the listing rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the official list of ASX, each as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

**Manager:** the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Law.

**Market Price:** of a Unit in respect of any Business Day means:

- (a) the last sale price per Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Unit on that Business Day, the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or

<sup>56</sup> Refer Part 5C.6  
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- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Unit on that Business Day, the price determined by an expert independent of the Manager whose identity and instructions are to be determined by the Manager.

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

**MPST:** Macquarie Park Street Trust ARSN 094 704 066.

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

**Net Income:** the net income of the Trust determined pursuant to clause 9.3.

**Officially Quoted:** quoted on the official list of the ASX, including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

**Operating Income:** the Net Income of the Trust determined pursuant to clause 9.3 adjusted by adding back any revaluation, write-down or write-off relating to any tangible or intangible assets or any other item determined by the Manager as being of a non-operating nature.<sup>57</sup>

**Performance Fees:** the fees (if any) payable to the Manager pursuant to clause 19.4 being both PF and EPF as defined in that clause.

**Performance Units:** Units issued to the Manager pursuant to clause 19.

**Quarter:** a calendar quarter and any period between the end of the last Quarter prior to the date of termination of the Trust and the date of termination of the Trust.

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

**Register:** the register of Members kept by the Manager under the Corporations Law.

**Registered:** recorded in the Register.

**Registrar:** the person appointed to maintain the Register from time to time.

**Registration:** recording in the Register.

**RePS:** Reset preference units issued by MPST.

**RePS Terms of Issue:** the terms of issue of the RePS a copy of which is attached as Schedule 1 to this constitution.

**Reserve Account:** means the account referred to in clause 9.16 of this constitution.

**Resolution:**

- (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

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<sup>57</sup> Required by Manager's fee.  
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- (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
  - (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority<sup>58</sup>.

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

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

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

**Taxable Annual Income:** the net income of the Trust calculated under the provisions of the Tax Act for a year of income.

**Taxable Period Income:** the net income of the Trust calculated under the provisions of the Tax Act but under the assumption that a Distribution Period is a year of income for the purposes of that Act.

**Transaction Costs:**

- (a) when calculating the Application Price of a Unit, the Manager’s estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager’s estimate of the total cost of selling the Assets;

provided that subject to the Corporations Law<sup>59</sup> the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

**Trigger Event:** Any of the following:

- (a) a resolution is passed at a meeting of Members removing or replacing the Manager without the recommendation of the existing Manager.
- (b) the Trust terminates;
- (c) a Date of Delisting occurs;
- (d) the Units are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Law;

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<sup>58</sup> Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

<sup>59</sup> See section 601FC(1)(d)



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- (e) the Members approve a formal or informal scheme of arrangement pursuant to which the Trust is to merge with any other managed investment scheme or entity or pursuant to which there is a material change in the ownership or control of the Trust.

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

**Trust Fund:** all of the Assets for the time being of the Trust but subject to the Liabilities at that time of the Trust.

**Trust Index:** the accumulation index for the Trust as calculated by the ASX, or other suitable body as determined by the Manager from time to time and notified to Members, using closing market price series data except for the closing price at the end of the Half Year which shall be replaced by the ten day volume weighted average trading price from and including the date upon which the Units trade ex distribution entitlement for the relevant Half Year. The index will commence at 100 on 29 February 2000 utilising the closing market price on that day.

**Trustee:** the person appointed as the trustee of the Trust for the time being and the Manager when acting as the Trustee in accordance with the provisions of this deed.

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

**Unit Holder:** has the same meaning as Member.

**User Pays Fees:** any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member

which the Manager considers should be borne by that Member.<sup>60</sup>

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

## Interpretation

27.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Law are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;

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<sup>60</sup> See clause 18.3  
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- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
  - (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
  - (h) a reference to a year, half-year or month means a calendar year, calendar half-year or calendar month respectively; and
  - (i) any schedule to this constitution is an operative part of it.

**Other documents**

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

**Constitution legally binding<sup>61</sup>**

- 27.4 This constitution binds the Manager 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.

**Severance**

- 27.5 If all or part of any provision of 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 of any other provision of this constitution.

**Governing law**

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

**Other obligations excluded**

- 27.7 Except as required by the Corporations Law all restrictions on the exercise of the Manager's powers or obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any such restriction or obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

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<sup>61</sup> Refer Section 601GB  
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## Schedule 1 – RePS Terms of Issue

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### Terms of RePS

Defined terms used in this Section are set out in clause 9 below.

References to clauses and paragraphs in the text below are clauses and paragraphs of these terms of issue.

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### 1 Face Value

The face value of each Reset Preference Unit (RePS) will be \$100 (Face Value), even if RePS are issued at a price which differs from this amount.

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### 2 Distributions

#### 2.1 Distributions

Subject to these terms, the Holder on the relevant Distribution Entitlement Date of each RePS is entitled to receive on each relevant Distribution Payment Date a distribution (**Distribution**) calculated in accordance with the following formula:

$$\text{Distribution} = \frac{\text{Distribution Rate} \times \$[\text{Face Value}]}{365} \times N$$

**where:**

**N** is the number of days from (and including) the date of allotment of the first RePS or from (but not including) the preceding Distribution Entitlement Date (whichever is the later) until (and including) the relevant Distribution Entitlement Date; and

**Distribution Rate** is:

- (a) for the period to 31 December 2006, the higher of
  - 7.25% per annum; and
  - the distribution rate per annum set under the Institutional Bookbuild; and
- (b) for the period after 31 December 2006 until and including the next Reset Date, a rate expressed as a percentage per annum of the Face Value as specified in accordance with clause 4.

#### 2.2 Payment of Distribution

The payment of a Distribution is subject to there being Distributable Amounts in MPST available for the payment of Distributions. If there are insufficient Distributable Amounts in MPST, the shortfall is to be made up under the Guarantee to the extent of an amount no greater than the amount of MOF Income. If the amount of the shortfall exceeds an amount equal to MOF Income, any remaining shortfall may be met on subsequent Distribution Payment Dates, subject to the terms of clause 5.5.

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## 2.3 Non-Cumulative Distributions

Subject to clause 5.5, if and to the extent that all or any part of a Distribution is not paid because of the provisions of clause 2.2, the Manager and MPST have no liability to pay such Distribution and the Holder has no claim in respect of such non-payment, except pursuant to the Guarantee.

## 2.4 Calculation of Distributions

All calculations of Distributions will be to four decimal places. For the purposes of making any Distribution payment in respect of a Holder's aggregate RePS, any fraction of a cent will be disregarded.

## 2.5 Distribution Entitlement and Payment Dates

- (a) Subject to clause 2.2, Distributions will be payable to those persons registered as Holders at the date on which the books of MPST close for Holders (Distribution Entitlement Date) in respect of each relevant Distribution, which shall be each 31 March, 30 June, 30 September and 31 December until the RePS are converted or redeemed or in the case of a change in the terms of the RePS pursuant to clause 4, in accordance with such change. The first Distribution Entitlement Date shall be 31 March 2002
- (b) Subject to this clause 2, Distributions will be payable on the last Business Day of the month following the relevant Distribution Entitlement Date.
- (c) For the avoidance of doubt, where a Reset Date falls on a Distribution Entitlement Date, Holders will be entitled to receive the relevant Distribution notwithstanding the fact that the date for payment of the Distribution will fall after the Reset Date.
- (d) In the event of termination of MPST, the date of termination will be a Distribution Entitlement Date.

## 2.6 Payments

The Manager will not deduct from any Distribution payable to a Holder the amount of any withholding or other tax, duty or levy except where such amounts are required by law to be deducted. If any such deduction has been made and the amount of the deduction accounted for by the Manager on behalf of MPST to the appropriate revenue authority and the balance of the amount payable has been paid to the Holder, then the full amount payable to such Holder shall be deemed to have been duly paid and satisfied by the Manager on behalf of MPST. The Manager on behalf of MPST shall pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring penalty under the applicable law and shall, if required by any Holder, deliver to that Holder the relevant receipt issued by the revenue authority without delay after it is received by the Manager.

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## 3 Conversion

### 3.1 Holder Conversion

- (a) Holders of RePS may request the Manager to convert their RePS by giving a notice to the Manager (Holder Conversion Notice):
  - (1) at least 35 Business Days (but no more than three months) before the Reset Date, in respect of all or some of their RePS. If

a Holder Conversion Notice is issued under this clause 3.1(a)(1), the date of conversion (Conversion Date) is the Reset Date immediately following the giving of the notice;

- (2) at any time after the second anniversary of the date of issue of the RePS, in respect of all or some of their RePS. If a Holder Conversion Notice is issued under this clause 3.1(a)(2):
  - (A) the Conversion Date is the thirty-fifth Business Day following the giving of the Holder Conversion Notice; and
  - (B) for the purposes of clause 3.7, the Conversion Ratio (if applicable) will equal the Minimum Conversion Number; or
- (3) pursuant to clause 3.2.

To be valid, the Holder Conversion Notice must indicate under which paragraph the Holder is giving notice.

- (b) Once a Holder has given a Holder Conversion Notice under this clause 3.1, the Holder must not deal with, transfer, dispose of or otherwise encumber the RePS the subject of the Holder Conversion Notice.
- (c) On receipt of a valid Holder Conversion Notice under clause 3.1(a)(1), (2) or (3) from a Holder, the Manager must, at its option, do one of the following in relation to the RePS which are the subject of the Holder Conversion Notice, on or before the Conversion Date:
  - (1) convert the RePS into MOF Units in accordance with clause 3.7;
  - (2) purchase the RePS for an amount (Manager Purchase Price) equal to higher of:
    - (A)  $\frac{\text{Face Value}}{(100\% - CD)}$ ; and
    - (B) Minimum Conversion Number x Conversion VWAP x 101%.

where:

**Face Value** is as defined in clause 1;

**CD** means the Conversion Discount of 5% (Conversion Discount);

**Conversion VWAP** is as defined in clause 9; and

**Minimum Conversion Number** is as defined in clause 3.7(b); or

- (3) procure the acquisition of RePS by a third party, including the Manager as the responsible entity for MOF, at the Manager Purchase Price and deliver the proceeds to the Holder on the relevant Conversion Date.

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- (d) The Manager may, at its discretion, redeem RePS purchased pursuant to clause 3.1(c)(2), in accordance with clause 3.6.
  - (e) No later than 25 Business Days prior to the relevant Conversion Date, the Manager must notify Holders who have submitted a Holder Conversion Notice of which of the alternatives referred to in clause 3.1(c) it has chosen.
  - (f) Where the Manager is in receipt of more than one Holder Conversion Notice at any one time, the Manager may adopt more than one of the alternatives referred to in clause 3.1(c).
  - (g) If the Manager does not notify the Holders in accordance with this clause 3.1, then clause 3.1(c)(1) will apply.
  - (h) The minimum number of RePS that a Holder may convert pursuant to clause 3.1(a)(1) or clause 3.1(a)(2) is 50, or, if the Holder holds less than 50 RePS, all of the Holder's RePS.

### 3.2 Holder Trigger Event Conversion

- (a) If a Trigger Event occurs, a Holder may require the Manager to convert all (but not some only) of its RePS by giving notice to the Manager (Holder Trigger Event Conversion Notice) at any time after the Trigger Event occurs but no later than 30 Business Days after the publication of the notice referred to in clause 3.2(c). In that event, the Conversion Date will be the thirty-fifth Business Day following the receipt of the Holder Trigger Event Conversion Notice by the Manager.
- (b) A **Trigger Event** means the occurrence of any of the following events:
  - (1) a resolution is passed at a meeting of members of MPST removing or replacing the Manager without the recommendation of the Manager;
  - (2) MPST or MOF terminates;
  - (3) a Date of Delisting occurs;
  - (4) either the RePS or the MOF Units are the subject of a takeover bid which becomes unconditional and pursuant to which the bidder is or becomes entitled to more than 50% of the RePS or MOF Units;
  - (5) the members of MPST approve a formal or informal scheme of arrangement pursuant to which either MPST or MOF is to merge with any other managed investment scheme or entity or pursuant to which there is a material change in the ownership or control of MPST or MOF;
  - (6) the Holders do not receive (after including any amounts paid pursuant to clause 5.5 and the Guarantee), the full amount of the Distribution calculated in accordance with clause 2.1 for any period, and the unpaid amount of the Distribution remains unpaid for 12 months or more;

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- (7) MOF Units or the RePS are suspended from trading on ASX for a period of 10 consecutive Business Days;
  - (8) there is a breach of the borrowing covenant in the Guarantee; or
  - (9) MPST ceases to have an indirect interest in the property at 2 Park Street, Sydney known as Citigroup Centre.
- (c) The Manager must notify Holders of the occurrence of a Trigger Event by publishing a notice in The Australian or a daily financial newspaper in Australia which specifies the particular Trigger Event as soon as practicable after becoming aware of the applicable event.
  - (d) Where a Holder issues a valid Holder Trigger Event Conversion Notice under this clause 3.2, the Manager must, at its option, do one of the following in relation to the RePS which are the subject of the Holder Trigger Event Conversion Notice, on or before the Conversion Date:
    - (1) convert the RePS into MOF Units in accordance with clause 3.7;
    - (2) purchase the RePS for the Manager Purchase Price; or
    - (3) procure the acquisition of RePS by a third party including the Manager as the responsible entity of MOF at the Manager Purchase Price and deliver the proceeds to the Holder on the relevant Conversion Date.
  - (e) The Manager may, at its discretion, redeem RePS purchased pursuant to clause 3.2(d)(2), in accordance with clause 3.6.
  - (f) Where the Manager is in receipt of more than one Holder Trigger Event Conversion Notice at any one time, the Manager may adopt more than one of the alternatives referred to in clause 3.2(d).
  - (g) No later than 25 Business Days prior to the Conversion Date, the Manager must notify Holders of RePS who have submitted a Holder Trigger Event Conversion Notice of which of the alternatives referred to in clause 3.2(d) it has chosen.
  - (h) If the Manager does not notify the Holders in accordance with this clause 3.2, then clause 3.2(d)(1) will apply.

### **3.3 Conversion by Manager**

- (a) The Manager may convert the RePS by giving notice to Holders (Manager Conversion Notice):
  - (1) in respect of all or some of the RePS at least 35 Business Days (but no more than 12 months) before the Reset Date;
  - (2) in respect of all (but not some only) of the RePS, if the Manager resolves on reasonable grounds (having obtained an opinion from reputable legal counsel or tax adviser) that a change in any taxation law, interpretation or ruling issued by any relevant governmental body has occurred (or is announced) and that change will materially adversely affect MPST or MOF; or

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- (3) in respect of all (but not some only) of the RePS:
- (A) after the Manager has published a notice under clause 3.2(c) following a takeover offer or scheme of arrangement described in clause 3.2(b)(4) or (5), or after MPST has ceased to have an indirect interest in the property at 2 Park Street, Sydney known as Citigroup Centre;
  - (B) if the total Face Value of RePS remaining on issue is less than \$15 million; or
  - (C) if a meeting of the members of MPST is called by any members of MPST or upon the requisition of members of MPST to replace the Manager, to terminate MPST or amend the constitution of MPST.
- (b) The Conversion Date will be:
- (1) in the case of paragraph 3.3(a)(1), the earlier of:
    - (A) the Reset Date immediately following the date the Manager Conversion Notice was served; and
    - (B) the thirty-fifth Business Day after the publication of the Manager Conversion Notice.
  - (2) in the case of clause 3.3(a)(2), 3.3(a)(3)(A) and 3.3(a)(3)(B), the thirty-fifth Business Day following publication of the Manager Conversion Notice; and
  - (3) in the case of clause 3.3(a)(3)(C), a date nominated by the Manager, which shall be at least 10 Business Days following publication of the Manager Conversion Notice.
- (c) The Manager cannot elect to convert only some RePS if, as at the date of the Manager Conversion Notice, that conversion would result in there being RePS on issue with an aggregate Face Value of less than \$15 million. In a partial conversion, the Manager must treat Holders on a proportionate basis, subject to rounding and not leaving Holders with non-marketable parcels of RePS.
- (d) Where under clause 3.3(b)(1) the Conversion Date is earlier than the Reset Date, the Reset Date will be brought forward to the Conversion Date as determined in accordance with clause 3.3(b)(1), and the Manager will issue a Reset Notice in accordance with clause 4.2 in respect of any RePS which are not the subject of a Manager Conversion Notice.
- (e) Where the Manager issues a Manager Conversion Notice under this clause 3.3, the Manager must, at its option, do one of the following in relation to the RePS which are the subject of the Manager Conversion Notice, and must notify in the Manager Conversion Notice which of the alternatives referred to in this clause 3.3(e) it has chosen;



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- (1) convert the RePS into MOF Units in accordance with clause 3.7;
  - (2) purchase the RePS for the Manager Purchase Price; or
  - (3) procure the acquisition of RePS by a third party including the Manager as the responsible entity of MOF, at the Manager Purchase Price and deliver the proceeds to the Holder on the relevant Conversion Date.
- f) The Manager may, at its discretion, redeem RePS purchased pursuant to clause 3.3(e)(2), in accordance with clause 3.6.
  - g) The minimum number of RePS that the Manager may convert pursuant to clause 3.3(a)(1) is 50 or, if the Holder holds less than 50 RePS, all of the Holder's RePS.

### **3.3A Transfer to a third party**

The Manager may do anything which it reasonably considers necessary to effect a transfer of RePS to a third party in accordance with clause 3.3(e)(3), including, without limitation:

- (a) effecting a crossing; or
- (b) acting as agent of a Holder to execute a transfer, and each Holder irrevocably and unconditionally appoints the Manager as its agent for this purpose.

### **3.4 Notices**

- (a) A notice given by the Manager or a Holder under clauses 3.1 to 3.3 is irrevocable.
- (b) A notice given by a Holder under clauses 3.1 and 3.2(a) must be accompanied by evidence of title acceptable to the Manager for the RePS being converted.
- (c) A form of notice which may be used by Holders under clauses 3.1 and 3.2(a) will be made available by the Manager upon request.

### **3.5 Meaning of Conversion**

Each RePS confers the right to request the Manager to arrange the conversion of the RePS into MOF Units in accordance with clause 3.7. Where a conversion into MOF Units is to occur, the Manager must cause the RePS to be redeemed at the Redemption Price in accordance with clause 3.6 and apply the redemption proceeds as agent on behalf of the Holder in subscribing for that number of MOF Units determined in accordance with clause 3.7. The Manager must cause that number of MOF Units to be issued to the Holder.

### **3.6 Redemption**

A RePS which is redeemed will be redeemed at the Face Value (Redemption Price). A Holder, other than the Manager, has no right to redeem except where Conversion occurs.

### **3.7 Conversion and additional MOF Units**

- (a) Except where conversion occurs pursuant to clause 3.1(a)(2), upon conversion, each RePS will entitle the Holder to be allotted a number of MOF Units equal to the Conversion Ratio, where, subject to clause (d) below, the Conversion Ratio is an amount calculated in accordance with the following formula (Conversion Ratio) :

$$\frac{\text{Face Value}}{\text{Conversion VWAP} \times [100\% - CD]}$$

Where:

**Face Value** is as defined in clause 1;

**CD** is the Conversion Discount;

**Conversion VWAP** is as defined in clause 9.

- (b) The Conversion Ratio shall not be less than the Minimum Conversion Number, where:

Minimum Conversion Number means:

- 1) as at the date the RePS are issued, the number set under the Institutional Bookbuild which shall be no less than 70 and no more than 75; and
  - 2) thereafter, the number determined in accordance with clauses 3.10 to 3.13 as those clauses apply from time to time, so long as successive applications of these clauses, if any, will be based upon the Minimum Conversion Number applying immediately prior to the application of the relevant clause (referred to in clauses 3.10 and 3.11 as CNo);
- (c) Where conversion occurs pursuant to clause 3.1(a)(2), each RePS will entitle the Holder to be allotted a number of MOF Units equal to the Minimum Conversion Number.
- (d) Where the total number of MOF Units to be allotted on conversion to a RePS Holder includes a fraction, that fraction will be disregarded.

### **3.8 Distribution Following Trigger Event Conversion**

If conversion of a RePS is carried out by the Manager in accordance with clause 3.2 or 3.3(a)(1),(2) or (3), the Holder will be entitled subject to clause 2.2 to receive any Distributions calculated in accordance with clause 2.1, up to the Conversion Date of the RePS as if that date was a Distribution Entitlement Date.

### **3.9 Adjustment to VWAP**

For the purposes of calculating VWAP in clause 9:

- (a) where, on some or all of the Business Days in the Reference Period, MOF Units have been quoted on ASX as *cum* any distribution or other entitlement and the RePS will convert into MOF Units after the date those MOF Units no longer carry that entitlement (Ex Date), then the

VWAP on the Business Days on which those MOF Units have been quoted *cum* distribution or *cum* entitlement shall be reduced by an amount (Cum Value) equal to:

- (1) the amount of that distribution;
  - (2) (in the case of an entitlement which is traded on ASX on any of those Business Days), the volume weighted average price of all such entitlements sold on ASX during the Reference Period on the Business Days on which those entitlements were traded as attributed to each MOF Unit; or
  - (3) (in the case of an entitlement not traded on ASX during the Reference Period), the value of the entitlement per MOF Unit as reasonably determined by the Manager; and
- (b) where, on some or all of the Business Days in the Reference Period, MOF Units have been quoted *ex* distribution or *ex* entitlement, and the RePS will convert into MOF Units which would be entitled to receive the relevant distribution or entitlement, the VWAP on the Business Days on which those MOF Units have been quoted *ex* distribution or *ex* entitlement shall be increased by the Cum Value.

### 3.10 Adjustments for Rights and Bonus Issues

- (a) Subject to paragraphs (b), (c) and (d) below, if MOF makes a pro rata rights issue or a bonus issue of MOF Units to Holders of MOF Units generally, the Minimum Conversion Number shall be adjusted immediately in accordance with the following formula:

$$CN = CN_o \times P \times \left[ \frac{(RD + RN)}{(RD \times P) + (RN \times A)} \right]$$

Where:

- CN** means the Minimum Conversion Number applying immediately after the application of this formula as provided for in clause 3.7;
- CNo** means the Minimum Conversion Number applying immediately prior to the application of this formula as provided for in clause 3.7;
- P** means the VWAP during the period from the first Business Day after the announcement of the rights or bonus issue to ASX up to and including the last Business Day of trading *cum* rights or bonus issue;
- A** means the subscription or unit price per MOF Unit for the rights issue and is zero in the case of a bonus issue;
- RN** means the number of MOF Units issued pursuant to the rights or bonus issue; and

- RD** means the number of MOF Units on issue immediately prior to the allotment of new MOF Units pursuant to the rights or bonus issue.
- (b) No adjustment to the Minimum Conversion Number shall occur if A exceeds P.
- (c) Paragraph (a) does not apply to MOF Units issued as part of a placement, unit purchase plan or a distribution reinvestment plan, or units issued to the Manager under the terms of its management agreement
- (d) No adjustment is to be made pursuant to paragraph (a) if at or about the time of the rights issue or bonus issue, MOF offers MOF Units to the Holders at the same issue price and in the same proportion as if the Holders had been able to participate in the rights issue or bonus issue but without having the ability to renounce the rights.

### 3.11 Adjustment for return of capital or Capital Distribution

If MOF makes a return of capital other than as part of a normal distribution or there is a Capital Distribution to holders of MOF Units (other than by way of a buy-back) the Minimum Conversion Number shall be adjusted in accordance with the following formula:

$$CN = CN_o \times \frac{P}{(P - C)}$$

where:

- CN** means the Minimum Conversion Number applying immediately after the application of this formula as provided for in clause 3.7;
- CNo** means the Minimum Conversion Number applying immediately prior to the application of this formula as provided for in clause 3.7;
- P** means the VWAP during the period from the first Business Day after the announcement of the return of capital to ASX up to and including the last Business Day of trading *cum* the return of capital; and
- C** means with respect to a return of capital, the amount of the cash and/or the value (as reasonably determined by the Manager) of any other property distributed to holders of MOF Units per MOF Unit (or such lesser amount such that the difference between P and C is greater than zero). With respect to a Capital Distribution, C is the amount of such Capital Distribution as defined in clause 9.

### 3.12 Adjustment for Capital Reconstruction

If at any time the MOF Units are reconstructed, consolidated, divided or reclassified (other than by way of a bonus issue, which is dealt with under clause 3.10) into a lesser or greater number of securities, the Minimum Conversion Number must be reconstructed, consolidated, divided or reclassified by the Manager on the same basis.

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### **3.13 Adjustment to the Conversion Ratio for a Takeover or Scheme of Arrangement**

- (a) In the case of conversion under clause 3.2(d)(1) or under 3.3(e)(1) following a takeover offer or a scheme of arrangement, the denominator of the formula in clause 3.7 will be the lower of:
- (1)  $(100\% - CD)$  of the offer price under the takeover offer or the consideration under the scheme of arrangement; and
  - (2) the VWAP over the 20 Business Days immediately preceding the announcement of the takeover offer or the scheme of arrangement plus 50% of the amount calculated by subtracting that VWAP from the offer price or the consideration (as applicable).
- (b) The offer price or consideration under the takeover offer or scheme of arrangement is the cash consideration offered for each MOF Unit or, if cash consideration is not the only consideration offered,  $(100\% - CD)$  of the value of the consideration offered as reasonably determined by an independent investment bank appointed by the Manager (which shall act as an expert).

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## **4 Reset of Terms**

### **4.1 Manager may Change Terms of Issue**

Subject to these terms, the Manager may notify Holders of changes to the following terms (Reset Notice):

- (a) the Distribution Rate applying from the relevant Reset Date until and including the next Reset Date;
- (b) the Minimum Conversion Number applying from the relevant Reset Date until and including the next Reset Date (subject to the operation of any or all of clauses 3.10 to 3.13);
- (c) the next Reset Date (which must be at least 12 months after the relevant Reset Date and which must coincide with a Distribution Entitlement Date);
- (d) the frequency and timing of Distribution Entitlement Dates; and
- (e) the definition of Capital Distribution.

These new terms will apply from the relevant Reset Date until and including the next Reset Date.

### **4.2 Notification**

To be effective, the Reset Notice must be given to Holders no later than 45 Business Days immediately preceding the relevant Reset Date.

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## **5 RePS general rights**

### **5.1 Ranking**

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RePS rank equally amongst themselves in all respects. The issue of any other preference units which rank in priority to the RePS in respect of distributions and return of capital on a winding up constitutes alteration of the rights attached to the RePS.

The Manager reserves the right to issue further RePS or preference units which rank equally with existing RePS in respect of distribution and return of capital on a winding up. Such an issue does not constitute an alteration of the rights attached to the existing RePS.

## **5.2 Preferential Distribution**

Until conversion, the RePS rank in priority to MPST Units for the payment of distributions.

## **5.3 Priority on Termination**

If MPST is terminated, Holders will be entitled in priority to holders of MPST Units, to receive an amount equal to the Redemption Price, or if there is insufficient money available to make this payment in full, the available amount is to be paid to Holders proportionately based on their respective numbers of RePS held as at the date of termination.

## **5.4 No Set Off**

Any amount due to a Holder in respect of the RePS may not be set off against any claims by MOF or MPST against the Holder.

## **5.5 Restrictions on Distributions and Other Issues**

Until the date on which all RePS have been converted:

- (a) MPST will pay Distributions in respect of each Distribution Period in priority to distributions on any capital over which the RePS rank in priority for the payment of distributions or return of capital. MPST may only declare and pay distributions on such subordinated capital if all Distributions for the current Distribution Period and Distribution Shortfalls arising under this clause 5.5 have been paid;
- (b) if any Distribution as calculated under clause 2.1 is not paid or otherwise satisfied in full on a Distribution Payment Date, the amount of the unpaid Distribution (Distribution Shortfall) will be carried forward to subsequent Distribution Payment Dates during the Financial Year in which the Distribution Shortfall arose, and if and to the extent there are surplus Distributable Amounts following payment of Distributions, the Distribution Shortfall will be paid to Holders;
- (c) if at the end of a Financial Year, any of the Distributions which were payable pursuant to clause 2 during that Financial Year have not been paid in full, including by payment under clause 5.5(b) (Financial Year Shortfall), the amount of the unpaid Distributions will be carried forward to the following Financial Year, and to the extent that there are surplus Distributable Amounts in any Distribution Period in that Financial Year, following payment of Distributions and any Distribution Shortfall under clause 5.5(b), the surplus will be applied in or towards payment of the Financial Year Shortfall. For the avoidance

of doubt, where an amount is paid to Holders in respect of a Financial Year Shortfall, that amount will be applied against Distribution Shortfalls in the order in which they arose;

- (d) if a Financial Year Shortfall has not been paid at the end of the Financial Year following the Financial Year in which it arose, the Manager and MPST will have no liability to pay the Financial Year Shortfall;
- (e) MPST must not, without approval of a special resolution passed at a separate meeting of Holders, issue units ranking in priority to the RePS or permit the conversion of any existing units to units ranking equally or in priority to the RePS, but the Manager is at all times authorised to issue further preference units ranking equally with any existing RePS;
- (f) in determining whether there is any shortfall, account will be taken of payments made under the Guarantee in respect of Distributions;
- (g) any payment to be made to Holders pursuant to clause 5.5(b) or (c) will be paid to those Holders who are on the register on the Distribution Entitlement Date as at the end of the Distribution Period in which the surplus Distributable Amounts became available.

## **5.6 Takeover Offers and Schemes of Arrangement**

If a takeover offer is made for MOF Units, acceptance of which is recommended by the Manager, or the Manager recommends a scheme of arrangement in respect of the MOF Units which will result in a person having a relevant interest in more than 50% of the MOF Units, the Manager will use reasonable endeavours to procure that Holders who convert during the takeover or scheme period will have the right to participate in the takeover or scheme.

## **5.7 Participation in New Issues**

Until the RePS are converted, they will confer no rights to subscribe for new securities in MOF or MPST or to participate in any bonus issues.

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## **6 Voting Rights**

### **6.1 MOF**

Holders will be entitled to receive notice of any general meeting of MOF and a copy of every circular and like document sent out by MOF to MOF Unit holders.

Holders will not be entitled to vote at any general meeting of MOF.

### **6.2 MPST**

Holders will be entitled to receive notice of any general meeting of MPST and to attend, speak and vote at that meeting in accordance with the Corporations Act.

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## 7 Listing of RePS

The Manager must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure, at its own expense, listing of the RePS on ASX and all MOF Units issued under clause 3.7, on ASX.

## 8 Amendments to the Terms of Issue

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Subject to complying with all applicable laws, the Manager may without the authority, assent or approval of Holders amend or add to these terms of issue if the Manager reasonably considers the change will not adversely affect Holders' rights.

## 9 Interpretation

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- (a) Unless the context otherwise requires, if there is any inconsistency between the provisions of these terms of issue and MPST's constitution, then, to the maximum extent permitted by law, the provisions of these terms of issue will prevail.
- (b) If a calculation is required under these terms of issue, unless the contrary intention is expressed, the calculation will be performed to four decimal places.
- (c) Definitions and interpretation under MPST's constitution will also apply to these terms of issue.
- (d) The following expressions shall have the following meanings:

**ASX** Australian Stock Exchange Limited/

**Business Day** has the same meaning as in the ASX Listing Rules/

**Capital Distribution** is the amount by which the sum of all distributions per MOF Unit paid by MOF in respect of a Financial Year exceeds the relevant amount shown below for that financial year:

In respect of the financial year ending:	Amount:
30 June 2002	\$0.13
30 June 2003	\$0.14
30 June 2004	\$0.15
30 June 2005	\$0.16
30 June 2006	\$0.17

**Conversion Date** means the date of conversion in respect of a Conversion Notice RePS in accordance with clause 3.1(a), 3.2(a), or 3.3(b).

**Conversion Ratio** is defined in clause 3.7(a).

**Conversion VWAP** means:

- a) for the purposes of clause 3.2, the VWAP during the period (Reference Period) of 25 Business Days immediately preceding, but not including:



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- 1) if the Manager receives a notice under clause 3.2(a) following a suspension of trading described in clause 3.2(b)(7), the first day the MOF Units are suspended; and
  - 2) otherwise, the Conversion Date.
- b) for the purpose of clause 3.3(a)(3)(C), the VWAP during the period (Reference Period) of 10 Business Days immediately following the publication of a Manager Conversion Notice pursuant to clause 3.3(a)(3)(C); and
  - c) in all other cases, the VWAP during the period (Reference Period) of 25 Business Days immediately preceding, but not including, the Conversion Date.

**Cum Value** is defined in clause 3.9.

**Date of Delisting** means whichever is the first to occur of the following:

- a) the date upon which the Manager receives notification from ASX of the removal of MPST from the official list of ASX; or
- b) where the RePS are suspended from trading by the ASX for a continuous period of 60 days, the day following the expiration of that 60 day period.

**Distributable Amounts** means in relation to a Distribution Period the net income of MPST plus such other amounts which the Manager in its discretion determines are available for distribution to Holders.

**Distribution** in respect of each RePS is the distribution calculated in accordance with clause 2.1(a).

**Distribution Entitlement Date** means each date on which Holders will become entitled to receive a Distribution.

**Distribution Payment Date** means each date on which a Distribution is payable in accordance with clause 2.5 whether or not a Distribution is paid on that date.

**Distribution Period** means a period ending on a Distribution Entitlement Date as referred to in clause 2.5.

**Distribution Shortfall** is defined in clause 5.5

**Ex Date** is defined in clause 3.9.

**Face Value** in respect of each RePS is \$100, as described in clause 1

**Financial Year** has the same meaning as applies under the Corporations Act.

**Financial Year Shortfall** is defined in clause 5.5.

**Guarantee** means the guarantee dated 15 November 2001 provided by MOF to a security trustee of the benefit of the Holders in respect of the RePS.

**Holder** means a registered owner of RePS.

**Holder Conversion Notice** is defined in clause 3.1.

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**Holder Trigger Event Conversion Notice** is defined in clause 3.2(a).

**Institutional Bookbuild** means an open price bookbuild process in which institutions may bid for RePS.

**Manager** Macquarie Office Management Limited (ABN 75 006 765 206).

**Manager Conversion Notice** is defined in clause 3.3(a).

**Manager Purchase Price** is defined in clause 3.1(c)(2).

**Minimum Conversion Number** is defined in clause 3.7(b).

**MOF** Macquarie Office Trust (ARSN 093 016 838).

**MOF Income** means net income of MOF arising in accordance with the constitution of MOF.

**MOF Units** Ordinary Units in the capital of MOF.

**MPST** Macquarie Park Street Trust (ARSN 098 704 066).

**MPST Units** means ordinary units in MPST

**Redemption Price** is defined in clause 3.6.

**Reference Period** is the period described in the definition of Conversion VWAP in this clause 9.

**Reset Date** is 31 December 2006 or earlier as provided in clause 3.3, and thereafter the date as specified by the Manager in a notice issued under clause 4.1.

**Reset Notice** is defined in clause 4.1.

**Trigger Event** is defined in clause 3.2(b).

**VWAP** is the average of the daily volume weighted average sale price of MOF Units sold on ASX during the relevant period or on the relevant days but does not include any transaction defined in the ASX Business Rules as “special”, crossings prior to the commencement of normal trading, crossings during the after hours adjust phase nor any overseas trades or the exercise of options over MOF Units.

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## Finding list

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This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Law for constitutions of registered managed investment schemes.

Corporations Law	Constitution
601GA	
(1)(a)	4.1 - 4.8
(1)(b)	11.1 - 11.4
(1)(c)	24
(1)(d)	21
(2)	17.3 - 17.5, 19.1 - 19.8
(3)	11.2, 11.3
(4)(a)	7.1, 7.4, 7.11, but not a right while listed (7.1A)
(4)(b)	7.3 - 7.10, 6.1 - 6.3
(4)(c)	7.11 - 7.13, 6.1 - 6.3
601GB	27.4

This list is included to assist the ASX in identifying the provisions in this constitution which satisfy the requirements of the Listing Rules which relate to constitutions of registered managed investment schemes.

Listing Rules	Constitution
1.1, condition 2	22.4
1.1, condition 5	7.1A
15.12.1	3.9
15.12.2	3.12
15.12.3	25
15.13	26
15.14	N/A